# A SOCIALIZED STATE.

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"L'Etat, c'est toi!"

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CONTENTS.

CHAPTER I.

SOCIALIZED SOVEREIGNTY.

During the last ten years the reorganization of state government has been one of the liveliest subjects in political science. A great deal has been written about it, but little has been done to remedy the defects pointed out. Some progress has been made, however, and doubtless the next few years will see the widespread adoption of many recommendations investigators recently have proposed. We are just entering upon the period of construction which normally follows the period of criticism.

Bryce's famous animadversion against the government of American cities(1) is largely untrue at the present time as a result of the remarkable growth of the commission and manager types of city government. The National Municipal League feels so hopeful of the outlook for cities and so pessimistic of the conditions in state government that, for the last two or three years, its organ, "The Municipal Review", has been devoting much more space to state than to city government. Of course, there still remains plenty of room for improvement in the conduct of government in the vast majority of American cities, but we seem to be on the right track in municipal affairs. We may confidently expect continuous improvement in urban goverment.

How different is the situation with respect to state government! Since 1910 the question has been widely discussed. In that year the Proceedings of the American Political Science Association is almost completely devoted to the consideration of various aspects of state government. The publications and proceedings of

practically every political science organization, the writings of professors of politics and experts in government, the speeches and articles of practical politicians and publicists, all tell the same story,--something is wrong with state government. Divers remedies have been prescribed but few of them have been earnestly and honestly applied. Some of the more radical attempts have been more or less tentative; their results are more or less doubtful; and their future is still more open to question.

Herbert Croly was one of the first publicists to present the subject in such a way as to gain nation-wide consideration for it, altho the "Oregon System" had created a great deal of discussion, a large part of it unfavorable. Croly says (2), "A popular but ill-founded American political illusion concerns the success of their state governments. Americans tend to believe that these governments have on the whole served them well, whereas in truth, they have on the whole been ill-served by their machinery of local administration and government". Ten years after these words were written, they still are true in the main, but sweeping changes will unquestionably occur within the next ten years unless present indications are very misleading.

What, then, will be the nature of these changes? Legislative reorganization? New systems of representation? More of direct government? Or less of it? Centralization? Decentralization? State socialism? Guild socialism? What will be the determining factors in the changes which most students of the question are convinced will come?

However, there seems to be no occasion for alarm. Rather there is ample reason for faith and optimism. Some of the ideas which have been most instrumental in bolstering up the static conception of the state and instilling into the minds of the people an irration-

al fear of any change, are showing signs of breaking down or of radical modification. Doubtless one of the most conservative of these ideas has been the theory that state sovereignty is as real and absolute as the sovereignty of the federal state. But now that the concept of the absolute sovereignty of any political state is being thrown into the scrap-heap along with other doctrines of political absolutism such as the divine right of kings, Macht-politik, papal supremacy, and so on,(3) it seems that the theory of the sovereignty of the smaller administrative units is bound to disappear.

This will open the way for a rational attack upon some of our troublesome administrative problems. They will be assigned to the federal government. On the other hand, there are very likely some matters being handled by the federal government which might better be taken over by the states. A real scientific division off administrative labor between the state and federal governments has never been made. This is largely due to the fact that sovereignty has been conceived of as some absolute, indivisible, unchangeable entity of which, by some inconsistent chance, the several states and also the federal government each have a definite share. Constitutional barriers have rendered permanent this division of the indivisible in such a way that proper apportionment of administrative functions has been impossible; jealousy and suspicion has always existed between the states and the central government; often they have been violently at logger-heads. From 1789 till 1921 this has been true, in spite of Whiskey Rebellions, Nullifications, Civil Wars and Prohibition Amendments and the consequent gradual centralization of federal power.(4)

Doubtless this conflict will continue until the problem of sovereignty is finally settled. Now that the concept of absolute

sovereignty is becoming more and more attenuated, and, consequently, political organization is becoming more and more plastic, there is greater likelihood that important changes in state government may take place. When the stultifying influence of absolute sovereignty is removed, the prohibitive limitations of the federal analogy will go with it and we will come to look upon the erstwhile "sovereign state" merely as an administrative unit. This will make reorganization not only possible, but imperative.

But we may ask, What becomes of sovereignty if the state is not sovereign? Surely there must be some agency in which the power is vested to compel conformity to rules of conduct which society may lay down from time to time. Some sort of delegation of power over person and property will always be necessary if we are to continue to have any such social organization as that with which we are now familiar. And if this effective power to coerce and control is merely removed from the state and transferred to some other agency how has the theory of sovereignty been modified?

That is just the point. No such transfer is contemplated. Sovereignty is regarded as being vested in no agency, neither in church, nor state, nor labor union; sovereignty is vested in the hearts and minds of the people themselves, in the active, vital functioning of the people in and thru their individual and group life. Now all social groups are continously changing, just as the individuals are; hence the state, which is nothing more than a social grouping, is also in continous flux. Thus we arrive at the conclusion that sovereignty is not an absolute, but is a relative quality. It is not uncontrolled and irresponsible, but is always and ever dependent upon the psychic interaction of individuals in their organized capacities. We no longer have "sovereignty" but "sovereignties". By this, we mean much the same thing the psychologists mean when

they say we have "memories", not "memory". Each and every group exercises a complete and actual sovereignty within the limits of its own functional domain. Sovereignty is an active, dynamic quality; it is the doing of something rather than the right to do it; it is the will of the people in action. It is as varied and variable as human life.(5)

So we must stop thinking of "government by consent of the governed"; we must begin to think of "government by the cooperation, participation, mutual stimulation and psychic interaction of the governing". The people have not only the "right to alter or abolish government", but they have the supreme privilege and duty and necessity of altering it continually. The state is merely a form of human association, but it is becoming more important all the time. Government touches life in more points now than it ever has in the past. It is a safe prophecy that the importance of government will increase in direct ratio to the increase of the complexity of human life. Now it is only by association that we can live,--and remain human. Hence the state must be made one of the most vivid and vital parts of our living if we are to achieve the destiny which appears to await us.(6) From this point of view, sovereignty becomes the glow of the real and actual life of the people; it is the spirit of the people in its creative aspect; it is socialized participation in the most essential and inspiring activities and interests of the community. If this ideal can be achieved, the socius-citizen might truly say. "L'etat, c'est moi!", for he creates it.

There is another idea gaining acceptance in the social mind which has an important bearing on the problems of reorganization. This involves the destruction of the old superstitious regard for constitutions, particularly, for THE Constitution, It also implies

the elimination of the feeling of divine sanction, if not divine origin, of the "democratic dogma".(Brooks Adams' phrase.) The new idea which is replacing these old fetishes has been nicely expressed by Mr. Justice Holmes in a recent decision.(7) " The best test of truth is the power of the thot to get itself accepted in the competition of the market. That is the theory of our Constitution. It is an experiment as all life is an experiment." An eminent American sociologist has written,"Freedom is continuous experiment." (8) Thus, if we come to use the same experimental procedure in political science that we use in natural and economic science, there is no doubt that we will achieve an institutional plasticity which will be conducive not only to efficiency, but also, and of vastly greater importance, to permanency.

Finally, the general abandonment of the laissez faire, particularistic, individualistic conception of society(9) portends a similar abandonment of the conception of the static state. It implies the theory that the state is simply a human institution which has grown up in a rather unconscious manner as most institutions do. Instead of allowing the institution to coerce and constrain the individual, man may consciously reshape it to his own best purposes. That is, the advent of social consciousness augurs well for the ultimate reorganization of the state.

Therefore the point of view of this paper is frankly sociological. Thus far the largest part of the writing on state government has emphasized other aspects of the question. The efficiency expert, the lawyer, the publicist, the political scientist, and many men of various persuasions have written on the subject but little of the work has been done by the sociologist. Perhaps he has been fearful of encroaching upon some field not specifically

his own. One of the stock criticisms of sociology always has been that it has to rely upon a superficial and surreptitious invasion of the various "real" social sciences inorder to find any "science of sociology". However that may be, the sociologist has left the subject of state government pretty much to the administrative expert, the muck-raker, political agitator and political scientist. While such writers as Duguit in France, Cole in England, De Maetzu in Italy, Gierke in Germany, Croly, Follett and Laski in America have criticized the so-called sovereign state from a sociological view-point, little if any effort has been made to discuss the problems of the larger administrative units of the United States from a sociological approach. That is the purpose of this paper.

Hence, the following chapters will be in the nature of a general survey of what has been proposed and accomplished in the past ten years, with an attempt to formulate some of the more obvious sociological implications and conclusions. This will involve the general aspects of the problem, followed by proposals for legislative, administrative and judicial reorganization, concluded by a summary of the principal characteristics of the truly socialized state as visualized in this discussion.

The object will be to deal with Oregon and its problems particularly, altho it is thot that the general principles of reorganization will apply as well to any other American state. Taking Oregon as the specific unit upon which the discussion shall center introduces some peculiar difficulties, however. Many progressively minded people consider Oregon as the one state far in advance of all others in the matter of democratic, popularly responsive government; they would say Oregon is the place

to leave off rather than the place to begin. Still others would say that if Oregon is an example of the reorganized state, let us have no more reorganization while the world standeth. It is true that Oregon has gained some deserved reputation (or notoriety, if you choose) as a progressive state. The "Oregon System" has been heralded and hounded all over the land. We probably received more printed space, per capita, in books and periodicals and more praise and condemnation from the platform, pulpit and legislative floor than has any other state within the last twenty years. We have been greatly criticized and greatly approved. Very likely we have deserved some of both.

However, it would appear to a dispassionate observer that Oregon is beginning to lose the preeminently progressive leadership she assumed about 1900. We achieved our initiative, referendum and recall and seemed to be exhausted. Perhaps we thot the political millenium had come. We lay quiescent for about ten years. Then the progressive spirit began to hover over the land again and we adopted some more progressive legislation, viz; the minimum wage law for women, (1913); women's suffrage, (1912); eight hour day on public works, (1912); workman's compensation, (1913); prohibition and abolition of death penalty, (1914). Then we took another slump. We began to pass such laws as the readoption of the death penalty, prohibition of publication of books and papers in foreign tongues, multiplication of administrative boards and commissions, and failed to pass such laws as were advocated by commissions on reform in the various branches of government. The legislative assemblies pass just as many and just as trivial laws as before, just as hastily drawn and as hurriedly considered as they did before the "Oregon System" was adopted. The most hopeful sign of a new progressive spirit was the exceptionally large number of bills vetoed by the governor

in the 1920 special session and the constructive educational and road building program recently adopted. Since our pioneer work in the matter of direct legislation in 1902 and the direct primary in 1904, we have done nothing original in practical progressivism, with the possible exception of the minimum wage law. We have been followers rather than leaders. It is a very open question as to whether Oregon with its "Oregon System" is really any more progressive from a sound sociological viewpoint than is Massachusetts with its Henry Cabot Lodge.

So, altho we may need reorganization as badly ad any state, we may find it difficult to accomplish much in that direction because we have such a smug, self-satisfied conviction of our superior progressiveness and superlative achievement. The backward (I almost said "back-woods") road policy we have followed until recently, our neglect of education, the general apathy of the average citizen on political questions, (altho the Oregon citizen is probably much more intelligent on public questions than is the citizen of the I. R.& R. state which does not have the "Voter's Pamphlet") and his distrust of the legislature and his contempt for it,--- all of this is indicative of the fact that we may be in an eddy or back-wash of the progressive movement instead of in the midst of the channel rowing with the current.

So, however much it may please our collective vanity to think ~~think~~ of ourselves as the pioneer adventurers in practical progressivism, the facts are that we are probably not greatly different from any other western state. We are as far as they from the millenium and can move toward it no faster and no more certainly than they. Hence, our conclusions will have to seek the golden mean which lies somewhere between what ought to be and what has some likelihood of attainment, between ideality and workability. This

is good sociology.(10) All progress must be conceived in terms of trial and error. If it becomes necessary for us to modify our system of direct legislation after only twenty years of trial, we should be greatly cheered by it. Usually, distinct progress in any field requires a much longer time and a great deal more dissatisfaction with the innovation than we have experienced with direct legislation. We have attained a more democratic method of making law than ever was known in such a large constituency as a modern American state. When we began the experiment, most political theorists and practical politicians regarded it as a political wild-goose chase, if not a movement subversive of the fundamental principles of American representative democracy, forgetting, as the conservative is apt to do, that the very most essential element in American democracy is faith in the people, faith in experimental politics, faith in the plain man's philosophy that "the world do move". So if we can retain the proved benefits of direct legislation and remove its obvious defects, all in the short space of twenty or twenty-five years, we should regard it as a triumph of rationality and progressive achievement. And so with any modification in our system of government, method of representation, conduct of administration, or functioning of the judiciary,-- it will take time; we shall make mistakes; it will be continuous experiment; it will demand faith, intelligence, perseverance and temporary disappointment, perhaps;--but in the end, we will achieve our purposes. The hundred and fifty years of our national life is a short time compared to the 150,000 or 250,000 years during which mankind has been blundering along toward a more effective social organization; yet, in that hundred and fifty years we have astonished the civilized world. In the next hundred and fifty years we must accomplish still greater wonders. The American democracy is no pampered child and it will

not grow senile with the years; Like the prophet of old, it will go on and on, with eye that is not dim and natural force that is not abated.

Accordingly, it is not expected that the suggestions offered in the following pages will be adopted immediately in Oregon or elsewhere. Nor will any of them be final in form and functioning when they are finally adopted, no matter how much care and study precedes their formulation. We shall never be able to transcend the trial and error method. We may formulate our hypotheses ever so painstakingly, but in social science as in physical science, the experimental verification of success or failure must be the court of last resort. The only value of theory and reason is that the experiment may be as little wasteful and as greatly conducive to success as is possible to human frailty. The only advantage the scientist has over the man on the street is that the scientist has developed a finer technique for making good guesses as to what will work.

No claim is made that any of the following proposals are original. Such a claim would doubtless discredit them at the start. As a matter of fact, many of the changes advocated have already been tried elsewhere and have been found eminently satisfactory. All of the proposals are supported by sound political and sociological theory, as the documentary citations show. No attempt has been made to reject plans merely because they are radical nor to condemn them because they are conservative. The terms 'radical' and 'conservative' refer to types and attitudes of minds rather than to the inherent nature or qualities of propositions as such. Some attempt has been made, however, to steer a fairly straight course between the Scylla of Impossibility-of-Adoption and the Charybdis of Too-Idealistic-to-Function.

In other words, the object of this paper is to present some suggestions for the reorganization of state government in Oregon which would stand a reasonable chance of adoption in whole or in part if they were supported by a proper educational campaign. They are so adapted to the ideals and aspirations of the people and to the economic and social conditions of the commonwealth that, if adopted, they would undoubedly operate with a fair measure of success. There has been a distinct effort to avoid the idealistic and fantastic. The presumption is always against the utopian proposal.

This may appear to be a difficult and ambitious if not impossible program. However, only a rough approximation is contemplated. The details of the proposals presented would have to be worked out by experts in the several fields affected before any actual attempt to put them into operation could be made. We are concerned only with general principles and undetailed description. We hope to get a generalized sketch of the state that is becoming.

This is possible only by assuming that there is a degree of uniformity in human nature, and hence some validity in comparing people and conditions here with conditions and people existent where some of these proposals have been tried. The success of any theoretical recommendations which have not been tried elsewhere in the exact form advocated here, must, of course, rest upon their conformity to human nature, using that term to indicate all the complex social interpenetrations of heredity and culture. If this position is sound, it would follow that all political proposals which have never had any practical trial, all simon-pure political experiments, should be worked out and presented by the social psychologist or sociologist rather than by the technical student of politics.

CHAPTER II.

## HUMAN NATURE AND THE NASCENT STATE.

Before proceeding with the problem of state reorganization, it is necessary to get a vision of the state as we think it should be. This is possible, of course, only by a more or less imaginative process. The state as-it-should-be depends in the last analysis upon human nature as it is, or as it is becoming. Hence, by understanding the nature of the people out of which the state must be made, by considering the relations which exist between them and which present characteristics and tendencies indicate may exist, it ought to be possible to forecast the broad outlines of the state, its nature and spirit, which we think ultimately will be evolved. In the foregoing pages it was shown that the nature of human life is such that the state seems destined to become more and more important as civilization becomes more and more complex; it was shown that human life is possible only in association, cooperative activity; therefore the coming state must be one in which the people as a whole are able to take a vital and effective part. The state must be the life of the people as they are the sine qua non of its life. The state must cease to be something above and beyond the people, some vague, mysterious force ensconced in marble and mosaic at Washington or Salem; it must become the means whereby then people find their largest life, must be bone of their bones and flesh of their flesh. In this chapter I mean to point out just why this is true; to indicate just what are the fundamental characteristics of human nature and what are the implications of these facts for government.

It is safe to say that the political organization of any demo-

cracy will never be greatly superior to the social and economic organization of that community. Water never rises higher than its source. But its political government may be a great deal worse than either the social or economic conditions. This seems to be the situation in many American states. It is particularly true of Oregon. Practically all of our political machinery is traditional, conventional, antiquated, patched up, hand-me-down apparatus bestowed upon us by other days and other environments. Our political sawmill was started a hundred and fifty years ago and it is still running,-- largely by momentum. We have added a little grease from time to time and increased the available horsepower so that we have kept it turning out lumber,--such as it is and what there is of it. But the wheels are turning ever more slowly, the interest of the crew is flagging more and more, and the overhead is continuously gaining on the production.

But the people of Oregon are virile, progressive, dynamic empire builders. They are untrammeled by much of the customary conservatism that makes any change from the long-established order so distasteful to most of the people in old communities. Oregon already has registered disapproval and disregard for much of the traditional system. Doubtless we will continue to modify and improve our state organization. We must see to it that the static, do-nothing-for-fear-of-doing-it-wrong conservatism which has been characteristic of some of the older states, shall not so crystalize in our public mind that we, too, shall be kept from making the same normal, rapid development in social and political lines that we have made in economic activities.

However, we must not fall into the prevalent and pernicious fallacy that all change is progress. As has been suggested already and as will be mentioned later, the attainment of such a powerful

and potentially valuable agency as direct legislation raises the question as to just how much real progress was made toward a stable, efficient, thoroly satisfactory form of state government. Doubtless there are conditions under which any change would be welcome; perhaps that was the case when the "Oregon System" was adopted; but ordinarily the ambitious reformer, and the pink-tea progressive, or gentlemen of the other sort of pinkness, are prone to confuse any change with progress. It is a serious thing to tamper with the tested and tried institutions which have served their makers well. The presumption is always in favor of the old, as Cooley points out.(11) But, on the other hand, it is just as dangerous to become so impressed with the sanctity of certain institutions that we are unable to muster the courage to tamper with them at all. On the whole, man is more inclined to the latter fault than to the former. He is a timid, furtive animal at best and seldom makes any changes until necessity forces it upon him.

But the people of Oregon are not satisfied with their state government. They will doubtless make some important changes before cold necessity drives them to it, They have done so in the past. Our legislature was no worse than those of other states, and not so bad as many, and yet we took the question in hand and insisted that the legislative power be directly responsible to the people from which it emenates. But there are many alert Oregonians who seriously doubt the millenial possibilities and practices of the "Oregon System"; the legislature is a current joke in the press and on the public platform; altho the individuals xxx composing it are almost universally men of high personal qualities who are greatly esteemed by their neighbors, yet the institution as such is an object of widespread ridicule and contempt. Whether

or not this situation is justified by conditions is an immaterial consideration, but the fact is of vast importance to show the temper of the people. "Politician" is a sort of popular-parlance substitute for "black-leg" or "horse-thief". (12) As a matter of fact, there is little doubt that Oregon has as great a proportion of superior men serving it in political offices as has any state, yet there is a very general feeling that the "State-house bunch" is extravagant, irresponsible and incompetent. In reality, it is probably the other way. The figures indicate that Oregon's administrators are as competent, efficient and careful as those of any state. Our record for sane, progressive, frugal legislation is far better than that of most states. Therefore, our conclusion must be that there is a widespread, inchoate, groping and growing dissatisfaction with state government as now constituted. The "Oregon System" did not remedy this condition, but rather aggravated it. The people have tasted real power in government. Instead of being allowed to look at the man who eats the ice-cream, they have sat at the marble table themselves. It is not likely that they will be willing to go back to the old way of non-participating, far-off representative government. We have the spectacle of a social group, or series of social groups strugging to consciousness of a particular situation, viz., the defects of the present system of state government.(13)

So we may conclude that the new state is in the process of creation. Like all human institutions, the state is simply a social product. All social forms are in a continual state of flux. Life is continuous change. So the main question is not Shall we change our government? but rather, How shall we change it? What shall the new state be like? Administrative machinery is already by way of being modified, the whole representative system

is being questioned, the judiciary is becoming increasingly unsatisfactory. What are we going to do about it? Only one answer is possible. The new state must be based upon the principle of service. (14) The day is passing when we can adhere to the principle, "that state is best which governs least". Man is irrevocably and desirably a social animal; his political institutions can no longer be founded upon principles of individualism, i.e., of anti-sociality. (15) Some writers have thot that the new state must be one less highly organized and less constraining to individual impulses, that it must give more freedom and less responsibility. (16) But the the tendency in all association, political, economic, religious, educational, is all in the opposite direction. Organization, combination, integration, systemization,--these are the concepts which are permeating all human life. So we conclude that the new state must be more highly organized than the present state, (17) that it must be the most efficient combination and coordination of all the departments of government to the end that it be able to minister most effectively to the increasingly complex needs of the people. This is what we mean by saying that the new state must be a 'service state'.

The term organization implies a unit. It is a sociological commonplace that every human being is a socially created entity. Perhaps it is more descriptive to say a 'socially functioning process', (18) altho this conception is unfamiliar to many people. Hence, it is possible for the sociologist to regard the individual as the political unit if the mind of such individual is sufficiently interactive with the minds of those with whom he is in immediate human association. That is, thru imaginative and cooperative association, the common interests of the group must be made real and actual to him. This consummation is made possible by the

fact that human nature is essentially social nature, that society itself must be conceived in terms of psychic interplay. The material forms which these spiritual forces assume are familiar to us, of course, in the modes of communication and transportation and the varied processes of modern education.(19)

These considerations certainly suggest the organization of political groups on some other basis than the familiar geographical and political party units. The fair success we have had in Oregon with our substitution of the individual for the geographic-political-party-representative unit is doubtless due to our peculiar situation. We have a well-educated, highly homogeneous, aggressive population to which the social gospel has been pretty well preached both by precept and by the exigencies of pioneer life. However, it seems fair to conclude that our measure of success is also attributable to the fact that human nature is in reality similar to the concept outlined above. People are forced by their very nature to do things together. Most often they do it unconsciously or even under the illusion that they are doing things for themselves by themselves. What the sociologist aims to do is to arouse the consciousness in the minds of the people that they are not individuals at all in the old sense of the word. They are socially created forces and can exist only by sincere social functioning. We commonly recognize the truth of this in our family and fraternal life. We must come to the realization that the principle is universal. It applies to business and politics as surely as it does to marriage.

While there is no doubt of the validity of the above position, the fact still remains that there are tremendous difficulties in the way of devising a form of government in which the individual shall be the fundamental and final unit. Every individual would have to

be a perfect socius; he would have to realize vividly that he is the state and that the state is he; that both are merely "personal ideas" (Cooley) and have no reality except in the sense that they are products of social psychic interaction. I venture that neither Cooley, Ellwood or Miss Follett would advocate an immediate attempt to institute a form of the state based entirely upon the unquestionable fact that man is a social creation and is human only so far as he is able to cooperate effectively with his fellows. (20) Whether the political unit shall continue to be a territorial area represented by a partizan individual, or shall become an occupational group as the Guild Socialists desire, or shall be the neighborhood, religious, fraternal, or athletic group, or a combination of all of them remains to be seen. Judging by past governmental development, the final form will be a compromise or composite system of group representation.

But some sort of group representation seems inevitable. This conclusion arises from the fact that the most intense life of every individual is found in some of his group affiliations. It is in our occupational, religious, neighborhood, fraternal, family, art and recreational societies that we are most keenly and satisfyingly conscious of the fact that we are normal, healthy, happy human beings who are engaged in doing something worth while. We know and enjoy our likemindedness and work together for common ends, in the words of Giddings. It is in our group life that we really live and move and have our being. (21) Whatever form our reorganized state may assume, it is patent that we must prepare for it by creating living, growing, cooperative communities in which the citizenship fitted for the new social state shall be continuously generated. (22) This means city-planning, city-zoning, garden-city building, rural community clubs, professional associations, factory and trade organizations and all other means of getting people into closely integrated group life whereby

they may be developed to their fullest capacity. We must provide the proper milieu for making and nourishing the real socii. Every citizen must be made an active member of one or more vitally cooperative groups. By becoming a live contributing member in such organizations, he will develop his personality to its utmost, he will consciously be creating himself and will be created by pleasant, stimulating, social intercourse. It is in the small, intensely personal group that this ideal is best realized. A great, undeveloped state like Oregon, crammed to its borders with unlimited natural resources of soil, climate, power, minerals, building materials, and blessed with an aggressive, progressive population, ought to catch this vision of the ever-expanding community life in which every man shall have an opportunity to work with his hands in the fruitful soil and at the same time to enjoy all the amenities of our whizzing twentieth-century machine-made culture in close mental and physical contact with intelligent, healthy, happy, helpful, hopeful human beings.

This leads us to the economic changes which must be brot about before we can realize or even approximate the conditions about which we have been talking. Obviously, the whole science of economics will have to be re-written in sociological or social psychological terms. The new science of socio-economics must take as a basic proposition that economic activity is a means to an end, and not an end in itself. Altho few economists regard their science in this light, they would be the first to admit that the science of wealth-getting and using is most often practiced as if it were an end in itself. It is from this viewpoint alone that economics becomes the 'sordid science'; not as it is taught, but as it is practiced. So the economist must redeem his science by replacing profit by service as the fundamental actuating economic motive. "Economic law" must be conceived in terms of social custom which can be manipulated by social, political, legal,

educational and cultural forces to achieve practically any desired end. Instead of determining, economic forces are determined. The chief problem is of course just how and just what we shall decide what things we want, or what is best for us. (23)

It is needless to say that no single socio-political unit such as Oregon can alone accomplish a great deal in the way of economic reform. Whatever economic means are attempted in the quest for the larger life, they must be the product of a general consensus of opinion, a slow and painful (I fear) growth. In the smaller units we must rely upon the adoption of such ameliorative measures as tend toward a more nearly economically sufficient life for increasing numbers of people. In this manner we will be contributing our small force toward that desired evolution from profits to service, from contract and commercialism to contact and culture. Any discussion of these means is outside the purview of this paper, but the adoption of some of them is imperative, such as a scientific taxing system, more available rural credits, better systems of cooperative marketing, and a more democratic organization of industry. The argument which follows is an attempt to manufacture some political tools to aid in the construction of the economic structure we must build. The final solution of the economic problem lies in the growing recognition of teachers and students of economics, that business is a social and not a selfish enterprise, that industrial activity may be made more inspiring than ordinary paint-daubing or stone -chipping artistic effort,-- as much more interesting than art as it is more necessary and beneficial.. Indeed, it ought to be regarded as the very highest form of art since it is the very basis of all phases of the more abundant life.

Finally, in considering any machinery for modifying the state, it is imperative that attention should be given to the type of

citizens who are to live in that state and operate it. There are many factors which enter into the making of a citizen,-biologic, economic, geographic, idealistic, institutional, and cultural (mores-folkways-ethos)--but there is one influence which cuts across and thru them all, modifying them for better or for worse. It is the most dangerous and most hopeful social force influencing man.— Education.

I use the term in the rather narrow sense of formal instruction. Democracy is possible only when the population can be relied upon to respond in a somewhat similar fashion to certain well-defined fundamental ideas; education is the only means of getting the understanding of common objects which will make this similar response possible. While we cannot agree with Mill that it is either true or desirable that "state education moulds the people to be exactly like each other", (24) still we believe that all education thru the high school should be monoplized by the state. It is questionable whether this principle holds for higher education, but certainly whatever amount of education is conceived to be absolutely necessary for intelligent citizenship in a democracy should be under the direct and unobstructed control of the state. The high school seems to be the logical minimum. Thus only can we get the homogeneity of culture necessary for a truly socialized citizenship. The ideal is not to make them all in the same mould, but to give them a similarity of democratic ideals so that they will be pschologically fitted to live in a socialized state. (25)

But education is as dangerous as it is desirable. Not only is "a little knowledge a dangerous thing", but much knowledge is more dangerous if it be of the wrong kind. The preeminently stock example of this for all time to come probably will be Germany before the Great War. China is the prime case for all time past. (26)

However, education need not be so overtly pernicious to be thoro-

ly dangerous. It may be simply inept and archaic, based on traditionalism and formalism, a mere "going thru the motions" on the assumption that some salutary miracle is wrought thereby. Ross tells us how it was done in the past and Cooley tells us it is being done today.(27) Todd sets forth still another type of anti-social education. It is that which "mirrors" the prevailing type of social desire and activity. (28) In the growth of schools of commerce, technological, polytechnical, and industrial and business schools of all sorts, we see a fine example of it. Thus the educational forces which should produce balance and perspective tend to develop lop-sided, top-heavy civilizations which run to seed on some single s stalk of culture. Historic cases are: an anarchic liberty-loving Greece; a disintegrating state-worshipping Rome; a vice-ridden, debased ascetic Medievalism; an assassinating renascence Italy; a blood-and-destruction religious Reformation; and so on, ad nauseam. So prevalent is this tendency of civilizations to run amuck on some one paramount interest, that we have Karl Lamprecht and Henry Adams attempting to evolve a philosophy of history upon it. (29) The largest part of our education to-day is frankly tuned to the economic motif. When we add to this new subject matter the old incubus of traditionalism which still rides our educational system like an old man of the sea, there is not a great deal of time, energy and money left for real constructive, progressive, truly social education.

What, then, are the ideals of education demanded by our new sociological state? Space permits only a very few general suggestions.

First and foremost, education must be social. Todd defines social education as that which develops a"social type marked by service rather than by exploitation" Croly uses Small's phrase which describes the aim of social education as the inculcation of a spirit of "live-and-help- live" rather than one of "live-and-let-live".(30)

It would be an easy tho unprofitable task to point out that the raison d'être of our education is almost entirely individualistic rather than social, that we emphasize the prime virtue of "getting ahead", "making a living", "making money", "being successful", etc., and that all these ideals are comprehended in the demands we make upon our educators; we set them to making profits, not men; "success" not service. To be sure we hear a great deal about education for 'citizenship'; but the "good" citizen" is merely "the greatest getter". We go to school to learn to make a living, not to learn to live. The American people do not seem to want to learn to live, widely, nobly, helpfully; they want to learn to "get", greedily and effectively.

What are we to do about it? We must reverse the fundamental premise of our education; we must make our education conform to the findings of social psychology. We can no longer teach that a man is a disparate entity developing by divine fiat; nor is he a mere protoplasmic automaton of mechanical sensation and response. We must teach, with all its implications, the great fundamental fact that man is a socially stimulated and stimulating reaction system; that he is created, that his very soul, personality, ego, self, or whatever you choose to call it,-- that he gains his very being by the interpenetration and interplay of psychic forces; that the individual is a social product as well as a social producer; he is a very complex social fabrication, not a thing apart, self-sufficient and irresponsible. We must base our education on a sound social psychology.

Next, we must bring our educational methods into harmony with this ideal. The recitation must become a process of doing something together. We have begun to apply this principle in the primary schools. It is gradually extending to the higher branches of education. Even some college classes (miracle of miracles!) are begin-

ning to be discussion groups rather than automatic lecture-machines which attempt to cram the sophomoric mind like a rubber-hose feeding-machine stuffs the crops of turkeys before our annual grand Thanksgiving slaughter. The whole tradition of educational procedure or methodology needs to be revised to conform to the fact that human nature is essentially social in origin and development.(31)

Much of the subject matter of our curricula also needs to be changed. In place of a traditional culture of rote and rule formalism, classic discipline, and nationalistic dogmas, we must have a content which will fit the individual for social life in a modern community. This means that bloody-dynastic-state-growing-great-man-lauding-history will have to give place to a culture history in which the life of the people is given the most prominent place, in which the emphasis is placed especially upon the growth of economic, social, intellectual, religious, and artistic ideas; that formal discipline in mathematics and language will have to give place to the discipline of the industrial arts; painting and embroidery to cooking and sewing; dead languages to live ones; analysis of flowers to soil and crop analyses; the carving of frogs and cats to the care of babies; and so on. This may sound like a contradiction to the former criticisms of the materialistic motive, but it is not. We must continue to do all the things we are now doing in economic and industrial affairs. Further, we must do all we have done in these directions; and much more than that, we must become more productive and more efficient than we ever have been; but we must never forget in the future, as we have so often in the past, that these things are merely a means to an end.(32)

Finally, we must provide for the continued education of every man and woman in the community. It is the continuation of education which really constitutes social education. We might socialize the

aim, method and content of education till doomsday and yet achieve little in the direction of real social education if we should allow the products of our socialized schools to go out into a scrabbling, narrow-minded, blind-alley society with no provision for continued education. Of course there is a certain social educational value in reading the papers and magazines and an occasional good book, in attending the annual Chautauqua and the hebdomadal sermon, but these activities, valuable and desirable as they are in themselves, do not constitute a social education. The individual is passive, receptive, (let us hope), inactive, separated from the show. Whatever social value the exercises may have for him is dependent upon how facile and vivid his imagination may be, upon his ability to make himself an active part in the affair. In most cases, this sense of participation will be totally lacking. In the cases where it is present in any degree, it will be a vague, shadowy, intangible ghost-like experience compared to the mental alertness, virile sense of power and reality which characterizes any association in which the individual is an important creative contributing agent. As James would say, the one experience is 'thin', the other is 'thick'.

The conclusion seems plain. We must gain our continuation of the social education which is begun in the school by developing and vitalizing the community club. the cooperative society, the civic forum, the mothers' club and the fathers' club, the corn club and the cabbage club, and every other form of association in which people get together and do something for common advantage. This is the real continuation of social education. Get people to work together, learn together, play together, accept responsibility together; inspire them to do this with some vision greater than the immediate

object they have before them, and you have achieved social education. It must be conceived as a process which has no logical ~~con~~ conclusion.(33)

This may all seem to be entirely out of place in an argument for the reorganization of state government, but I am convinced that no very important changes ever will be made in government unless some changes in education precede them. Furthermore, it is most undesirable that any very sweeping modifications be attempted unless they have been well preceded by a thorogoing campaign of education. There is nothing more to be regretted than an attempt at radical social or political reform before the social consciousness is ready for it. History is replete with failures, reactions, chaos and confusion due to the violation of this principle. Hence, we must deliberatley train our citizens in the way of sociality; we must develop a wide tolerance; a keen, analytic type of critical thot; a thorogoing recognition and understanding of the social nature of man; we must furnish norms of conduct and standards of success in terms of mutual service rather than in terms of dollar-aggrandizement, personal power and prestige. There is little danger that we will take any forward step in a democracy which is too far in advance of the general social mind, but the more pertinent fact is that we can never take any step without an extensive educational preparation.(34)

Here in Oregon we have a very optimistic outlook. We have an exceptionally good library system; we are becoming increasingly liberal to our schools; we have a large measure of economic prosperity and opportunity; our citzens are learning the value of cooperative economic enterprise; we have an aggressive and highly intelligent population selected, in a large measure, from the adventurous and

progressive element of the eastern states.

In this latter fact lies our greatest danger as well as our greatest hope. The pioneer has many fine qualities, but he is the individualist par excellence. He very easily becomes the self-made man who interprets goodness in terms of goods, success in terms of savings. He is very intolerant towards any idea which suggests that the reason why others who come after him do not get along (i. e., "get ahead") so well as he, is because he had gained all the strategic positions before the later-comers arrived, and consequently they never had that "fair field and no favors" which is the self-made man's gospel and law and prophets. It indicates his democracy no doubt, when he assumes that he has no more aggressiveness and ability than those who come after him. Therefore, he holds that if they would strive as he has striven,"use their heads" as he has used his, they would inevitably meet with the same measure of success. This attitude may indicate a high degree of Andrew Jacksonian "democracy", but it does not indicate a very high order of social demodemocracy or of social intelligence. We must build ourselves a "sociocracy" (Comte) in place of our present individualistic democracy.

CHAPTER III.

## CREATING THE WILL OF THE PEOPLE.

Whatever may be the final form of governmental organization in a democracy, it is self-evident that the people always will keep the legislative branch under their direct control. Large grants of power may be made to a responsible executive, expert administrative officers may be selected by impartial civil service examinations, many of the most cherished and 'democratic' agencies may be greatly modified or even abolished, but the people will never allow the law-making arm of the government to become self-directive. They will demand frequent elections, complete and final accountability of legislators to constituents, and a more intimate part in the actual process of law making. This does not necessarily mean that we must make more of our law by the initiative and unmake more of it by the referendum. But it does mean that the people will demand that some means be devised whereby they may actually express themselves in political activity.

It has already been pointed out how this may be accomplished. The most vital life of the individual is found to be that part which is essentially social, his group functioning in its varied ramifications. This follows from the fundamentally social origin and development of human nature. Now if it is true, as has been suggested, that the functions of the state are becoming more and more inclusive, that the individual must depend more and more upon social cooperation to realize his own best interests, that the more complex civilization becomes, the more important will become the political coordinating agencies; then it follows logically that the vital social groups,

occupational, fraternal, business, professional, etc., must be brot into close, constructively cooperative relation with the state. The only way people can humanly live is to do things together; hence, if the political life of the people is to serve as the unifying center thru which they are to realize their largest and best life, the intimate small groupings must be utilized as governmental forces. There is no doubt of the fact that these groups are in fact so used at the present time. Commercial clubs send recommendations to congress, mothers' clubs and teachers' clubs lobby in legislatures, timbermen's organizations look after their "interests", and so on down the list of the voluntary groups. The plea of this paper is that we should recognize this indubitable fact and provide some way in which these potential governmental forces can be capitalized, expanded, developed, utilized, without being subjected to adverse criticism, and even allegations of improper tactics. They are undoubted forces in the life of the community and play their parts openly, constructively, and respectably. If we continue to ignore them in governmental organization, give them no legitimate mode of expression, they will be driven to seek expression in illegitimate ways as some of them have done in the past. Perhaps the Freudian theory of repression works in politics in much the same manner as in psychology.

However, the most pregnant argument is not a negative one. We do not seek political recognition and self-expression for the various social groups because of the secret damage we fear from them if they are not so represented in the governmental organization, but rather for the positive contributions which they will be able to make when so represented. Social psychologists are pointing out that there is a definite stimulating effect on all the minds in actual communicative contact.(35) They have experimental evidence of the

fact, altho most of us must have noticed it often in our own experience. We sometimes are surprised at our facility of phrasing, the startling clarity of our ideas, the quickness and originality of our thots, when we are in face to face discussion with our mental equals or superiors. And at the same time, we are impressed by the fact that our friends are very intelligent men who have many ideas well worthy of careful consideration. It is seldom that we arise from such a discussion without feeling that we are "broader and wiser men." This is especially noticeable when there is a problem to be solved. We all contribute something to the final solution. Our long-forgotten, or never-known ancestor who devised the adage "Two heads are better than one if one is a sheep's head" put it in a nutshell years ago. Now if we could utilize this fact in a state-wide way what treasures of wisdom and constructive thot might not be unlocked! The only possible approach seems to be thru group life, so organized and integrated with the political machinery that every citizen may become a psychically interactive unit in the political programs of the state. Of course, the final expression and formulation of the people's will must come from reprsentatives, but under the proposed plan these representatives would represent a consensus of opinion arrived at by a process in which a large proportion of the citizens had taken an active part.

The people have a tradition that the legislative function, the true popular representative, is one of the most honorable positions in our society. We shall not soon surrender this ideal. We are becoming conscious of the failure of our state legislatures, to be sure, (36) but we shall not relinguish our tradition of legislative honor. Rather, we shall set about an analysis of the evils which have tarnished it, and then prodeed to compound and apply the indi-

cated remedies. The legislative power lies at the heart of any democratic form of government. In so far as the legislature quickly and accutately moulds into legal forms the strong and enduring molten materials of public opinion and social will, it may be regarded as an efficient democratic instrument. But before the material can be moulded it must be melted. This is the function of the people. They should generate, create, what their accredited representatives formulate. This can best be done in their group relations. Hence, the various social groups must be integrated with the legislative branch of the government. At present, the only such relationship existing is extra-legal and more or less surreptitious. Whether or not very much actual corruption exists, it is certainly true that the lobby system of group influence in government gives rise to a great deal of suspicion of shady tactics and many out-right allegations of the same.

So we are becoming conscious of this paradox in politics. The legislative office is a position of honor. The legislator is respected as an individual and is invested with some of the traditional admiration and hero-worship which the common man always has bestowed upon his so-called servants. Yet in the abstract, legislature and legislators are looked upon askance. We hear "grafters","incompetents", "loafers", "gas-bags", and other such uncomplimentary terms freely bandied about by the man on the street, while occasionally the same sentiments couched in more elegant phraseology find expression on the editorial pages of our leading papers.(Note13) We are painfully conscious of the fact that much of this distrust and disrepect is justified by the familiar exhibitions of legislative inefficiency but it is probably true that these conditions are a result of the clumsy, antiquated, unreasonable organization of the legislative

branch rather than the failure or personal shortcomings of any considerable number of the members. It is the fault of the machinery instead of the workmen. (37)

To understand this properly, a brief review of the history of American state legislatures is necessary. During and immediately after the Revolutionary war, when rhe first constitutions were made, the legislatures were given almost supreme power. Little attention was paid to the principle of checks and balances in our first governmental experiments. There were several reasons for this. The prevailing idea of the political supremacy of the people as expressed in the Declaration of Independence, the idealist adulation of the principle of representative democracy which the war had aroused, (cf. the idealistic democratic fervor of the people of the world during the recent Great War and the subsequent conservative reaction) hatred which the supreme colonial governor had aroused, and the determination to have nothing in the new government analogous to the judicial annulment of colonial legislative acts by "king in council", are some of the most important.(38) ¶ I wish to suggest another possible reason, or an additional one rather. I do not find it cited by any writer on this period, but it appears to me to be thinkable, at least, and in view of the fact that the people so quickly curbed the power of the legislatures, it does not seem unlikely to me that the following may be a very satisfactory explanation. The legislatures wrote and adopted the first constitutions. Hence, the first constitutions made the legislative branches of the various states practically supreme. Before 1783 only two states had constitutions which had been drawn up by conventions and submitted to the people. These states were Massachusetts and New Hampshire, but both of them had formerly adopted legislative-made constitutions.

Every single state adopted a constitution during the Revolution which had been made by an act of the legislature. Only one of the legislatures submitted the constitution to the people. They rejected it. (Mass., 1778) (39)

Now Hence, my conclusion is that the state legislatures would be constitutionally supreme because they wrote their own constitutions. It seems evident that the people were not greatly impressed by the necessity for legislative supremacy. They soon repudiated these constitutions and adopted new ones based on the 'checks and balances' theory, or elses amended the old constitutions in such a way that the legislatures were greatly shorn of power.

This movement began during the "critical period" (Fiske) which gave birth to the federal constitution. Under the leadership of those aristocratic democrats who were readers of Montesquieu and lovers of English law and government as they understood it, occurred the governemntal organization which some writers have called the "conservative reaction". In many respects it still continues, altho we appear to be in the forefront of a politically progressive renascence in spite of the temporary conservative complexion of our frantic effort to get back to "normalcy". Smith says, "Democracy was not the object of the Federal Constitution; stability of wealth and culture was".(40) The state governments under their unrestrained legislatures were as menacing to the 'stability of wealth and culture' as was the central government under the Articles. Hence, the wave of conservative reaction swept over the states and left them thoroly 'balanced and checked'. Wealth and culture, actual and potential, were driven to this, because paper money was flooding the land, laws were being passed against the interests of the creditor class, graft, corruption and irresponsibility were rampant. It seemed as if

the people were bent on attaining wealth and culture by political means at the expense of those who already had them. This could be prevented only by a well-staged 'conservative reaction'..Fortunately for 'wealth and culture', the economic and social conditions were favorable; and likewise, fortunately for us. If it had not been for the facts that there were not distinctly drawn class lines, that the disparities of wealth and culture were not great and invidious, that every man was economically independent or , on account of the seemingly unlimited natural resources, was in a fair way to become so, it is unlikely that our ancestors would have been able to establish a stable government. Here is at least one prime example in history where the conservative type of mind proved the political salvation of a great people. All the world was looking to see us fail. (41)

The result is well known. The new constitutions were modeled on the federal constitution; the governor was given many of the powers of the old colonial governor,- which powers he had exercised in effect during the war; the veto power was restored; the judiciary was given, or assumed, the power to set aside the acts of the legislature; two-thirds and three-fourths amendment clauses were adopted; sessions of the legislatures were shortened;biennial or even longer periods intervened between meetings; in short, the theory of checks and balances was carried out almost to utter paralysis. (42)

This movement in the direction of constitution-regulated legislatures continued thruout the whole nineteenth century reaching its limit about 1850. Since then we have been running on a constitution-worshipping inertia. We have made few changes for the better and many for the worse. Standing still is really reaction because the governmental function is becoming more and more important as was

pointed out above. We are constantly demanding more and more work from our old-fashioned, half-worn-out machine and kicking and cussing the workmen when we do not get it. Perhaps the advent of direct legislation about 1900 marks the beginning of a new epoch.

After the conservative reaction and the establishment of the state governments on the federal model with a complete set of checks and balances of the most approved style,-- and the consequent impossibility of fixing responsibility when things went wrong, or of accomplishing anything when the theory really worked, i.e., when the forces really checked and balanced each other,---of course, the state governments proved to be practically unworkable. Hence arose the extra-constitutional means of party control and machine politics. The people had stalled their steam-shovel so they proceeded to use hand-shovels and pick-axes. (43) Then when things did not go to suit the people they would rise up a and "turn the rascals out of office", (and get some new "rascals "in!) or else revise the constitution further curtailing the power of the legislature, or create some new elective office, or make the constitution more difficult of amendment so that the politicians would not be able to hoodwink the people into undoing the fine work of making the state safe for democracy. Doubtless the political mechanics smiled and planned a new coup. The more unworkable the people made the governmental organization, the more indispensable the party form of government became. (44)

Thus things continued till about 1900. Then the people began to clamor for effective power over the legislative process. The system of direct legislation and recall of all elective officers which is most popularly known as the "Oregon System", was the result. The direct primary laws began to break down the barriers of political partizanship and there began to crystalize a grim determination on

the part of the people to take the government back into their own hands. Political theorists began to give state government the attention they had given to city government from 1876 to 1900. Just now they have begun to arrive at a decision. Their remedy is as sweeping and far-reaching as the changes they proposed for city government. Since the unit involved is much larger than was the case in municipal affairs, it will be more difficult (and more dangerous) to try it, but when our doctors all agree, and we know the patient is very sick, we must submit to the indicated treatment even if an operation is necessary. (45)

The evils and mal-adjustments have been developing for almost a hundred and fifty years. It was the courage of desperation which induced the people to adopt the radical remedies of direct legislation. They see the defects and unsatisfactory features of this means of legislative control, but they took it as a drowning man grasps at the proverbial straw. They were, and are, determined to have an active thumb in the political pie.

Yet in spite of the inefficiency and incompetency of our state governments, we have prospered and progressed. Hence, we are liable to commit the logical fallacy of ascribing identity, or causal relationship, to events which have merely simultaneity. It is only now that we have come to the end of the largess that nature has so bountifully bestowed upon us, that we begin to perceive the necessity for reorganization. It is by the appropriation of this natural wealth that we have built up our complex and inspiring civilization. There is no more natural wealth to be appropriated, therefore we must use what we have in a more scientific manner. Our government must respond to the call for conservation as certainly as the other departments of human activity must. As a result of our unprecedented material progress and the tendency to ascribe it to our

laissez faire theory of government, we are likely to be slow to change. Our natural course will be to wait till we are forced by the iron hand of circumstances. Certainly this has been the way social changes have occurred in the past. The plea of the social and political reformer is that we should be fore-handed in these matters, that our policies should be constructively active.

So we have a great deal of provincial self-satisfaction, egoistic American prejudice, ignorance and traditionalism to overcome. Some of our most cherished old machinery will have to be scrapped and some of our latest and most highly prized new inventions will have to be remodeled. Many of our pet theories will have to be thrown aside. It will take time, courage, education and faith.

One of these democratic dogmas we will have to supplant is the conviction that all legislative bodies must consist of two houses. In the minds of most good, non-thinking Americans, the mere statement of such a proposition is sufficient to discountenance any plan of reorganization in which the renunciation of the bicameral principle appears. It is not my purpose to argue the question of bicameral versus unicameral legislatures. However, I must point out that most modern political scientists favor a one house legislature for state governments. (46) The primary reason for this tendency is that we are coming to realize that the function of the state is more fundamentally administrative than legislative, and, further, the already-mentioned expansion of state activities will advance rather than retard the growth of the administrative work of the state. As some one has said, instead of the state's business being nine-tenths legislative, as it was when most of the state

Governments were organized, it has become one-tenth legislative and nine-tenths administrative. This being true, a small, one-house legislature can be integrated with the administrative departments a good deal more effectively than is possible with a large, unwieldly, "checked and balanced", irresponsible, two-house legislature. The corporation board of directors analogy much more closely fits the real situation than does the old patriotic federal analogy.

Furthermore, the imminent breakdown of the party system in state government as the community spirit (the antithesis of the party spirit) spreads from the local units (where it is now nearly supreme) thruout the whole state, will render the two-house legislature of the old type not only unworkable and unnecessary but eminently undesirable. It is as difficult to see why party politics and partizan policies should be dragged into state affairs as it is to understand why we let the same sort of theory disgrace our local and municipal government for so many years. Even tho we have seen the promised land so far as the local governments are concerned, we are forced to admit that we are not yet entirely out of the wilderness. So far as the state is concerned, we have not yet more than glimpsed the promised land from afar off. If we admit this line of argument, and decide that we do not want our state directed by partizans, the only other conclusion is that our affairs should be controlled by our best citizens, who are willing and anxious to confer with us, and who want to arrive at the decisions which are for the very best interests of the whole people. This mutually helpful relation can best be obtained in a relatively small group. It is in the small, informal discussional body that the real unified judgment is obtained. We

must rely for real efficient deliberation upon a small number of intelligent, highly responsible men upon whom the light of full publicity and the corrective force of an informed public opinion are continually playing. This is good psychology as well as common-sense".(47))

A very authoritative voice once said, "Ye shall know them by their fruits".(48) If this dictum be applied to bicameral state legislatures, they should have been 'hewn down and cast into the fire' long and long ago. One of the standard arguments for the two-house system is that if one house fails to find the flaws and faults in a bill, the other house will do so and kill it. Thus 'hasty, ill-considered, dangerous legislation' will be made impossible. Let us see how this theory has worked in Oregon. In 1915, there were 515 bills introduced in the House and 315 in the Senate, to say nothing of 92 memorials and resolutions in the House and 99 in the Senate, making a total of over 1000 measures to be considered by ~~each~~ both houses. In 1917, there were 1089; in 1919, 1052.(49) Now let us see how effective each house was in killing the bills which came to it from the other house. On the face of it, we would not suppose the two-house system is very efficient as a bill-killing agency, since it took 1073 pages to print the session laws of 1917 and 1000 pages for the laws of 1919. But let us look a bit more closely. In 1919, 251 of the 400 bills considered by the Senate reached the House. All of them but 43 were passed. In the House, of the 650 bills and resolutions considered, 358 reached the Senate and only 42 of them failed to pass. This does not look as if the second chamber is a very effective "strainer"; rather, it looks very much like a mutual "back-scratching" process.

It is possible, however, that each house may have passed some

bad bills which deserved to fail,-- very likely more than the forty which did fail;--but is it possible that some of the bills which did not pass were not fundamentally bad bills? Let us examing this. Among those rejected in 1919, we find such measures as S. B. 68,"Requiring actual competition in bidding for public work"; S. B. 72, "Prohibiting trusts and monopolies in restraint of trade"; S. B. 95, "Requiring the filing of specifications for construction of public highways"; S. B. 101, (at request of Superintendent of Public Instruction) "Relating to granting of permits to teach"; H. B. 128, "Authorizing the Labor Commissioner to conduct educational work to prevent bodily injury"; H. B. 141, "Increasing salary of Superintendent of Instruction to $4500. per year"; H. B. 244, "Making it unlawful to obstruct streams used by salmon or trout"; H. B. 420, "Fixing salary of State Engineer at $4200."; H. B. 446, "Requiring railroads to construct ditches, culverts and other outlets thru road grades." (51) Judging these bills by their titles, it looks as if some potentially good bills were slaughtered along with the (presumably) bad ones. Of course, there may have been grievous defects in the measures cited above, but even if they were technically defective and yet sound and salutary as to purpose and principle, they should have been amended and adopted. At least, they appear much more constructive than many of the measures among the five hundred which were passed in the roaring last days of the session. ~~To indicate the sort of consideration the measures receive in the closing days of the session, the following facts~~

To indicate the sort of consideration the measures receive in the last days of the session, the following facts are cited. The 1919 session closed February 27, 1919 . On that day, we find, the Senate considered three House joint resolutions and six House bills;

on February 26, it considered 27 House bills and 3 resolutions; on Feb. 25, 28 House bills and 2 resolutions; on February 24, 48 House bills. (52) It is unnecessary to pursue the analysis any further. The congestion and confusion, lobbying, neglect, and irregularity of the last days of every session of every American state legislature is so well known as to be a common-place. One hundred and seventeen bills finally disposed of in three days! And all this in addition to the regular committee work, discussion of Senate bills and passing of them on to the House and other regular routine work. If this is a specimen of the "solemn deliberation" and "check on hasty, ill-considered legislation" we obtain from the bicameral system, surely it is time to try some other system. Ninety men, untrained, irresponsible, underpaid, by a cumbersome, antiquated, inefficient, committee-ridden and information-less procedure rushed thru forty days of lobby-pestered (53), smoke-thickened, helter-skelter legislative puttering and wrote upon the records of Oregon a thousand pages of new laws in the year of our Lord 1919! This was the Twenty-ninth Legislative Assembly of the State of Oregon. Certainly we have not learned a great deal in our sixty years of statehood. No wonder our philosophic critic, Bryce, is moved to say that "legislation is seldom either careful or well-advised which results in the unconstitutionality" of much of it. (54) How could it be otherwise?

So we may conclude that if the bicameral system ever had any value for state government, it has long since disappeared. The defects of the two-house legislature are bound to grow rather than diminish if state government continues to follow its present trend and become more and more a matter of business administration. Practically all the cities have recognized the fact that their governmental ac-

tivities are fundamentally administrative rather than legislative and have long ago abandoned the two-chamber city council. The city government is undoubtedly more like that of the state than the state government is like that of the federal government. So much for the bicameral principle.

Another defect of the present state legislature is that it does not give democratic representation. This is the fault of the system used, or of the system which has been worked out by the political party. The Twenty-ninth Legislative Assembly was composed of 24 Republicans, 5 Democrats and one Independent in the Senate and of 55 Republicans, 4 Democrats and one Independent. In the Thirtieth Assembly, there were 24 Republicans, 3 Democrats and 3 Independents in the Senate and 54 Republicans and 6 Democrats in the House. But on the basis of the registration in 1918, the Republicans were entitled to only about 40 members in the House, Democrats 16, Socialists and Prohibitionists, one each and two scattering; in the Senate, Republicans about 20 and Democrats 8 or 10.

This situation results from our mistaken political practice of regarding the members of the legislature as representative of a party or a district instead of a certain number of live, intelligent human beings. (55) Of course, we know that they really represent the people in the last analysis, but the personal relationship has been almost completely lost. A true representative assembly is one in which the different focii (in the persons of those citizens who most nearly comprehend the true social sentiments of a certain number of people) of public opinion in a community come together for deliberative registration of the public will. If such representatives of the various groups of opinion are not present, no true democratic representation is possible, and hence no democratic dis-

cussion, deliberation and decision can take place. Therefore, some sort of proportional representation of the various coherent groups composing a given community must replace the old party-geographical-district misrepresentation, the old "majority tyranny". (56)

It might be inferred from the foregoing that a plea is being made for the rejuvenation of political party government in Oregon, by the adoption of proportional party representation. Such is not the case. It is true that the adoption of some forms of so-called proportional representation has resulted in just this thing. The Illinois cumulative vote and the Belgian list system are cases in point. (57) But the position taken in this paper is that party government is neither necessary nor desirable. It is not necessary if some system be adopted which will make it possible to do anything without reliance upon party organization. The adoption of the party system was a confession of weakness in the government, a recognition of the paralysis of checks and balances, and the manifestation of an undemocratic lack of faith in the people. It is not desirable because, as Smith says, "The misrepresentative character of the American political party seems to be generally recognized by those who have investigated", (58) because it is patent evidence that the government as at present organized is unworkable, because it denies the average citizen any real sense of effective participation in the government and because it very often results in corruption, conservatism and criminal waste of wealth. The "Oregon System" has started the disintegration of the party in state politics and we believe the influence is salutary and should be encouraged.

In the smaller units, opinion is divided on the basis of men and measures, specific policies and concrete problems, not on party principles or politician-policies. The reform and reorganization

of the cities did not progress far until the civic spirit became ascendant over the party spirit. There seems little doubt that the same sort of movement is taking place in state government.(59) The system of proportional representation which I shall propose will continue the process of the disintegration of the party spirit which the "Oregon System" began in this state. At least, this is the conclusion of experts and the result of experience where the proportional representation based on the single tranferable vote has been tried. (60) The present unproportional division of the mebers was cited merely to show how plurality elections work when the representation is of a partisan nature. What we hope to get by the proportional system is representation of opinion which shall be aroused , or created, by intelligent, informed group discussion. We want the will of the people to be flexible, always in process of formation,and never to become permanent, crystalized, static, partisanship.

In these preliminary ~~remarks~~ statements, I have attempted to show how and why the present legislatures are failing. Next I shall discuss the principles towards which we should strive in legislative reorganization. Then I will outline a tentative plan for attaining these ends.

The first principle states that the representative body should be small enuf for effective deliberation. It has been conclusively shown both by the foregoing analysis and by long experience that mere numbers and a two-house organization do not achieve deliberation worthy of the name. The shortness of the sessions, the amount of legislation attempted to be discussed, much of it of the "log-rolling" character, the cumbersomeness of the organization, all tend to preclude the possibility of very careful consideration. The fact that each house has to be broken

up into numerous committees is an admission that real deliberation is possible only in small groups. (61) Mr. Wallas gives the psychological basis for this when he says,"Before the invention of writing... ..a man who was engaged in serious and continued thot did so, either while dealing, in solitude and silence, with material provided by his own memory and imagination, or while forming one of an arguing group who constantly provided each other with new facts and diverted in new directions the course of each other's mental associations."(62) This, then, is the fundamental psychological basis of thot, a process extending back into dim, pre-historic ages when men were just becoming social, i.e., human, beings. Thinking, thus depends upon inter-mental stimulation resulting from close personal contact. Almost always, the great thinkers of history, from Socrates and Jesus down to Kant and Carlyle have been great conversationalists. Wallas goes on to plead for a rejuvenation of this lost art of "personal oral dialectic" as a solution for our deliberative difficulties. (63)

A man's ideas have a tendency to set up critical, supplementary and creative thinking in the minds of other men who are listening to him and at liberty to express themselves. It is only in the small, informal, discussional group that these conditions are met. Where every member is thus psychically stimulated, and not only at liberty to express his incipient thots but actually expected to do so, he may supply just the shade of meaning, the exact phraseology, or the elusive idea which the other members have been groping for. Or, failing in this, he may furnish the stimulation which will induce the desired reaction in some one else's mind. Thus every man becomes a contributing member of the group; every mind is tapped for its utmost treasures of experience, analysis, synthesis, imagination and judgment. It is in such a group that the

brilliant flashes of inspiration come.

The psychologist has only lately come to recognize the essentially social nature of thinking.(64) It is high time that the sociologist and political scientist should begin to apply the lessons which the psychological theorist has been teaching.

Altho the small group as typified in the legislative committee, government cabinet, or corporation board of directors makes possible some sort of real discussion by which an apparently collective will is evolved, I do not mean to infer that these forms are by any means ideal. All too often the conditions surrounding the operation of these groups make any very creative thot impossible. A decision is reached, but without that "unifying of differences" which Miss Follett conceives as the essence of collective thinking. (65) The board of directors is too often dominated by a chairman or small clique of heavy stock-holders and thus has a tendency to become a 'mere rubber stamp'; the governmental cabinet is usually influenced by political considerations, the effect their acts will have on the next seasOn's campaign contributions, and the other limitations which inevitably cling to party politics; the legislative committee is often controlled by "proper appointments", the covert suggestions of the political "boss", or by frankly party interests, it is over-worked, has poor informational facilities even if it had time to use them and is generally inefficient, both as to organization and operation.

The reformer political scientists recognize this as a necessary principle. (66) Practically every reorganizing tendency is in this direction. Nearly 500 American cities have adopted the commission and manager type of government and the movement is still growing. It is obvious that the "full dress debate"(Wallas)

(Wallas

the gallery-playing eloquence, the formal hum-drum of legislative oration,-crimination and recrimination,- grind but little grist and that, of poor quality. It arouses antagonism; panders to the love of self-display; wastes time, energy and money; confuses the issues, widens the gap of disagreement; causes rather than unifies differences in opinion; lulls the lazy to sleep; allows the corrupt to cover his iniquity with specious promises and demogogic cant--- and when the fire-works is all over, it probably has not stimulated a single mind or changed a single vote.

On the other hand, the small group of trained men, actively interested, conscious of their importance and responsibility, carrying on an informed and informal discussion in which all are expected to take part, mutually stimulate each other, draw out the very best that is in them and arrive at a unified decision toward the attainment of which every man has contributed his particular point of view. Instead of antagonism, such men have a warm, healthy sense of cooperative achievement.

It is impossible to say what sized group best fulfils these requirements. Since the legislative function is representative in the last analysis, it should be just as large as possible without sacrificing the fundamental object, viz,, discussional informality. Certainly the limit should be well under 30 members. One of the best examples of a real deliberative body which produces results is the British Cabinet. It has about 20 members. The number which can informally sit around a council table and not have to resort to loud orational discourse sets the limit to the size of the true deliberative assembly (67)

Secondly, the representatives must be responsible. They must be given large and adequate power and be held strictly accountable for their exercise of it. Now there are two sides to

this proposition. They must be responsible "for" something in order to exercise the legislative power; they must be responsible "to" something, the people, in order to be democratic representatives. That is, they must be able to do something for which they may be held accountable; their power must be great in order to express the popular will in an effective manner, but if they betray the high trust the people place in their representatives when they give them the tangible power of sovereignty, they must be held to swift and certain account. If the responsibility is great and the power conferred is adequate to discharge it worthily; if the personnel is selected from the best minds in the state; if the honor of being a state legislator is writ large in the public mind, it is unlikely that many cases will occur in which overt and summary account is judged to be necessary.(68)

The democratic representative always must be responsible to the people who elect him. This is fundamental democracy. This responsibility to the people is expressed in the ideal of "general, frequent and honest elections"; by the right to impeach or recall; by the right to initiate and referend measures which the legislature has passed or failed to pass. These are rights and privileges which the people of Oregon never will surrender; they are written into the public and political consciousness of most true Oregonians, as well as into the minds and aspirations of the citizens if many other American states.

But to say that these powers will always be retained by the people is not equivalent to saying that they will or should use them on all occasions. It does not imply that we should try to perform the detailed work of the legislature thru the ballot-box any more than saying that we never will surrender the right of revolution means that we must follow Jefferson's advice and water

the tree of liberty every generation or so, with blood. There are such grave difficulties in the way of making the legislators directly responsible to the people and at the same time making the power of the legislators great enuf adequately to discharge the legislative function that one well may hesitate to advocate any change. Indeed, one may well question whether or not it is possible to reconcile the two ideas. How is it to be done,-- how give the real power of legislative action to the law-making branch, and make them realize that they are really responsible for that function, and at the same time reserve to the people the right to recall any or all of them, make and unmake laws and generally meddle in the government? Croly states this dilemma and concludes that it is destructive of the possibility of direct government. (69) He says, "A statesman whose dominant object was the reorganization of existing state representative government would be foolish to depend upon the initiative and referendum for the accomplishment of his purpose." We may agree that it would be foolish to depend upon direct government entirely, or even mainly, and still contend that it has a very positive value as a remedial or regulative power. Any thorogoing reorganization would give the people the results they have a right to expect without the initiative and referendum ever having to be used, and yet the right to use them if the necessity ever arose surely should be reserved to the people. Such exigencies might well arise even in the best regulated state. It is not the use of direct government which is desirable, but rather the right to use it. In the plan which will be outlined below, it is thot the actual resort to the use of direct legislation will be comparatively unnecessary. At the present time in Oregon the tendency seems to be in the direction of a more judicious use of direct legislation. Of the 23 measures acted upon by direct legislation

from June 4, 1917 to June 3, 1919, 18 of them were submitted to the people by the legislature itself. (70) This is taken to indicate that the people are beginning to see that direct legislation is not a remedy to be used for light and unimportant reasons; but on the other hand, it indicates that the legislature is unwilling to take the responsibility of the law-making function. This is not strange when we remember that they have no time and no means to thoroly investigate the measures and certainly little opportunity to find out what the people thruout the state think about a given measure.

This leads us to consider the very important question of the relation which should exist between the people and their representatives. Certainly the legislator should not be regarded as merely the mouth-piece of a definite group of people, nor should he be entirely irresponsible and unresponsive to them as has been pointed out above. Rather he should be regarded as the focal point of a certain section of public opinion (the quota of electors who whose votes gave him his place). He should be responsible for his own acts, for thinking his own thots, and yet he should conceive of his work as something which can best be done by sympathetic understanding of the problems and wishes of his group. He should be open-minded, well-informed, alert and liberal. If these qualities are present to any degree it is unlikely that he will become either a rubber-stamp of a shallow-thinking or non-thinking group or yet a legislative autocrat. There is a golden mean which will realize the desired goal, a representative who a socially motivated member of a discussional group and at the same time a stimulating contributor to the deliberations of the law-making branch.

So much for the proposition that the legislator must be responsible to the people. Now we must consider his side of the

question. He must be given important duties and great responsibilities; he must be made responsible for something. To this end, it is proposed that the acts of the legislature and the measures passed by the people shall never be held invalid by the courts because of unconstitutionality. This solves the vexing problem of the relation between the courts and the law-makers and at the same time elevates the legislative function to the position it should occupy in the state. (71) This may sound revolutionary to the ordinary citizen used to thinking of the courts as the final sanctioner of the statutes, but in the last analysis the people of Oregon exercise this 'constitutional' prerogative at the present time. They may amend the constitution by a mere plurality vote in a general election. It is contended that no law which the people or their accredited representatives pass after due deliberation should be set aside by any other means than a solemn referendum or a legislative repeal. The courts would, of course, have to have jurisdiction over laws which conflict with federal laws or constitutional provisions, but the state courts should not have such jurisdiction, since the final decision ~~must always be~~ is rendered by the federal courts in most cases, --in all cases if the litigants have the financial means to carry the case thru the long appellate procedure necessary to get an unimpeachably conclusive decision.

It will be objected at once by certain suspicious, individualistically inclined persons that the legislature would tyrannize over the state by passing laws infringing the liberties and privileges of the people, that it would make itself supreme by destroying the fundamental organization of the powers of government and substituting the old system. This certainly would not be possible even if the legislators were so inclined. It must be remem-

bered that the final authority in state government will rest in the people themselves . It is unlikely that they would stand quietly by and see the legislature reestablish the old irresponsible government after they had tasted of the efficiency, responsiveness, and sense of effective participation vouchsafed them by the new. Every measure passed by the legislature would be subject to the governor's veto. A further check is provided by the referendum, which may be invoked at any time before the measure goes into effect. This period is ninety days according to the present constitution and would seem to be ample. However, it would be feasible to extend the time as much as was thot necessary under the new plan which contemplates the continuous session of the legislature, and yet have a great deal more flexibility in the law-making department than is possible under the system of forty-day biennial sessions. Likewise, members would be subject to recall from the district electing them.

Furthermore, if membership in the legislature were a position of high honor, if the salary were ample, if the responsibility were great, I assume that the men selected for the office would be very unlikely to tamper with fundamental American democratic ideals. The general organization of the government as outlined in the "constitution" would serve as a general regulator of their actions. They would be chary about making any radical change in the system without first getting a popular vote on the subject. The ~~corrupting~~ corrupting and corrosive influence of partisanship and "invisible" government would be absent under the system proposed. The legislators would tend to socially-minded statesmen rather than demogogic politicians or servants of the vested interests. However, if the people were willing to allow a legislative act infringing their liberties to pass and become operative law

without invoking the referendum upon it, there seems to be no reason for denying them this democratic privilege. The more likely result would be that the average citizen would be alert, informed and ready to act in the manner best calculated to protect his interests. Finally, the legislative function could be increased in honor and responsibility by regulating the manner in which initiative measures are put upon the ballot as will be suggested later.

Thus, if the members of the legislature knew that their acts were to become the "constitutional" law of the land, that theirs was the supreme duty of finally formulating the public will, and that the people held the effective power to hold them to account for any betrayal of trust or egregious errors of judgment, the importance of the legislature would grow in the popular mind and the legislators would feel their responsibility. They would strive conscientiously to discharge it constructively.

Thirdly, the legislature should be representative. This does not mean that it should be representative of parties, geographical districts, occupational groups, or even of specific social programs. We have swung far from that famous old dictum of the Massachusetts constitution which declared a "government of laws, not of men". Our ideal is rather that the government should be one of men, by men, for men. We do not want a government of laws, or parties, or factions, or classes, or of anything other than of living, thinking, working, feeling, human beings. It is as necessary to humanize government as it is to humanize industry, or religion or education, or any other mode of association which tends to become mechanical when sufficiently institutionalized. In fact, if we can get this principle of the essential value of per-

sonality written large into our political life, we shall have taken a long step in the direction of humanizing all our other social relations.

Therefore, the legislature must be representative of people. The only way this is possible,while avoiding the crystalizing impersonality of the modes above referred to, is to have each member represent a certain phase of public opinion, or judgment, or will. This quota of the electorate must be determined be the intelligent non-partizan citizens necessary to elect a representative. The selection of any particular man will be determined by the confidence in his judgment and integrity and social consciousness which the people in his district have. This will depend of course upon the policies and principles which he espouses. This conception differs from the present only in the fact that the organized political party which is out to win, even if compromise and indefinite "policies" have to be "supported" will be replaced by a fluid political opinion which will be in a continuous state of creation. The representatives of these people who hold a certain opinion will be the temporary focal points, or "radiant points" (Ross) of it. When they no longer serve to express the aspirations of such a group, some new spokesman will be found. As long as they do express the political thot of such integrated groups, the greatest efficiency will be obtained by retaining them in office. Under the present system, forty-nine per cent of the population may be absolutely without effective representation. Under the proposed system never more than four per cent would be unrepresented, for just as soon as one-twenty-fifth of the population, of the voters, rather, became a self-conscious group of opinion, they could concentrate their votes and elect their member. Besides this, even if they could not muster the twenty-fifth, they would not be wholly unrep-

resented as will be pointed out later. Thus the legislature should be made representative of the people, or rather of the various and varying psychic collectivities of people.

While it is unthinkable that we will ever depart from the fundamental democracy of "majority rule", it is equally unthinkable that we will forever continue to fail to utilize the the social stimulation which comes from minority opinion. It is a travesty upon the term 'democracy' to interpret it in such a way that that large elements of the population have no voice in the government except when they raise their voices in a more or less useless protest. Their only hope is to be so critical that they can discredit the acts of the party in power and thus get the people to turn it out and turn them in, in which case the process is reversed and the great political dog-fight goes merrily on for another season. How much wiser it would be to give the various elements adequate representation according to their proportionate numbers and allow them to expend their energy in constructive rather than destructive activity. Put the bad boys to work, give them responsibility and interesting opportunities for achievement, and we usually find them to be good boys after all.

One of the lessons of universal application which history teaches is that every majority was at one time in its career a militant minority, often much abused and very bitterly opposed. A minority is aggressive, critical, analytic and sometimes quite constructive. In any event the presence of opposition is as salutary in politics as it is in baseball. A completely one-sided affair is very likely to become farcical or tragic, depending upon the end being striven for. If we admit the desirability of minority representation, we certainly cannot reject the principle of proportional representation. Mill's famous remark remains the classic

statement of this conclusion,"In a really equal democracy, any and every section would be represented, not disproportionately, but proportionately. A majority of the electors would always have a majority of the representatives; but a minority of the electors would always have a minority of the representatives. Man for man, they would be as fully reresented as the majority," (72) Of course, Mill was speaking of the situation under party government, but the principle is just as valid when we are talking about quotas of electors or units of public opinion, as when we are talking about parties and geographical districts. Proportional representation would appear to be the only just and equal mode of representation in a democracy which pretends to give every man, every voter, an effective participation in the government. It is the only means by which we can get the maximum of stability, experience, points of view, suggestions and constructive judgments, to say nothing of the checks of criticism, analysis and stimulating opposition, which are absolutely necessary for progressive, dynamic democracy. (73) This is the leaven for the lifeless dough of majority rule; it is the kinetic power which will make the inertia of party "bossism" and political formalism impossible. It will tend toward a unity attained by creative discussion rather than to a unity attained by suppression and coercion.

If the territorial system of representation is ready for the discard, what is the alternative? Should some system of occupational representation, similar to that recently proposed by Mr. U'Ren, be substituted? This theory of the soviet, or industrial group, as a basis for political representation seems to be gaining a somewhat respectable place in modern thinking. The Russians are actually trying it and the Guild Socialists of England are sponsor-

ing it is a more or less modified form. (74) Of course, no American or English political writer would advocate the attainment of the goal by any such revolutionary means as have been employed in Russia, but at the same time many of them are advocating a definite recognition of the industrial groups in political representation. The Labor members of Parliament are indications of the unity of action of the industrial population. The various attempts to form a Labor party in our own country indicate the same general movement.

However, in repudiating party and territorial representation we are not driven to uphold occupational representation as such. In fact, the logic of the situation is distinctly against it. The ascendency and permanency of the industrial group implies an economic interpretation of history which no sociologist would be willing to grant for an instant. It suggests the very thing we have already condemned, namely, the conception that economic activity is an end in itself instead of a means to an end. There are so many other interests in life, so many other group-interests of the average individual, than his immediate occupational group, that any state based exclusively upon this interest, important as it is, could not be anything other than limited in its scope.

But we are striving for a political organization in which the whole people shall be vitally interested and participant in the welfare of the whole state. We are attempting to make the state the agency thru which every man shall most truly realize the social nature of his life; that he shall feel that he lives in, and thru, and by, the state; that all his interests shall find a political expression. But the occupational group is divisive and partizan and limiting by its very nature. It implies class struggle and individualistic effort expanded from the limits

of a single life to the somewhat larger limits of a particularistic group. This is antagonistic to the principle of the synthesis of divergent interests into a unity of social interest. Miss Follett expresses the thot when she says in effect that we want a state which shall include industry without either abdicating to industry or ruling industry with a bureaucratic hand.(75)

In other words, the occupational group representation theorists seem to proceed on the proposition that "man lives by bread alone"; that"as a man works, so is he". This is contrary to all experience, racial and personal. We are by way of allowing our materialistic economic civilization to swallow up all of our other interests in life. We tend to make money and the accumulation thereof the be-all and end-all of life. Hence, it is not strange that our historians and political scientists and poets begin to give us philosophies of life based on this hypothesis. When we act in a certain way for any great length of time we tend to take the position that our action is in accord with the eternal nature of things. The Sociologist attempts to see life clearly and see it whole. He has the long range view which is inimical to unversal affirmatives and absolutist explanations. He cannot but regard any given socially ascendant line of conduct as temporary and trivial as conpared with the human history that has been and is to be. So our leading sociologists are preaching the doctrine that our present economic civilization will be modified in the future. Indeed some of them are proclaiming that we are already entering the period of the decline of dollaritis and crass economicism. Ross says that our commercialism is "merely an eddy"; that "modern reforms are redeeming us from Mammonism"; Cooley says,"I do not anticipate that the struggle of classes over pecuniary distribution will go to any great extremes";

and goes on to plead for a theory of life in which "love and beauty and religion can have a part". (76) Of course, this does not mean that we are to have any less of economic activity, but merely that the emphasis will be equalized somewhat. There is little doubt that civilization as we know it can not go on without an ever increasing efficiency and amount of economic endeavor, but as has been reiterated time after time, we must, sooner or later, come to regard wealth as a means to an end. Otherwise, our economic civilization contains the seeds of its own destruction.

Now if if these sociologists are authentic voices preaching the gospel whereby men shall be saved, and if they have rightly interpreted the trend of modern life, we are not fore-doomed forever to serve the god of Mammon. Hence it would seem to be a false step to base our political representation upon any economic group division of society. Judging by experience, there will always be plenty of divisive forces present without our consciously cultivating them. We should rather bend our efforts in the direction of integrating the interests of all groups by building up the community groups. Here we are on solid psychological ground for the average individual is not an exclusively occupational group an individual. And our ideal postulates an individual who touches life at many points, a man of wide and varied culture, of many interests, broad human symapthy and catholic ideals. And the American man approaches that ideal more nearly than any other citizen, perhaps. His mind is in psychic contact not only with various parts of our own country every day, but also it reaches out and taps the secret places of the whole wide world. "You cannot sum up the social environment and mental outlook of a man of today by saying he is a farmer or an artisan or a priest as you

might have done in the Middle Ages. He may be a farmer and also many other things; a member of learned societies, an investor in remote enterprises, a socialist, a poet; in short, a complex and unique personality". (77)

Therefore, representation by occupational grouping harks back to the Middle Ages rather than articulates with the twentieth century. While the occupational group will remain a vital factor in society so long as the capital-labor problem is unsolved, I venture that it will never attain such paramountcy as to be made the basis of the state. We will surely attain to a sufficient degree of social sanity in time to prevent our civilization from writing its own doom by adopting a thorogoing economic materialism. In any event, there is no need for advocating occupational representation here in Oregon where industrialism is a threat and a promise rather than an accomplished fact. Let us hope that before Oregon becomes the industrial state she is destined to become, the economic problems of capital and labor will have reached their angle of repose. (78)

The fourth principle deals with the personnel of the legislature. The highest type of citizens, the most socially-minded, the most widely experienced, the most far-seeing and deep-thinking citizens of the state should be inducted into the legislative service. Every writer on the subject places this requirement among the prime requisites for any successful attempts at reorganization. (79) The problem of personnel is always a difficult one. No definite formula can be devised which will determine the quality of the public officials in a given community, but in general we may say that the people will get the sort of representatives they demand. This is merely saying that water does not rise higher than its source. The shyster and demogog will have little chance of election from a constituency of thinking people who are interested in the welfare of the

state community. The growth of the community spirit is the salvation of American politics. "A deeper community spirit is needed thruout our society." (80) I have already discussed the principal means of attracting high calibre men to the legislative department by making the position of the legislator one of trust, honor, power, responsibility and adequate compensation. In addition to this there should be a definite educational campaign carried on in the schools, the home, and the various clubs of the community, as well as by the press and the platform aiming to elevate the position of the state legislatur in the popular esteem. If such a policy boldly outlined and carried out did not avail to redeem the legislative branch from the obloquy into which it has fallen it would seem as if the case were indeed hopeless.

Finally, the legislature should be stable. Membership in it should become a profession rather than a political plum. In order to get the greatest efficiency in the legislative work, it necessarily follows that the trained man of experience should be preferred to the ambitious climber. Solon should triumph over Cleon. However, there is another principle which may conflict with this one, altho it is not an absolute necessity that it be so. Members of the legislature must always submit to the frequent approval or disapproval of the people. Hence, the desirable stability can be achieved only in so far as the people are able to find such satisfactory legislators that they will return them term after term. This will undoubtedly be the tendency in the system proposed, for membership in the legislature of the reorganized state will depend upon service, intelligence and integrity rather than upon party allegiance or demogogic art. The man will be put into the place; he will not climb into it. Of course, the scheme of retirement in rotation could be used, but it is thot that this plan has a

tendency to make the body a closed corporation. Certainly it would lessen the possibility of quick control of the legislature by the people by means of the general election. In order to control, they would have to resort more and more to the use of the recall. This is costly, disruptive and generally undesirable.

I have shown that the legislature should be small in number, extensive in power and responsibility, representative of minority as well as majority opinion, composed of members of high ability and wide experience, and that it should be as stable as is consistent with the principle of frequent general elections. Next I shall attempt to formulate the means of attaining these ends.

The legislature should be composed of twenty-five men elected from seven districts each of which must return at least two and not more than nine members who are chosen by proportional representation with the single transferable vote. (81) These districts must be composed of contiguous territory, as compact as possible, and formed of such smaller units as have some degree of social and industrial solidarity. It is possible that a redistribution of territory might group them more effectively than I have done by making nine districts of three members each. This would give a House of 27 members as against my 25. I think 27 men would not be too large a body in the light of the the above discussion as to the size of the legislative chamber, especially if the procedure suggested below were followed. The concentration of over one third of the population in Multnomah county will always make an equality in the size of the districts difficult to obtain. As the population of the state increases, however, the relative fractions will doubtless tend to equalize themselves. Nevertheless, there will always be a strong sentiment for making Multnomah a district by itself, and as long as this is done, of course, there

can never be equal districts. The only way out would be some basis of districting other than the county unit. None seems practicable at present.

Some central point must be designated in each district where the ballots are to be counted. Under the proportional voting system where the Hare single transferable vote is used, all the ballots in a given district must be counted at a single place. Every voter in the state should be able to cast his vote for any man in the state. This provision is made, so that if any group in the state had one twenty-fifth of the votes and wanted to be sure of getting their representative, they could concentrate on some candidate in a particular district and be sure of getting a member. In case a man wanted to vote for someone outside of his district, the procedure would be as follows: He would appear before the proper officer in the district where he was registered, and vote by mail. The sealed ballot would be mailed to the designated officer of the vote-counting city in the district where the mail-order voter wished his vote to count. His vote would them be counted in with the rest of the votes cast in that district, and would of course ~~raise~~ raise the quota of first choices which a candidate would have to receive to be elected. The election should be held the "first Tuesday after the first Monday in November". The term of office should begin about the first of February. (82) This would give the newly elected member plenty of time to arrange his personal business and to familiarize himself with his new duties.

To show the way in which the state might be districted, the following table is suggested. The figures are taken from the 1920 census. (83) The total population is something over 780,000. This gives a quota of approximately 30,000 for each member. Therefore,

we must have at least 60,000 in each district in order that we may have two members in each district. The proportional representation plan requires that we have at least two members in each district. More would be better as it would allow each voter to exercise more choices and thus make his vote effective in the election of more than two members. But even in case there are members to be elected from each district, the voter should but two indicate four or five choices on his ballot in order to make his vote most effective. (84)

District No. 1..... 9 members.

| | |
|---|---|
| Multnomah | 275,898. |

District No. 2.....3 members.

| | |
|---|---|
| Clatsop | 23,030 |
| Columbia | 13,960 |
| Tillamook | 8,776 |
| Washington | 26,376 |
| Lincoln | 6,084 |
| Yamhill | 20,539 |
| | 98,755 |

District No. 3.....4 members.

| | |
|---|---|
| Polk | 14,181 |
| Benton | 13,744 |
| Clackamas | 37,698 |
| Marion | 47,117 |
| Linn | 24,550 |
| | 137,290 |

District No. 4.....3 members.

| | |
|---|---|
| Lane | 36,166 |
| Douglas | 21,332 |
| Coos | 22,257 |
| Curry | 3,025 |
| Josephine | 7,655 |
| | 90,435 |

District No. 5....2 members.

| | |
|---|---|
| Jackson | 20,405 |
| Klamath | 11,413 |
| Lake | 3,991 |
| Deschutes | 9,622 |
| Harney | 3,992 |
| Malheur | 10,907 |
| | 60,330 |

District No. 6.....2 members.

| | |
|---|---|
| Hood River | 8,315 |
| Sherman | 3,826 |
| Gilliam | 3,960 |
| Wasco | 13,648 |
| Jefferson | 3,211 |
| Crook | 3,424 |
| Wheeler | 2,791 |
| Grant | 5,496 |
| Morrow | 5,617 |
| | 50,288 |

District No. 7.....2 members.

| | |
|---|---|
| Baker | 17,929 |
| Umatilla | 25,946 |
| Union | 16,636 |
| Wallowa | 9,778 |
| | 70,289 |

It will be noted that these districts are fairly compact and homogeneous, both geographically and economically. No. 1 is almost entirely urban and industrial with a considerable element of rural population devoted to trucking, dairying and poultry-raising. No. 2 is chiefly lumbering and dairying, with a very

rapidly developing mountain and seashore recreational industry. No.3 is chiefly devoted to horticulture and general farming; No. 4, lumbering, general farming and some dairying; No. 5, minerals, stock and fruit raising, lumbering and irrigation-farming; No. 6, irrigation, dry-farming and fruit-raising; and No. 7 to stock-raising, mining and farming. These cardinal interests will tend to develop corresponding types of opinion and bring about a nucleus of community organization necessary for a real, active, participating electorate.

The legislature should be presided over by the lieutenant governor. He should have no vote, even in case of a tie. This could occur only in the event of the illness or other unavoidable absence of some of the members, since the house should always be composed of an odd number of representatives. In the event of the death of the lieutenant-governor, or of his assumption of the governor's office, the legislature should have the power to elect a new one to serve out the unexpired term. This election should be according to the principles of the Hare system, each member having the right to nominate a man for the office, with the proviso that only one nominee from each district could be named. Vacancies in the legislature should be filled by the other members from the district in which the vacancy occurs. If they cannot agree, or make no selection within thirty days, the governor should fill the place by appointment.(85) The legislature should make rules and regulations regarding the returning officers in the several districts, the election procedure, and the credentials and seating of its own members.

It is proposed to abolish the direct primary as a means of nomination because it is cumbersome, expensive and unnecessary.

It really amounts to a duplicate election. A sensitive man of high ideals who holds that the office should seek the man instead of the man seeking the office, is likely to be hesitant about throwing himself into a political fight for what seems to be a personal prize. The direct primary method of selecting candidates is an open invitation to all the devices of self-advertizement, demogogic haranguing, undignified promises and other practices which are universally condemned by all good citizens, (86) We want a substitute for it; one which will preserve the benefits of the direct primary, i.e., its tendency to break down party lines and party organization, and at the same time obviate its defects as above pointed out.

Barnett says that the direct primary has "practically annihilated party organization." (87) If this true, or if the tendency is in that direction, certainly there is virtue in the direct primary idea which we must preserve;-at least, that is the view taken in this paper. Doubtless the other factors he mentions have had as much effect on the decline of partyism as has the direct primary. However, the essential features of the primary can be preserved without the necessity of the extra election with all its attendant defects.

The following is a suggested procedure. As has been so often pointed out by high authority the only safe principle to follow if a democracy would avoid the pitfalls of demagogery is that the office should seek the man, and not the man the office. (88) This means that there should be a popular demand from the citizens whom a man is to represent for him to assume such responsibility. Hence, in accordance with our general theory it is proposed that the people themselves shall announce a man's name for nomination.

Whenever one per cent of the total number of voters who were registered for the preceding election in the district affected shall be obtained on a freely circulated petition in the interest of any qualified voter's candidacy, his name shall be eligible for filing with the registration officers of the district affected. The secretarial officer of the district involved shall notify the person whose name has been presented that he is a candidate for nomination. The person in question shall reply in writing within five days if he is willing to allow his name to go on the nominating lists. In the event that he does not reply, acquiescence shall be taken for granted. In order that these names shall be real popular choices, it should be made a misdemeanor for a man to cause a petition to be circulated in his behalf, or for any individual or organization to pay for getting names on a petition.

But the real nomination shall be made by the voters at the time they register. This should be done yearly, on or before August I. The list of candidates for nomination should be presented to the voter when he registers and he should express his preference. When a number of voters equal to a certain percentage of the total registration in the district concerned for the preceding election shall express preference for a candidate, he shall be considered nominated and shall be so notified by the secretarial officer of his district. Five percent is suggested. If no one has the required five per cent, the secretarial officer shall declare as nominees twice as many candidates as there are offices to be filled, selecting the highest on the list.

Thus, if a county judge was to be elected and no two candidates for nomination received their quota of five percent of all the votes cast for county judge at the preceding election, the county clerk would declare the nominees to be the two highest men on the list. If there were two officers to be elected, as in our suggested Fifth

L

Legislative District, he would declare the four highest on the list ; and so on. There should always be at least two candidates for every office. Where the district is large, as in the sixth legislative district above, it might be a week or so before all the reports came in to the central officer, but even if the state were the district, all nominees could doubtless be apprised of their nominations by the tenth of August. This would leave them about two months and a half for their campaigns which would seem to be ample time. Every incumbent should automatically be regarded as a candidate for reelection unless he expressly notifies the clerk that he will not run.

Such a system as this, besides being simple, direct and inexpensive, would strike the final blow at party rule in state and local politics. Of course, it would not work at all except where the short ballot prevailed. It is expected that the local governments will ultimately be reorganized along the idea of the plan I am proposing for the state, in which case the number of elected officers would be very small. In the case of the state, there would be only three general state officers elected every four years and the biennial legislative elections. Provisions should be made for registration and voting by mail under certain conditions. The corrupt practices act should apply to this system of nominations as severely as it does to any of the election processes.

By far the greatest gain which would accrue from such a system of direct nomination would be the interest and sense of responsibility which it would arouse in the voters. They would conceive government as a definite, personal, active responsibility for intelligent consideration of men and measures. ( The relation of this to direct legislation will be discussed later.) He would be forced to read, discuss, listen and become generally informed on the questions of government, and he would be anxious and enthusiastic about discharging this civic duty because he would feel that he was actually concerned

in the accomplishment of the public will; were it not for his proper performance of his civic prerogatives, the machinery of the state could not run. ¶Undoubtedly, one of the reasons it is such a task to get the voters registered is that they feel that it futile and pointless; they do not like to be labelled Republican or Democrat and have their freedom of action restricted thereby when it comes to deciding who shall be the next county commissioner, or whether they shall adopt an aggressive or passive road policy. The above proposal would put some life and reality into registration. It would abolish the present primary election, which most voters regard as an extra election, a jockeying start , or as a fore-gone conclusion as the case may be, and yet it would preserve the fundamental principle of the primary by making the people absolutely responsible for the selection of their nominees.

Next we must take up the procedure in the new legislature. The first thing to be remembered is that the legislature is fundamentally a discussion group; a body of men selected for their reason and judgment; men who realize the value of divergent opinion but who regard as the essence of their duty the effort to make divergent opinion become convergent; men who sense their primary function as the process of formulating a great many honest differences into some unified plan of action. They have to determine general policies and then work out the exact details of the same or make operative law what the people have endorsed in principle by direct action. In any event, the true legislature will arrive at its conclusion by a system of give and take, of constructive criticism and enlightening discussion, of investigation and reliance upon exact knowledge, until finally, when a decision is arrived at, every member will feel that the very best solution has been reached. No man should cast his final vote on a measure feeling that the best has been sac-

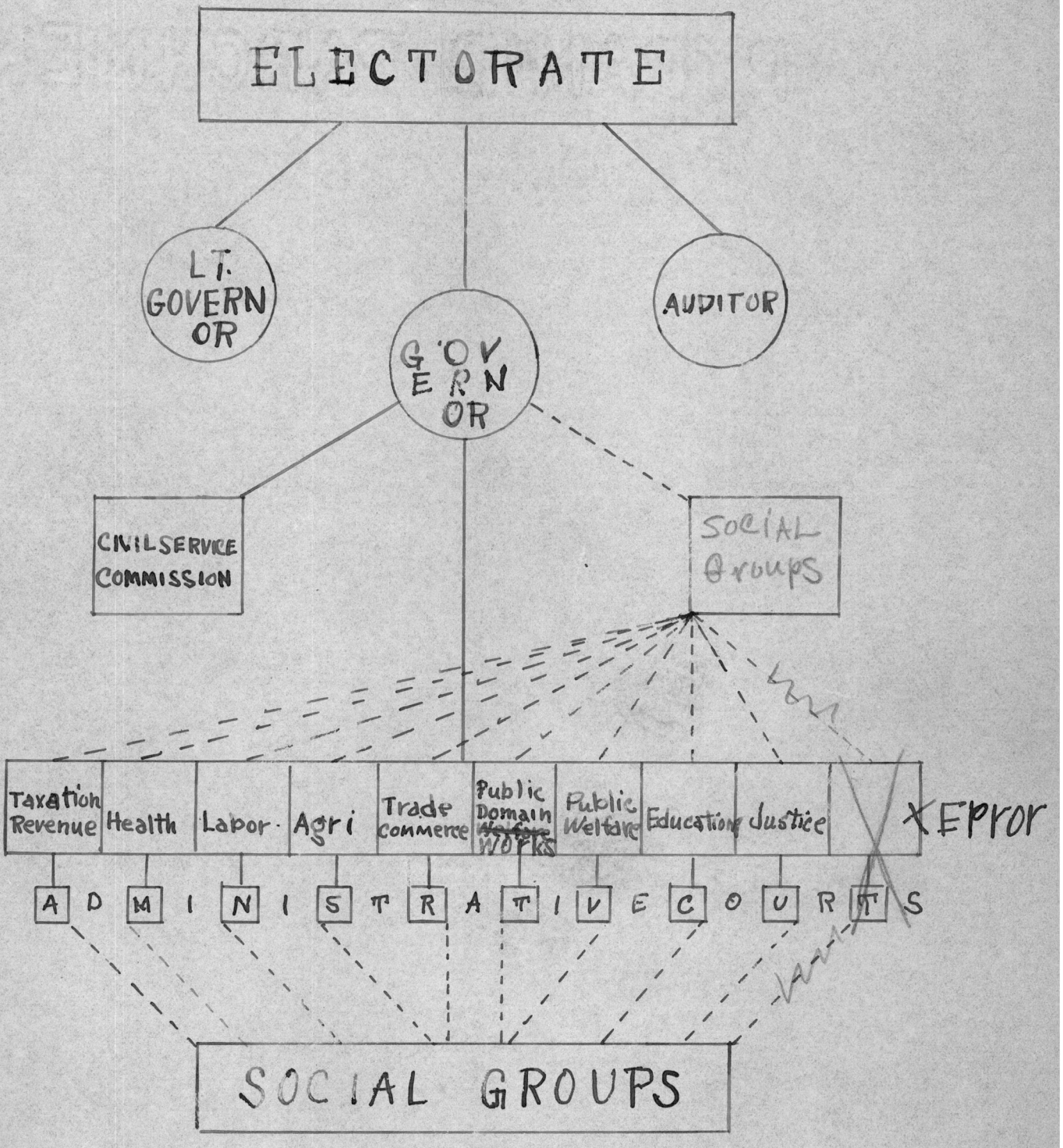
rificed to the expedient, that there has been a compromise, or that he has voted for this bill in order to get someone to vote for some bill which he considers more important. Rational unanimity is the ideal.

The members should be seated around a large table in a quiet room. There should be no committees or secret sessions. Visitors should be allowed to come and go freely. No member should ever be permitted to "orate". The discussion should be just as informal as is compatible with decorum and business-like procedure. The presiding officer should be a man of rare tact and discretion. His is the nice task of steering a straight course between the Scylla of Formality and the Charybdis of Formlessness. While "speechifying", argumentative antagonism and legalistic bickering should be absolutely taboo, informality should not be carried so far that undignified, pointless talk, wasteful pleasantry and general inattention will result.

The secretary of the legislature should make arrangements for the reception and hearing of delegations, administrative officers, and experts who may wish to communicate with the legislature from time to time. Together with the regular legislative calendar, he should prepare a regular weekly conference calendar and present it to the members a week in advance. The clerk of the legislature should keep the records of its proceedings and be prepared to take a stenographic report of any material which a verbatim record may be thot necessary. The press should be made a prominent part of the legislative procedure. Part of the duties of the clerk and secretary should be to assist the press in every way possible to the end the widest non-partisan publicity be given to the work of the legislature.

The legislature should of course have the power of interpellation and the right to call the heads of the administrative

chart
Figure 2. Proposed Administrative (executive) Department



departments for information and advice. Representatives of various groups thruout the state, particular experts and officials may be called or received at any time. Hence, provision must be made for carrying on these conferences and audiences with the greatest degree of informality and efficiency possible. The room should be small and plainly furnished. The furniture should be as compactly arranged as possible. Every suggestion of a "dignified spectacle" should be avoided. It is essentially a board of directors' office where the business of the state is being transacted. Fig. 1 is a suggested arrangement.

Now we will consider the method of initiating legislation. The main purpose of the legislature is to crystalize the nascent public will into law. Hence, there must be the closest possible integration of the legislature and the people. The way must be kept open for the the people to present measures to the legislature as well as for the legislature to initiate laws itself. It is thot that the following classification includes the main sources of potential laws.

1. Administrative bills.
2. Member bills.
3. Initiative bills.
4. Organization (group) bills.

The first two classes will constitute the bulk of the bills. The administrative department is most closely connected with the actual conduct of the state's business and thus comes most directly in contact with the people. The appropriation bills would be prepared under the direction of the governor and of course are the most important acts of the legislature. Then the administrative department in the conduct of its duties become aware before any other part of the government of laws which ought to be passed or repealed. Hence, it is held that administrative bills should be given precedence. The governor and the heads of his administra-

tive departments should be members of the legislature with all the privileges of that body except the right to vote. Presumably, the measures of the members themselves would be next in importance since they will be best informed and most interested in the legislative affairs of the state.

The third and fourth classes demand more explanation. It is desirable that the initiative be used just as little as possible. There are several reasons for this, chief among them being the fact that the excessive use of the initiative implies lack of faith in the legislature and will tend to lessen the honor and respect for the office of legislator; and in the event that the measure as proposed is defective, amendment is not possible. The people of Oregon are beginning to regain the respect for the legislature which they had so completely lost twenty years ago that desperation drove them to direct legislation. (89) The success of any such system as the one we are discussing demands that this movement shall continue until the position of legislator shall be comparable to the Roman consul in the days of the Republic. So while we do not advocate the abrogation of the right to resort to direct legislation, we do believe that the less it is used the better.

Hence, it is proposed that whenever an initiative measure is ready for submission to the people, it shall first be presented to the legislature. If that body finds the measure good, it will adopt it and thus save the expense, trouble and undesirable consequences of a submission on the ballot. If the legislature proposes amendments and they are concurred in by the organization which sponsored the bill, the measure may be adopted as amended. On the other hand, if such amendments are not concurred in, the bill shall go on the ballot as first presented. Likewise, if the legislature rejects the petitioned law, it shall go on the ballot as

first presented; or if the legislature does not act on the measure
The same procedure should apply to referendum measures.
within thirty days, it shall go on the ballot.

Such procedure would undoubtedly decrease the number of initiative measures, particularly with the modifications to be suggested later. The general principle is that the legislature should pass all the legislation, but at the same time the initiative power should not be so much emasculated that the people would find it impossible of use if a distinct difference of opinion should develop between them and the legislature. The initiative should be a potential force in legislation rather than an operative one.

The fourth class of measures might appropriately be called "suggested legislation". The idea id that any bona-fide state-wide association such as the Bar, ~~Dairy~~ Dairymen, Plumbers, Carpenters, Grangers, the state organization of any religious or fraternal group, etc., may prepare measures and submit them to the legislature for consideration. The legislature may adopt, amend and adopt, consider and reject, or completely ignore such proposal as it may see fit. Such a plan would give the legislature a good opportunity to apprehend the trend of public opinion as mirrored in the differnt social, occupational, religious , educational and fraternal groups, and at the same time it would integrate the various groups of the state with the government and give the members of the same a lively sense of participation in public affairs. Thus the state-wide community spirit would be fostered. The state would be finding a way to utilize for the general good those forces of organization ~~into~~ which the people ~~group themselves~~ create for the advancement of their personal interests.

A word as to the actual passage of laws. The legislature should be in session continuously so that it may be always responsive to the needs and demands of the commonwealth,- a real creative

agency of the public will.

No bill should be passed until it has been discussed on three separate days. The first two considerations should be devoted to a thoro analytical study of the bill from every possible angle, the getting of opinions from administrative officers and experts in the field affected by the proposed measure, amending and preparation of the bill for final passage. These first two considerations should be at least a week apart. The members of the legislature and all the chief administrative officers should be supplied with printed copies of the bill at least one week before it is to be formally discussed by the legislature. Thirty days should elapse between the second consideration and final passage. During this time, any voter or citizen making application should be supplied with a copy of the bill as it is proposed to be passed. Certain state-wide private organizations and other publicity groups such as schools, libraries, lodges, newspapers, etc., should be supplied without request. This period of publicity will enable the legislature to determine how public opinion will react toward the proposed new law. If the criticism has revealed defects which the legislature considers real and important, it may amend the measure and present it for another period of discussion. By some such method of taking the social temperature, we may approximate the desired end of knowing how a law will work before an actual trial is made. (90)

If the bill passes the house by a 3/5 vote of all the members, and is signed by the governor, it becomes a law. He should be compelled by law either to approve the bill or veto it within ten days of his receipt of it, unless he should be ill or absent from his office when the legislature sends the measure to his office. If he vetoes the bill, 4/5 of the total number of legislators may pass it over his head. In the event the house cannot muster the 4/5 vote, it may, if it choose, order the measure submitted to the people at the next regular election

if 3/5 of the total house concur in such a course. On the other hand, if a bill fails of adoption on its third consideration, i.e., if 3/5 of the total membership do not vote for it, the governor and 2/5 of the members may refer it to the people. (91) If these references to the people are made less than ~~Sixty~~ sixty days before the November election, they will of course have to wait till the succeeding election, unless the legislature shall by unanimous vote declare a special election before that time. The use of the special election should be restricted as much as possible, but whenever one is held, all measures eligible for consideration at that time shall be on the ballot. The above are the only conditions under which the legislature shall refer measures to the people. As pointed out above, the legislature should assume all the responsibility for the legislative function, but in these cases the referendum is more in the nature of a judicial appeal to the people to settle disputes between the governor and the legislature. As a rule , they will be in sufficient accord to obviate the use of direct legislation .

The proposition was laid down above that the acts of the legislature should not be set aside on the plea of unconstitutionality. This needs some slight qualification. The constitution of a state should contain nothing except the briefest possible exposition of the organization of the government. This should be stated in general principles whenever possible. Now obviously the legislature should not have the right to change these principles without the immediate consent of the people, but in the event such an attempt is made, or if in the opinion of the supreme court, any proposed, or adopted legislation would so result, the matter should be referred to the people at the next election. However, of the legislature frankly wishes to revise the constitution by adopting some new principle

or abrogating some old one, they may submit it to the people if the governor and 4/5 of the members concur. or by a unanimous vote if the governor objects. Such questions as the use of direct legislation itself, departmental organization of the government, budgetary finance, size and organization of the legislature, gubernatorial veto, and so on, are cases in point.

The legislature should meet at least two days of every week, beginning on Monday morning. The weekly calendar containing the program of legislation and conferences for the ensuing week, should be sent to each member's office every Thursday. A complete yearly calendar should be included in the report of the legislature. The clerk and secretary should be responsible for this report. Each member should have an office near the legislative chamber. Competent stenographic assistance should be provided, one stenographer being assigned to every four or five members, or in such manner as to get the greatest efficiency in stenographer hire. Recess of two weeks, or whatever period the other employees of the state are allowed, should be taken at the option of the members, except that theyshould be in session during February, March and April when the appropriation and other administrative measures would be under consideration.

An efficient reference bureau and bill drafting service should be supplied for the legislature, administration and initiative petitioners. The Oregon State Library has furnished reference service since 1905.(92) In 1913, this function was prescribed by a legislative act, altho no specific provision was made for a bureau. In 1919, an act was passed providing for a "legislative reference bureau composed of five members, including the heads of the departments of law, history, economics, and commerce of the University of Oregon." These were to be appointed by the governor. The purpose as set forth in the

act was to stimulate and direct research of students and faculty on governmental questions and to give assistance in drafting bills, The life of the measure was only two years. (93)

This act is another example of legislative incompetency. It looks good th the casual reader, gives the impression that it is a constructive piece of legislation, but in effect, it is absolutely worthless. No funds were provided and no compensation for the members was specified. Under certain conditions, some members of the faculty and a few students could carry on research, but obviously the heads of the departments would be too busy to devote much time to this work, even if funds had been provided for carrying it on, and the life of the law had been long enuf to permit a piece of research to be done under its auspices.

In some states, the same agency furnishes both reference and drafting service. (94) In others, the reference function only is prescribed. (95) In most cases, funds are provided for carrying on the work. These appropriations range from nearly nothing up to almost $30,000 a year in Wisconsin(96) The two agencies should be closely connected even tho the direction be under different heads. (97) The American Bar Association asserts the general principle that "the reference service should be so organized and operated as to be directly contributory to the drafting service". (98) This report goes on to say that the lawyer is not the ideal draftsman, as most people would be inclined to think at first, because "his mind is critical and analytic rather than constructive". His training has all been in the direction of evading law or in getting an interpretation favorable to a preconceived hypothesis. So it is a fundamental mistake to put lawyers in charge of the drafting service. What is wanted above all things is directness, simplicity, clarity, independence, and constructive social out-look, as well a knowledge

of the common and statutory law. (99)

It is not necessary to pursue this subject any further. Suffice it to say that any well-organized legislative system must utilize both agencies. Bill drafting is an art as well as a science, while legislative reference service demands proper training in research methodology. Professional training, personal and professional pride, and a distinct recognition of civic responsibility are indispensable to the proper preformance of these duties. The two should be closely integrated, the reference under the direction of the State Librarian and the drafting under the direction of the department of justice.

Just what would be the relation of the proposed legislative system to direct legislation and the recall? The problem has already been touched on in the discussion of nominations, the consideration of initiative and referndum bills by the legislature before they go to the people, and the conditions under which the legislature may refer measures to the people. As stated above, it is desirable that direct legislation should be used only when the regularly constituted legislature fails to find and formulate the people's will. Hence, we have advocated the elimination of the circulated petition (except as a preliminary step in nomination, and here we have rejected the use of the paid circulator) and have made the use of direct government somewhat more difficult than at present. The general principle followed is that primary nominations, direct legislation, and the recall shall be initiated thru the registration machinery.

The recall should be invoked in much the same way as a man's name is placed with the registration officers for approval. When one percent of the number of voters registered in the district which elected the officer shall sign a freely circulated petition for recall and present the same to the secretarial officer

of the district affected, he shall file the name with all the registration officials . If after 30 days, 15% of the total registrants in the district have petitioned for the recall, or as soon as 15% of them have asked for it, the chief executive officer of the district affected shall order an election to be held within thirty days. If the required 15% is not obtained in 30 days, the recall shall be declared quashed and the officer against whom it was invoked shall be immune from the recall for a period of six months, as he is under the present law immediately after being elected. If the recall is ordered, however, candidated to oppose the incumbent may be nominated as in a regular election, except that two weeks before the recall election is to beheld, the two names having the highest numbers of indorsers shall be named as nominees to oppose the officer who has had the recall invoked against him. Thus there will always be at least three candidates in a recall election, and may be more if the candidates for nomination succeeed in getting their requiied percent of indorsers two weeks before the election. At a recall election any other matter which is eligible to be considered by the people shall be included on the ballot. In the event the incumbent is successful at the election, he shall not be subject to the recall for another period of six months.

These suggestions are essentially in accord with the principles outlined by Barnett when he says, "The only possible excuse for a recall is that it should be spontaneous". If 15% the voters are not enuf dissatisfied with an officer to go to the place of registration and record their disapproval of him within a period of 30 days, certainly he should not be disturbed.(100)

The same general principles should apply to the initiative. If there is no wide-spread and insistent demand for the initiative

measure, the ballot should not be cumbered with it, even tho people experience has shown that the people of Oregon are not likely to adopt measures merely because they are on the ballot.(101) Of 136 measures up to 1914, only 51 were adopted. They select the good measures from the mass of crank proposals which the present unjustifiable method of initiating legislation allows on the ballot from time to time. Barnett says that the quality of the direct legislation has been at least equal to the representative legislation. (102) The people follow the rule, "When in doubt, vote no." "The presumption is always in favor of the established order."(Cooley)

The following procedure is suggested for the initiation of measures to be voted upon by the people. The bill may be prepared with or without the aid of the bill drafting bureau, as the petitioners may desire. After it is properly drafted, it should be filed with the secretary of state. He will have its official title prepared and instruct the various registration officers of the state to put it on the list of direct legislation proposals. The attention of every voter should be called to this list at the time he registers just as he is shown the list of the various candidates for nomination. The registration officers should make weekly reports to the secretary of state so that he may declare the initiative measure eligible to be voted on at the next election just as soon as it gets is quota of indorsers. On the other hand, any measure which has not received its required quota by the time the registration books are closed August 1 shall be declared "dead" by the secretary of state and shall be ineligible to be filed as an initiative measure for a period of six months. No initiative or referendum bill should be voted upon at the regular November election unless it has received its proper percentage of indorsers and been proclaimed by the secretary of state at least sixty days before

the date of the election. This would give plenty of time for the voters' pamphlet to be prepared and distributed 30 days preceding the election as is provided by law.

This is the way these proposals would work in practice. Suppose the bill were titled and sent to the registration officers in July. If the required 8% were not obtained by August 1, the bill would be declared "dead" and could not be re-initiated for a period of six months. But suppose the bill were filed with the registration officers on August 2. If by the end of the month the required number had not signed the petition, the bill could not be voted on at the November election because the completed petition could not be filed with the secretary of state 60 days before election. But the bill would not become "dead" until the following August 1. It would remain on the registration officers' lists and thus would have almost a year in which to get the required number of signatures. When the registration books were closed the next August 1, it would either be a dead bill incapable of re-initiation for six months, or it would be eligible for the regular November election.

The percentages required to put initiative, referendum or recall measures on the ballot should be based on the total registration of the preceding year in the unit affected. It has been recommended that the percentage for ~~initiative~~ recall elections be lowered from 25 to 15 %, while the percentages for the initiative and referendum are left the same,- 8% and 5% respectively. If any change were to be suggested in the latter , it would be to raise the percentages, say, to 10%. (103) The intention of these recommendations is to make the use of direct government somewhat more difficult than at present and yet to leave the procedure simple and flexible enuf so that the people may readily use it whenever circumstances warrant.

In the case of the referendum, the procedure must be a litte

bit different altho the principle remains the same. No legislative act except those which are passed in response to a real emergency should go into effect for ninety days after final passage. In spite of Governor Chamberlain's famous emergency veto of 1905 (104) there is no doubt that the emergency clause has been greatly abused. In 1915, it was attached to 82 laws; in 1917, to 72; to 30 in 1919. (105) The average man of common sense would have to strain the meaning of "immediate preservation of the public peace, health or safety" (106) to find more than a half a dozen real emergencies in the whole hundred and eighty-four emergency laws.

During this ninety days, a referendum may be filed against the law by substantially the same procedure as outlined for initiative and recall petitions. If the required 5% has not been obtained on or before the end of the 90 days, the law shall go into effect. If the petition has been successful, the law shall be inoperative and shall be placed on the ballot at the next election, providing, of course, that the required number of signatures shall have been obtained at least 60 days before such election.

This constitutes a rather sketchy outline of the legislative branch of the proposed new government. The intention is to get stability, responsibility and efficiency in the legislative department and at the same time to connect it with the people as closely as possible. It is recognized that some of the methods proposed are a far step from the usual "democratic" devices of more elective officers, decentralization of power and responsibility, and more voting. We ought to have less voting and more thinking. The voting process becomes a very serious and important function in the political life of the individual under the new plan. The intelligent citizen can honestly feel that it means something to cast his vote for a state legislator of the sort described above. The very highest type of citizen,

on the other hand, cannot but regard it as a high honor and unquestionable mark of respect and admiration to be voted for by his neighbors when he knows, and they know, the kind of position which awaits him.

In this plan, the community spirit is substituted for the party spirit. The issues are men amd measures, definite programs and concrete propositions affecting the interests of the state as a whole. Provision is made for the integrating of the several community groups with the legislature by the informal initiation of bills by the legislature, and the reception of committees or delegations representing such bodies. By these means and others, it is expected that intelligent legislators would keep in touch with the views of the various occupational, recreational, religious, fraternal and educational organizations throughout the state. The true socially-minded legislator could do no otherwise. While it is true that "no man liveth unto his group alone", it cannot be denied that an individual's group life is his most vital social expression in the majority of cases. Every man has some particular group to which he gives paramount allegiance, which best expresses his aspirations and ideals. The legislature of the "sociocracy" certainly must take cognizance of this fact. I think the suggestions herein offered constitute a step in that direction, altho there is little doubt much more intimate relations between the legislature and the people would develop as time and trial gave their revelations.

In the following chapter, I shall attempt to show how the administrative department can be integrated with the legislature and the community.

CHAPTER IV.

ADMINISTERING THE WILL OF THE PEOPLE.

If there were no other reasons for the reorganization of the administrative department of the state, the argument of efficiency and economy would be ample. The citizen who is paying in the neighborhood of a 70 mill tax would give a greedy ear to any proposal which offered relief. Experience agrees with theory, that consolidation and concentration of administrative authority will result in remarkable saving in the conduct of the state's business. Civil administrative reform more than pays its way. Then proposed reorganization of the legislative branch might cost as much or even slightly more than the present system (tho we would get a great deal more for our money, not in quantity of laws passed, perhaps, but certainly in the quality and social value of them) but there is no doubt that the proposed administrative reorganization would result in vast financial savings without in the least impairing the service rendered the people.

The case of Illinois is an out-standing example of the financial results of the adoption of a civil administrative code. The treasury balance on Jan. 1, 1917, was less than $1000. The new code went into effect on July 1, 1917. By the end of 1919, taxes had been decreased about 1/3 and the treasury balance had grown to over $16,000,000. (107) The first report of the director of Finance, under the new system, showed that in every department except Public Welfare, the percentage of the current appropriation unexpended ranged from 5% to 50%. The general average of the contingent funds unexpended in the whole nine departments was approximately 62%. The past history of the state had been that the contingent funds were all expended

and almost every department came to the legislature with ever-growing deficiencies. In 1918-19, the total amount lapsing into the treasury from the preceding biennial appropriations was over $2,000,000. It should be remembered that this was during the war period of high prices, added expense incident to the war, and the absence of many experienced state officials, to say nothing of the fact that the new system was just being instituted under these disadvantageous conditions. (108)

The proposed reorganization of Oregon's administrative branch promises a saving of over $850,000. per biennium, but since $575,000. of this amount would be derived by the abolition of the state's contribution to the Industrial Accident Commission, we may expect a real saving of about a quarter of a million dollars. (109) The primary purpose back of the appointment of nearly all the commissions for reorganization of state administration has been the necessity of better business methods in the state's affairs. As the state has assumed more and more duties, due to the ever increasing complexity of modern life, the old inefficiency has become more and more burdensome. They cannot retrench to any great extent, in the direction of lessening their governmental activities so they have been forced to devise some means of doing the same amount of work for less money. (110)

Yet economy is not the only reason for administrative reform as I have already intimated. The sociological reasons are perhaps just as important,-probably more so if a long-run view is taken. We advocate the consolidation of the numerous semi-independent and decentralized boards and commissions in order that the state may be made more completely subject to the will of the people; that it may become a real and understandable organization to the ordinary voter. It is only by centralization and objectification that the bewildering

and ever-increasing complexity of the state can be made simple and concrete enuf for the average man to comprehend it. It is this visualization of the operative state, this bringing of all its administrative functions under the purview of the"efficient imagination" of the citizen, which must be achieved if the state is to become the vital, personally-conceived institution which the sociologist thinks it must become if we are to continue along our present path of civilization.(111) ¶ Thus the greatest gain from reorganization and centralization will be simplification. The state has grown into a vast ramifying under-ground net-work of roots and fiber-roots, entirely incomprehensible to the ordinary mind. If we are going to continue to use the state as the basic institution of our civilization, we must reconstruct it in such a way that we can think in terms of the state. It must become as real and familiar to the citizen as is the organization of his own or his neighbor's business. If it is true that"an institution is a phase of the public mind" (112) and the state is an institution, it follows that the state ceases to exist when the people are no longer able to conceive it. In a sense, the only way we are able to conceive an institution is by knowing the personalities who are intimately connected with it and responsible for for it. We tend to personify institutions the same as we do other objects in nature. The United States Steel Corporation means Judge Gary and Standard Oil means John D. As Cooley says, a 'an institution is thot of as a nucleated group of personalities'.(113) Therefore it is necessary for the citizen to have someone in the state who he can praise or blame when he thinks of the state. If the state remains forever an abstraction and a vaguity, it never will develop into the socialized institution humanity needs. The old veil of secrecy, invisibility and incomprehensibility must be torn aside and the new personalized state, clean,

efficient, simple, real and responsible must be revealed.

This, then, is the plan. There must be a great reduction in the number of state officers, elective and otherwise. Power and responsibility must be concentrated in the office of the governor who is the logical person to stand as the symbol of state government. Boards, commissions, bureaus, and all other administrative agencies must be consolidated into a relatively small number of general administrative departments headed by direct appointees of the governor. These department heads should have the power to appoint and remove their chief assistants. All employees, except a certain specified group of confidential secretaries, executives, and temporary employees, should be selected under civil service rules established by law. (114)

The more complicated, decentralized and anarchic the administrative agencies have become, the more pressing is the need for reorganization. In the case of a large and old state like New York or Illinois, the multiplication and superimposition of administrative organizations is almost inconceivable. In New York, 169 independent agencies were found, 152 of which were included reorganization bill drafted by the Bureau of Municipal Research and introduced into the constitutional convention of 1915 by Hon. John G. Saxe. (115) Altho this constitution was rejected, it is a good example of the movement toward decentralization. In Illinois, 125 boards, commissions and bureaus were combined into nine departments with the financial gain already discussed. (116)

While Oregon's administration is not so badly complicated as the two cases cited, we have done very well (or badly) for a state so young and with so little business to do. An unbiased judgment would doubtless decide that we need reorganization just about as much as any state ever needed it. The longer we wait, the worse condi-

tions will become, as the history of New York and Illinois shows. We ought to set our house in order before we are faced with financial and administrative bankruptcy. We have in Oregon 10 elective administrative state officers, besides seven supreme court justices. There are 76 boards, commissions, bureaus and institutions, besides 15 institutions and organizations of a semi-private nature receiving state aid. (117)

While the governor has the power to appoint the members of many of these boards, that fact alone does not give him adequate control over them and has no influence in the direction of centralizing their activities. In many cases the senate has to confirm his appointments; in still others, the boards are composed of elective officers who hold ex-officio, which of course ties the hands of the governor, so far as effective control is concerned. This is the case with some of the most important boards such as the Board of Control, Land Board, Desert Land Board, Tax Commission, Emergency Board, Printing Board, Banking Board, Board of Education, etc., In any event, it is easy to see that with nearly a hundred agencies, each having a governing board of from 3 to 10 members, the number of appointments precludes any very careful selection by the governor before appointment or any adequate supervision afterwards. The new plan would lessen the actual number of persons the governor would be called upon to appoint, but it would render the appointees directly responsible to the governor. (118) The ~~xxxxxxx~~ aim of the proposal is to make the governor the responsible head of the state, to concentrate the obligations for good government on him and give him plenty of authority to discharge them, to organize the government so that it will be humanly possible for him to do his duty. (119)

The movement for administrative reorganization began about 1909 with the publication of Herbert Croly's "Promise of American

Life" altho there was some agitation in New York and Massachusetts as early as 1901. These efforts were in the direction of reducing the number of boards and commissions, but more were created than were abolished in the next twenty years. (120) Very few results were obtained till 1911 when Wisconsin accomplished a partial reorganization by adopting a departmental form as far as constitutional limitations would permit, with the exception of the retention of 49 commissions. (121) Since that date, at least 24 states have appointed commissions to investigate and report on the consolidation and centralization of administration. (122) Many of the recommendations of these commissions have been adopted; in some cases, notably in Washington, Idaho, Illinois, Massachusetts and Nebraska, a complete civil administration code has been adopted substantially as proposed by the commissions.

The findings and recommendations of these commissions are all practically the same. The administrative department is not responsible to anyone, neither to the governor, the legislature nor to the people; nor is it responsive to the will of anyone, that is, it cannot be found to be carrying out any definite program, the will of the people, the governor, nor any other will directs it,- it goeth where it listeth, or rather where inertia drives it; it is not efficient; it is not economical; it is decentralized, disconnected, uncontroled. (123) Here are some of the characteristic remedies proposed. The unorganized administrative agencies should be grouped into a small number of departments the heads of which should be appointed and should be removable by the governor; the governor and the heads of the departments should be members of the legislature with all the privileges of that body except the right to vote; a thorogoing budgetary system should be adopted; business efficiency should govern the

conduct of the state's affairs, both as to the purchase of supplies and the employment of labor; a civil service law should govern the clerical and routine work of the state; the elective state officers should be subject to the recall. Where the reorganization is made by constitutional amendment, or revision, all elective state officers except governor, lieutenant-governor and auditor should be abolished.

The number of departments and the grouping of the agencies under them is a more or less arbitrary bit of detail. In Massachusetts, there are 16 main departments; in Illinois, 10; in Idaho, 9; in Washington, 10. In Oregon, 8 were proposed; in New York, 17; in Iowa, 3; in Minnesota, 6; in Ohio, 10 departments and 4 commissions. (124) But the fundamental thing is gubernatorial responsibility. As the Idaho act says, "The Governor is expressly charged with the duty of seeing that the laws are faithfully executed. In order that he may exercise .....the authority so vested"..etc., this law is enacted. (125)

With these preliminary remarks we may take up the recommendations made by the Oregon Consolidation Commission working largely under the direction of J. M. Mathews who was intimately associated with the reorganization of Illinois under the leadership of John M. Fairlie. Illinois admittedly has the most scientifically organized government in the United States so far. (126) The view taken in this paper is the hearty cuncurrence with the recommendations of the Oregon Commission except for one or two minor points which will be noted below.

The final report of the Illinois Efficiency and Economy Commission on which the reorganization of Illinois was largely based bids fair to become a classic for the purpose of administrative analysis of that peculiar political specimen which we call the American state. On page 19 of this report we find a summary of some of the evils

found in Illinois. There was no supervision of officers; where any control was given, the number so controled was far too great for efficient supervision; each authority was supreme in his own little field; hence, conflict was possible, and such harmony as was gained was the result of compromise; there was no systematic control of expenditure; hence, there was waste and extravagance; finally, there was more or less over-lapping of functions.

These conditions certainly exist in Oregon as markedly as they ever did in Illinois. For example, we have at least 15 boards of examiners, each with its own personnel, its own rules and regulations and with no efficient supervision. The same is true of the purchasing for the various state institutions. There is no semblance of scientific buying,, and no standardized system of accounting. It is apparent that no human being, even if he is called Governor,can possibly govern and supervise all of these boards, commissions and institutions, with any great degree of thoroness even if he had the statutory authority to do do. The only solution is for the governor to be given the power and responsibility of selecting [illegible] experts and executives to direct the various activities of the state. The governor must be given great power and trusted to delegate it wisely. If the people feel that he has betrayed their confidence and interests either by incompetence or chicanery, they always have the right to resort to the summary remedies afforded by direct government.

As stated above, the number of departments into which the administrative functions are ~~divided~~ organized is an arbitrary and immaterial consideration. However, they should be kept under 20 in order that the cabinet meetings of the governor shall be a true discussional group according to the principles laid down in the consideration of the legislature. The grouping of the agencies

and the naming of the departments is also arbitrary and more or less unsatisfactory. Two or three ~~of the main divisions~~ examples are cited to show the general agreement, altho an analysis of the agencies included in the departments of similar name would show wide variance.

The Oregon Commission suggested the following departments:

1. Taxation and Revenue.
2. Education.
3. Labor.
4. Health.
5. Agriculture.
6. Trade and Commerce.
7. Public Welfare.
8. Public Works and Domain. (127)

In Washington, the following were adopted:

1. Public Works.
2. Business Control.
3. Efficiency.
4. Taxation and Examination.
5. Health.
6. Conservation and Development.
7. Labor and Industries.
8. Agriculture.
9. Licenses.
10. Fisheries and Game. (128)

In Idaho:

1. Agriculture.
2. Commerce and Industry.
3. Finance.
4. Immigration, labor and Statistics.
5. Law Enforcement.
6. Public Investments.
7. Public Welfare.
8. Public Works.
9. Reclamation. (129)

The arbitrariness of the allocation of functions appears when we note that in the proposed Oregon law the examination and licensing of professional people, mechanics, etc., is placed under Education; in Washington, under Licenses; in Idaho, under Law Enforcement. In Oregon, Banking is placed under Trade and Commerce; in Washington, under Taxation and Examination; in Idaho, under Commerce and Industry. (130)

Altho it is unfortunate that some sort of standardization is

not possible as between the several states from the very beginning, doubtless there will be more or less similarity in the results. If absolute standardization is ever demanded by the exigencies of practical administration, it will be a comparatively easy matter for representatives for the states to get together in general conference and determine what is the best systemization of administrative functions into the main departments. Then the standardized groupings of the various minor duties can quickly be made by transferring work from one department to another. Such a development would greatly aid in the attainment of uniform state legislation.

In its first report, the Oregon Commission stated the desirability of eliminating all but three of the elective officers, yet in its final report it did not make any recommendation for accomplishing this . The reason given was that the constitutional elective officers,-secretary, treasurer, superintendent of public instruction, and justices of the supreme court,- were retained to avoid the necessity of amendment. This omission cannot be justified in Oregon where the constitution can be so easily amended. Constututionality will not be considered a bar to any of the recommendations which are made in this paper. If the proposal is logical and desirable, the Oregon Constitution presents no obstacle to enactment. Most of the reorganizations proposed in other states have had this defect. Expediency has urged the retention of the constitutional elective officers. This vitiates, in a measure, the good which would be gained by the reorganization, since the long ballot will be retained, the logical division of duties will be qualified in order to preserve some duties for the elected officers, and the chief executive has his responsibility lessened by just that much. This appears to be the case in the recent civil administrative code of Washington. Nine "administrative"

committees are created and given important duties. The elective state officers are all given places on these committees. This lessens the centralization of power and responsibility in the governor. (131)

We should not make any such mistake in Oregon. We should sweep clean and keep clean. The election of the secretary of state, treasurer and superintendent of public instruction should be abolished along with the abolition of the other elective state officers. Their duties would be performed by the departments of administration. The duties of the treasurer would naturally fall to the department of Finance (Taxation and Revenue). The multifold duties of the secretary would be distributed among the various departments. Succession to the governor's office in case of vacancy and auditing of accounts would go to the lieutenant-governor and auditor respectively. His clerical function would be performed by the departments which actually did the work. This would eliminate much of the duplication of reports which now swells the printing bill and cost of clerical service.(132) His budgetary duties (which he never performs), his handling of unclaimed bank deposits, and duty of motor registration would go to the department of Taxation and Revenue. Election duties, custodianship of public buildings and supplies would be best performed by the department of Public Welfare. The only change in the status of the superintendent of public instruction would be that he becomes an appointive instead of an elective officer. Thus the whole administrative system would be under the direct supervision of the governor thru the intermediacy of the department heads appointed by him and directly responsible to him.(133)

Similarly, the reason for the "advisory and non-executive boards" created by section 7 of the proposed code is not apparent. (134) These five boards seem to have no duties except to "advise";

they receive no compensation and bear no responsibility; hence, they would either act as meddlers or would not act at all. Evidently, the intention back of the provision ~~xxx~~ for these boards, is much the same as the purpose of the legislative conferences with representatives of the various groups in the state which were recommended in ChapterIII. A similar proposal follows for the administrative departments, The idea is that the people shall be definitely connected with the conduct of the government in some vital way. It appears to the writer that the end in view would be much better accomplished if this relation between the administration and the people were made spontaneous and general rather than try to obtain it by the appointment of several definite boards. This savors too much of the system we are trying to get away from, that is, if it worked. If it did not work, of course, the provision would be useless and hence would merely be another case of "dead letterism in law". If the way is provided, we may rest assured that the personal interests of the several groups thruout the state will urge them to make their influence felt. To limit the number of interests which may have this prerogative of giving "advise"to five, and to have those five selected by the governor seems to the writer to be an unwarranted exclusion of hundreds of other vitally concerned organizations from participation in the affairs of the state.

The head of each main department and his immediate subordinates should constitute an " administrative court" to hear and decide disputes which arise in the transaction of the business of the department. An administrative department is by its very nature something more than that. When it promulgates a rule ~~xxx~~ according to which its business is to be carried on, it is exercising a sort of legislative power; when it determines whether an individual has complied with or violated its rules, it is exercising a quasi-judicial power. One

of the fundamental errors of our constitution-making fore-fathers was the idea that there are definite lines of demarcation between the "three departments". Each so-called departments exercises all three functions. There is unity in the governmental trinity as well as in the theological. Government is an organic unity as life is. Croly says that the administrative court or commission is "simply a convenient means of consolidating the divided activities of the government for certain practical social purposes." (135) While I do not advocate that the administrative courts shall have as much power and scope as Duguit says they have attained in France, or thruout the Continent, for that matter,(136) I think they could be inaugurated in a departmentalized system of administration in such a way as to more closely integrate the people with the administration of the state and at the same time relieve the courts of law of a great deal of litigation.

The chief officers of the department would partake of the nature of a jury with the head of the department in the role of judge. All allegations of injustice to an individual or organization would receive quick and careful consideration. This would increase the serviceability of the department to the community. In the event that the aggrieved parties were not satisfied with the decision of the administrative court, they would of course have the right to take the matter into a court of law. If they accepted the decision such acceptance should be registered and enforced the same as the decision of any other court. All administrative departments should call delinquents into the administrative courts and attempt to make a satisfactory adjudication of the difficulties before resorting to an action at law. These hearings should be kept just as informal and untechnical as possible.

In this way a corporation or an individual could determine what line of conduct to pursue with reference to a given administrative rule by going into the administrative court and getting an authoritative decision on the question at issue. In effect, these quasi-judicial bodies would promulgate declarative law as has been done in France by the Council of State and other administrative-judicial bodies for nearly fifty years. (137) Our Interstate Commerce Commission, Federal Trade Board and Industrial Relations Commission are cases of development in this direction, the first being to all intents and purposes an administrative court. In the state, the Public Service Commission, Industrial Welfare Commission, and Accident Commission are administrative agencies which exercise some of the functions of administrative courts. So the idea is not new or novel; it is already in operation as a result of the actual necessities arising from the administrative function. We would recognize this in the organization of the government and make much more of it than has heretofore been done as will be seen below.

The administrative court should have the power to impose oaths, subpoena witnesses, examine books and accounts and other records, so that the findings of fact in these hearings would not be questioned in a court of law if the case ever went so far. (138) The department of justice should be at the service of the administrative courts, although there should not be regularly trained attorneys representing either the state or the complainants in these hearings. The members of the administrative courts would present the department's side of the controversy under oath.

Thus the administration would be definitely correlated with the public. The time and energy of the officers would be taken up with complaints only when some definite injustice was alleged and when there were a chance of arriving at some practical, constructive

decision.

But this quasi-judicial function of the administrative court should be supplemented by another which is perhaps more important. It is analogous to the suggestion for integrating the community with the legislature. Any body of petitioners, or accredited representatives of any organization or group, should have the privilege of appearing before the administrative courts and presenting their grievances, suggestions and recommendations. The head of the department should have the right to invite such conferences whenever he thinks that the interests of the state would be advanced thereby. The sessions of the administrative courts should be held just as often as business demands, so long as they did not meet on the days the legislature was in session. The head of the department might use the information gained in these conferences as the basis of recommendations to the governor or legislature or as reason for the modification of the conduct of his department.

If some such procedure were adopted, it would serve as a point of contact between the people and the administration. It would make the conduct of the state's business much more responsive to the currents of opinion among the people. It would contribute to the organization and effective functioning of those creative, radiant points of community spirit which are becoming so increasingly important in the every-day life of the people. If the members of the various groups knew that there were a definite channel thru which they could render their influence active in the actual operation of the state government, their discussion clubs, community organizations, occupational groups, professional societies and educational gatherings, would immediately be vitalized and made valuable factors in the conduct of the affairs of the commonwealth as well as much better instruments for the accomplishment of the specific purposes for which

they were organized.

But it is not enuf to let it be tacitly understood that they have the privilege of thus cooperating with the state officers; it should be emphasized and publicly proclaimed that this machinery was created to be utilized; that it is a duty of citizenship laid upon these groups to exert their proper influence in state governmental activities. This would be the logical next step from the local purposes which these groups now serve. Such expansion in their scope would put reality and objectivity into both local and state governments and tend mightily in the direction of that larger, wider, deeper and more active integration of thot and performance, discussion and doing, toward which we hope to guide the whole population of the state. The administrative officers, by their imagination and insight, requests, cooperation and social-mindedness would largely determine the success of the scheme. Their conception of the social nature of their functions would make the plan either flourish or fail. No doubt if it were only once in smooth operation, both the officers and the people would feel such a glow of social satisfaction,-- the officers from the fact that they were serving a great and growing, intelligent and appreciative people, and the people from the fact that they were continually giving material assistance to the operative forces of the state,--that they would all do everything in their power to extend this phase of government.

The growth and vitality of the community groups would also be fostered, if it became written or unwritten law that the governor should receive nominations for the heads of the various departments as well as for all the other appointive offices, from the professional, occupational and other state-wide organizations especially interested in the duties of the various departments. For example, where the

code specifies that the head of Agriculture shall be a practical farmer of so many years' experience, the state grange, dairymen's association, dry- farmers and irrigation farmers, stockmen and horticulturists, etc., might all present their choice for the head of the agriculture department. In the case of the director of Education, the state teachers' association, federated mothers' clubs, parent-teachers8 associations, higher education league and grade teachers' association might all make their suggestions. In case of the Labor head, the state federation of labor, the state organization of any trade, the employers or manufacturers, might each make their recommendation. And so on thru the list. The same principle would apply to the heads of the various departments when they came to appoint their chief assistants. The several groups most interested should make known their selections.

It is not held that the appointive officer should be bound either by law or custom to follow these suggestions, or even to select appointees from the list of names submitted by the interested organizations, but he would doubtless be influenced toward the selection of a certain man should he find that man's name recommended by several closely allied organizations. On the other hand, the effect on the community interest in the conduct of the state government would be incalculable. The groups would feel that they were really a part of it. The individuals composing them would experience that fine glow of creative pleasure which comes from seeing our desires and aspirations embodied in some tangible form. It would contribute to that consciousness of participating effectiveness, to that objectification of the state, for which this whole paper is a plea.

The relation between the governor and the legislature has already been outlined. In preparation for his legislative duties, the

governor should have frequent meetings of the heads of the various departments. The latter should bring to these meetings such of their subordinates as they might require from time to time for advice, information or other assistance. Here the general administrative problems should be discussed and the general outlines of the administrative bills determined upon. These should then be handed to the bill-drafting department for final formulation. (139) After such meetings the administrative officers would be able to go into the legislature with a concerted plan and would be prepared to take part in the discussion in a stimulating, constructive and contributing manner.

There should also be frequent cabinet meetings of another sort which we may call "efficiency" meetings. In these meetings should be discussed ways and means of getting greater economy in the conduct of business; coordination of various branches; methods of saving labor and supplies by transfer and exchange between the several departments; examination for duplicated organization and effort; and the attainment of complete harmony and unity thruout the whole state administration. These meetings would be about as important as any single function of administrative officers. It is likely that such conferences would give rise to a good proportion of the administrative measures.

As noted above, the only elective officer besides the governor and lieutenant-governor would be the auditor. All the authorities seem to agree upon this point. (140) The auditor should act as a checking and financial over-seeing officer for all the departments of state and local government. Obviously, he should not be appointed by the governor if he is to have the greatest possible value as the "watch-dog of the people's money". It might be a temptation too strong to be resisted by some men if the governor could appoint the auditor. The auditor should be given power to provide a universal and uniform system of accounting for the whole state, for all of the

legislative, judicial and administrative accounts, both state, local and municipal. He should be allowed to suggest and to enforce devices for financial and accounting efficiency.(141)

The present conditions in Oregon are anarchic in the extreme, as was pointed out in the report of the Consolidation Commission.(142) The secretary of state, on whom these duties are placed by law, has no time to perform them in anything other than a superficial and nominal way; there is no check on the various fee-collecting agencies; no stated times for turning over moneys so-collected; no itemized records of expenditures from the fees collected; there is no uniformity in the systems of account; in effect, we have no auditing system.

The clerical help and minor state officials in the administrative departments should be chosen by some well organized, continuing system of classified civil service under the direction of a commission of five members appointed by the governor for six or eight years, overlapping terms. Needless to say, these appointments should be made without regard to religious, political or personal affiliations. (143) One general principle to be observed is that the heads of the departments should be appointed by the governor and the immediate executives beneath the head of a department should be appointed by him. In addition to this there should be an unclassified list of officers of a private and confidential nature, men who have to have qualities which are not easily revealed by the usual civil service examination, who may be appointed by the the officers designated by law. However, this unclassified list should not be so large that a "political raid" on the administration would ever be possible. (144) Likewise, no tests other than physical should ever be given to unskilled laborers. The head of a department should have the right to remove a civil service employee for sufficient cause, but such employee should have the right to appeal to the commissioners of civil service. Thus the civil service

commission would have certain duties analogous to those of the administrative courts above described. To complete the organization of the civil service so that work for the state might be standardized and take on the nature of a profession, schools providing training in this calling should be organized. (145)

Nor reorganization of the administrative branch would be complete if a scientific budget system were not included. The department of Taxation and Revenue should prepare the budget under the direction of the governor, It should be prepared for two-or three-year terms to avoid having to change the tax rates so often, to lessen the time and expense required to prepare the budget and to give greater stability to the fiscal policy of the state. The budget should be presented to the legislature at its first meeting in February. The fiscal year of the state should be June 30 to June 30. This would give plenty of time to get the machinery of assessment and collection into operation between the pagsage of the budget and the beginning of the new fiscal year. The devising of a proper budget system is a very difficult and highly technical question which will demand the best financial and accountant ability obtainable for an adequate solution. (146)

This virtually completes the discussion of the administrative department. On the whole the recommendations are in agreement with the civil administrative codes already adopted in several states and recommendad in several others. The purpose of this paper is to present the logical theory of administrative reform with as little concessions to expediency as the nature of the case permits. Hence, we have criticised the Consolidation Commission's report in a few minor details and offered a few suggestions which do not appear in that report. The relation of the administrative officers to each other and of the whole administration to the people of the state as they are

Chart I. Proposed Legislature Chamber

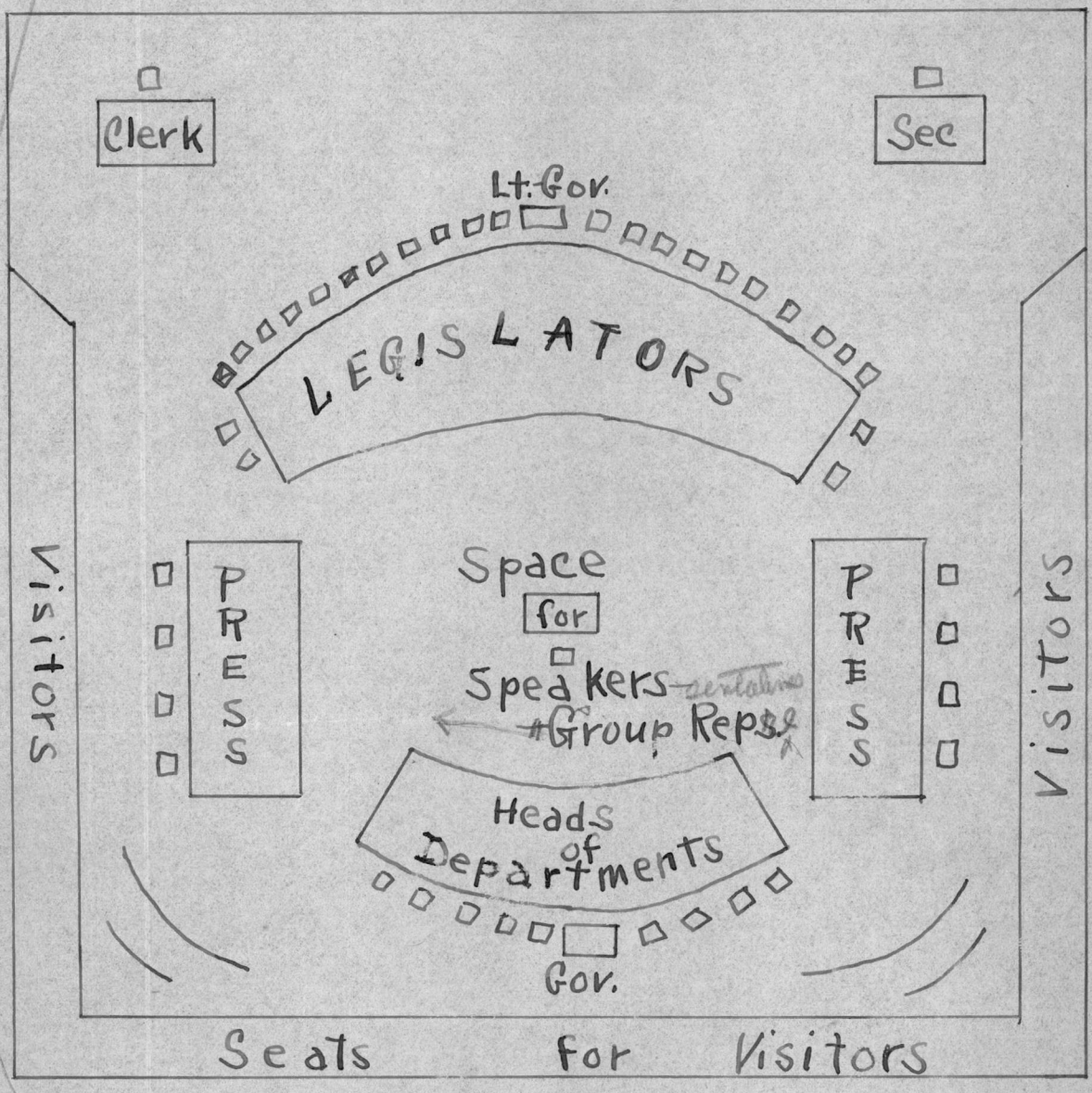



Figure 1.



Chart I. Proposed Legislative Chamber

organized into social groups is shown in Fig. 2.

Before concluding this sketch, we must consider the relation of the governor to the administrative departments and to the rest of the government. The aim is that the governor shall be by far the most important individual in the state government. It is the personality of the governor which will dominate the civic thinking of the people. As Holcombe says, "The power that best represents the people as a whole is not the legislative; it is not the judicial; it is the executive". (147) The governor has come to be the symbol of the people in the state and the personification of the state to the people. He is their law-giver and law-enforcer. (148) He is thus compelled to undertake vast and impressive responsibility; he should be given effective power to discharge it adequately. That is what is meant by "executive leadership". That is what the above plan hopes to do.

But might not the exercise of all this power make it possible for him to become a czar, or tyrant, or kaiser, or some other type of power-wielder equally obnoxious to a good, freedom-loving and liberty-demanding American? He has the power of initiating laws; he may debate for them and use all the influence of his whole "official family" to achieve his ends; he may appoint and remove the principal officers of the state, and thru these appointments, control all the other appointments; he may veto legislative acts; with the support of 2/5 of the legislature he may over-ride the will of the other 3/5 and take his measures to the people.

At first glance these undoubtedly large grants of power might seem dangerous to the interests of a liberty-loving people, but when we consider the restraints placed upon the governor, the powers conferred do not loom so large. He is subject to the recall; the administrative laws are subject to the referendum; the legislature is not compelled to pass any bill he presents to them just because it is

an administrative measure; the legislature may amend or reject; his veto may be over-ridden by a 4/5 vote; the civil service law protects the state from a political use of the appointive power; he is the sole responsible state administrative officer and as such is subjected to the searching white light of publicity and public opinion; he has the deterrent influence of that conservatism which always attends the assumption of great responsibility; he may be interpellated by the legislature; and finally, he is subject to prison sentence for any criminal malfeasance. (149)

It is difficult to see how any very serious danger to the freedom and liberty of the people could result from such a plan. It is somewhat strange to the thot of the average citizen who is accustomed to distrust all officers, shy at all investment of authority, and think that no advancement can be made unless by passing new and better laws. The difficulty is not with the personnel of the administration in very many cases, but with the system under which that personnel has to work. As Croly has so often said, the achievement of any advance in democratic society must in the last analysis be based indispensably upon faith.(150) So when the best political thot and the most expert opinion all point in the same direction, the progressive, forward-looking American will not long delay to set his feet upon the new path, tho it be somewhat strange and lightly traveled. His national history is his promise that the new path is often the one which leads him to a larger and better life.

CHAPTER V.

## ADJUDICATING THE WILL OF THE PEOPLE.

No plan of state reorganization which did not include some revision of the judiciary would be at all complete. We must attempt to fix the relationship of this very important phase of government to the other branches in the light of our general thesis, namely, that the state must be made more real and serviceable to the people, that it must be simplified and humanized, personalized, so that the average man will be able to think of it as something more intimately related to his life than it is at present. The state must cease to be a far-away abstraction and become a very near-at-hand mode of social participation. The law has been one of the most powerful factors in civilization, and yet it is one of the most abstact and incapable of comprehension to the average man. The result is that it has been made and administered by a sort of legal hierarchy which in many instances has become very far separated from and unsympathetic with the social organism which gave it birth and sustains its very life. Technique, legal tactics, precedental law, costs , delay, dissatisfaction with decisions and general unserviceability have come to characterize so much that many people are becoming disgusted with the whole system and tend to look upon lawyers as respectable parasites. While it is true that the law has probably played a more important part in the past, and is playing a more important rôle in the present, than it is destined to play in the future, still it must always be a very necessary adjunct to any very highly developed and complicated civilization. We must redeem it in the minds of the people and make it the truly socialized force it is idealistically conceived to be.

Law has played its stellar role in the past largely because of the old fetish of the "three coordinate branches of government which was based upon Montesquieu's misconception of the English parliamentary system. Blackstone may also give this idea.(151) But by 1750, the cabinet form of government was in full operation and the Parliament had been supreme since 1688. Another reason for the supremacy of law was the old absolutist conception that all law is as the laws of the Medes and Persians were said to be. Blackstone says that if a court ruling is found to be wrong and is reversed the only reasonable conclusion is that the ruling in question never was law, but merely the mistaken idea of fallible human judges. (152) Even today, it is comparatively easy to find teachers of law and practitioners both of bench and bar who hold that there is no possible conflict between morality and legality, --that law is some mysterious rule of reason which is <u>for</u> the people but by some strange miracle is not <u>of</u> them. Law is absolute, altho Einstein and others tell us that everything else in the universe is relative!

So it follows that the people may register their will by the deliberate passage of a statute and yet wake up to the realization that in some unaccountable manner this act of the"sovereign" people is "contrary to law"; that the'custodians of the law' have declared that the people did not know what they wanted, or knowing, wanted what was not good for them; hence, it was the duty of the "guardians of the Republic" to invalidate the expressed will of the people! This is strange doctrine for a democracy. But it is stranger still that the people of a land that is supposed to be "safe for democracy", a land that proudly claims to know no law but "the will of the people", continue to permit such principles to flourish. They resent it, alright, from time to time, as our history shows, but they seem power-

less to prevent it. We need a political Moses to lead us out of the land of legal bondage.

But there is dissention in the camp of the jurists themselves. Some of the ablest legal authorities call in question the whole theory of judicial review, saying that it never was intended and represents the rankest sort of functional usurpation on the part of the judges. (153) But these men belong to a new school; the other view has prevailed in the past and probably is held by a majority of the bench at the present time. The result of this static idea of law with its implication of judicial veto is that instead of being one of three coordinate branches of government, the judiciary has become the supreme branch by exercising the final word of legitimation over the acts of the other two. It has usurped legislative functions (of a negative sort) by its power to declare acts of the legislative branch null and void, and has taken over both positive and negative administrative functions by its wide use of injunction and mandamus writs and by its industrial decisions prescribing a course of action.

These wide usurpations of power have brot the courts into disrepute with the people, both as the result of specific decisions such as the income tax decision, Dred Scott decision, etc., and as a result of the general dissatisfaction which has seeped down thru the strata of society not definitely interested in the cases. (154) Far from"preserving the states from anarchy", as De Tocqueville said in 1830, (155) this assumption of power by the courts has been the immediate cause of a civil war, of labor riots amounting almost to civil war, Populist movements, and wide-spread distrust of the courts. (156)

But within the last generation, a new school of lawyers has arisen. It is represented in America by such men as Brandeis, Holmes, Pound,

Sharpe, Clark (Walter), Lewis, Laski, Freund and Frankfurter ; by Duguit, Gierke, Jhering, Pollack, Maine, Maitland, De Maetzu and Schmoller in Europe. (157) Roscoe Pound has written a book in which he outlines his ideas. Its title, "Sociological Jurisprudence", gives the key to the new approach. This view hold that the social group makes the law and that law must therefore vary as the social will varies under new times and conditions. The first part of this is not greatly different from the old conception of the "common law", but the latter part is almost the antithesis of the common law concept. The sociological jurists go on to say that there is always a conflict between what they call "the law of rule" ( precedents, abstractions, principles), and the "law of judicial discretion" (equity, new departures, specific cases, social responsiveness). It is this conflict which causes dissatisfaction with the courts. (158)

Particularly was this true in the colonies. The early immigrants came from a land where the law was dispensed according to definitive rules in the most undeviating manner. Sixteenth century Europe was securely bound in a tangled mass of legal red tape. The "law of rule" was supreme. So when the colonists were able to dispense their own justice, on the frontier and after winning independence, they naturally inclined most strongly toward the discretionary type of law. Procedure in the pioneer courts, the "up county" justice of the peace's court, even the vigilance committee, are good examples of this. But as life became more and more complex, and business and property interests became more important, as we became more "civilized", in short, the legal rule conception of law began to gain acceptance. Today, we are perhaps the most precedent- and form-bound nation in the occident. England and then the other European countries reached the limits of the "law of rule" concept

long ago and made the needed reforms in the direction of discretionary law. Our law has just begun to show the lack of flexibility and cumbersomeness and to give rise to the general dissatisfaction which is the mark of a "law of rule" jurisprudence gone to seed. (159)

However, the conclusion is not that we need less law, nor that all law should be declared by non-expert individuals of the Jacksonian persuasion, nor that the discretion of the trained judge should be the only law, nor that all rules of law should be abolished. It is rather that we need just as much, or perhaps more, law, but of a different kind. We need expert justices who will administer justice as a solemn social service, who are alive to the problems of the day and able and willing to interpret the law in the light of that knowledge. We must have "justice according to law", administered by highly trained men who conceive their function merely as the duty of declaring the law according to principles of justice; men who neither make the law nor administer it by mandamus and injunction; men men who regard themselves as a"social institution" which secures individual interests in such a way that society's best interests are secured at the same time. This is the conception of law which makes it possible to regard it as one of the noble professions. (160)

What is the situation in Oregon? Is there any need of judicial change? If so, what shall be done? While there is little doubt that conditions in Oregon are much better than those in many states, still it is an easy matter to find plenty of dissatisfaction with the legal organization. "Some day the judicial system of Oregon will be reformed. If judges and lawyers do not do it themselves, it will be done and done summarily, by those less competent". (161) The "Oregonian" recently published an editorial over a column and a quarter long in which the jury system was severely criticised. Whenever

one of the largest and most influential newspapers of the state goes on record with an editorial criticism of such a vital institution as the jury system it must be taken as pretty good evidence that there is something definitely wrong with it. (162)

So we find the legislature responding to the popular dissatisfaction with the judiciary. In 1917, it authorized the Supreme Court to appoint a Commission on Law Reform. This committeee made a 32 page report in 1918 advocating extensive changes. (163) Among the causes of delay in the courts were cited "the passion to enact laws", both on the part of the people (by the iniative) and the legislature, most of them amendatory, resulting in much confusion due to lack of knowledge as to what the law is, and also to the slovenly manner in which many of the laws are drawn; a desire on the part of the people to test the constitutionality of laws so enacted; poor administrative ability on the part of judges; dilatory and litigious tactics of the bar; dilatoriness of juries and witnesses; and the improper distribution of the judges. (164)

On the whole the report is very moderate and conservative in its recommendations, far more so than is the usual bar association reports on this same subject. However there is a minority report which goes into the matter much more fully, following, substantially, the line of attack of the American Bar Association and the American Judicature Society. It recommends the complete reorganization of the c courts, giving them plenary power to formulate and administer the necessary rules of procedure. It is too bad that the minority report was not the majority report. If the legislature ever should adopt either, which in unlikely, judging the future by the past, it certainly should follow the general outlines of the minority report.

The recommendation that all acts of the legislature shall be

regarded as the fundamental law of the state except when in conflict with the laws or constitution of the United States or when they are in opposition to the principles of state organization, strikes at the heart of the problem. This would eliminate a large part of the litigation for the purpose of determining constitutionality.(166) Likewise, if the new legislative system works as expected, the courts will have very few cases which arise on account of hastily drawn, ambiguously worded laws. (167) The number of laws passed will also be greatly reduced, anomolous tho it may seem that a small number of men working all the time, should pass fewer bills than a large number of men in session only six weeks every two years. But whatever the actual amount of legislation, it is reasonable to expect that it will be of a much higher type than the work of the present legislators. Then the proposed administrative courts would relieve the courts of more of less litigation.

However, one of the most promising schemes for lessening the work of the courts is the proposal of voluntary tribunals to settle civil cases out of court. The methods of procedure in the administrative courts proposed and the judicial work of the various commssion-courts now in existence, such as the Interstate Commerce Commission, Public Service Commsions, etc., are very similar to those in the voluntary civil case tribunal. The litigants and their attorneys are to select a third lawyer or individual satisfactory to both parties and submit their case to him for arbitration. Technicalities will be avoided, the time be made agreeable, and the proceedings just as informal as is consistent with accuracy and systematic presentation of the causes. If the decision is acceptable to both parties, the decree of the statutory arbitrator will be made of record and enforced by the state the same as any regular court order. (cf. to administrative courts.) It is a dignified, honest, conciliatory, sim-

ple, democratic and legally sound" method of settling civil disputes where the interests of the public are not endangered. (168) In case the public's interests are involved, it should be the duty of the department of justice, thru its local representative, to file an information against the voluntary finding and bring into court one or both the parties thereto.

Another method of keeping cases out of court is the system of declaratory law which was adopted in Michigan in 1919 upon recommendation of the State Bar Association. Altho it was declared unconstitutional by the Michigan Supreme Court on Sept. 30, 1920, the principle appears sound. The question of constitutionality is open to argument in spite of the decision of the court, as Mr. Justice Sharpe shows in his able dissenting opinion. The "law of rule" was in conflict with the "law of discretionary justice" in Michigan and the latter was temporarily worsted. Doubtless time will reverse this decision as it has so many other anti-social decisions . (169)

The intent of the law was to allow prospective litigants to come into court and get an authoritative declaration of their respective rights and obligations under a particular statute, in this manner avoiding the "tedious delay incident to the ordinary law-suit and the acrimony between litigants usually engendered thereby".(170) In other words, it was an attempt to provide "preventative justice"; an attempt to keep the dispute from causing such acute inflamation that no other remedy could cure the malady than a "legal operation",- a costly, bitter, long-drawn-out law-suit, the results of whichare usually unsatisfactory to both parties. (171)

The declaratory judgment is based upon the principle that justice is serving its purpose best when when it can remove the uncertainty of loss or injury before the event occurs, a principle which has been in active operation in England for nearly three quarters of

a century. In this country, we have been willing to regard as justice merely that recourse to law which gives money compensation after the damage has been done. (172) A more unsocial doctrine scarcely could be imagined, to say nothing of actually being practiced. The principle of preventative justice is just as sound as the principle of preventative medicine. Oregon should adopt it into her judicial system. Any sound reorganization of the judiciary must have in view the elimination of litigation as well as an efficient handling of those disputes which are inevitably bound to arise in a complex economic civilization. All of the fore-going proposals for keeping cases out of court are in reality based upon this principle.

Finally, a more complete professionalization of the bar and the adherence to a higher ethical code on the part of all lawyers must be relied upon to solve much of the problem of over-litigation. The chief enemies of the bar are some of its own most prominent members. Law has been brot into such disrepute mainly by those who profess it and profit by it. (173) The goodness which will remedy this situation and redeem the law must come out of Nazareth. The lawyers themselves, teachers of law, writers of law, members of the bench, general educationalists and publicists must see to it that the profession is more thoroly socialized. The leaven of the doctrine of "sociological jurisprudence" preached by Dean Pound and the rest of the Harvard Law School and so eminently practiced by Justice Holmes and Justice Brandeis must leaven the lump. The lawyer must come to feel pride in the number of cases he has settled out of court rather than in the number of cases he has won. He must be proud of the amount of social service he has rendered rather than proud of the amount of fees he has collected. He must regard himself as an adjuster of delicate pathological social and economic relationships. The legal profession must take corrective rather than combative jurispru-

dence for its ideal. (174) The bar must be composed of a higher type of men, men who are trained in social, economic and industrial fields as well as in the law. The frailty of human nature must be fortified and bolstered up by an ethical code which puts the interests of society above those of the client and his counsel. Law must conform to the general trend of human life from a selfish individualism to a generous, expansive concept of social origin and development.

So far the discussion has dealt with the general function of the judiciary and the problem of minimizing litigation. But, as Pound says, we are bound to need more and more law as time goes on and our civilization becomes more and more complex. Long-time business activities and vast economic enterprises demand that the law be uniform and secure, yet flexible and quickly available. (175) If we remove as much potential litigation from the judicial calendar as we can by means of appropriate legislation ( workman's compensation laws, safety laws, regulation of probate, etc.), and settle as many cases out of court as we can, still there will be an ever-increasing amount of litigation if society continues to develop along present lines. This brings us to a consideration of the reform of judicial procedure.

The first question that presents itself is the selection and tenure of judges. Shall they be elected? If so, for how long? Should they be subject to recall? It seems to me that the discussion thus far has hinted at the answer to these questions. If there is any possibility of success in the suggestions for reorganization of the legislature and administration, reform of the judiciary ought to be a simple matter.

If these plans were adopted and worked, the courts would neither make nor administer the law. There would be no need for it. At last that much-discussed, dreamed-of, but never achieved miracle would oc-

cur and the courts would be taken "out of politics", (176) or that would be done as nearly as it is humanly possible to do so. The conclusion is obvious. Judges should not be elected and should hold office during "good behaviour". The general principle that the "office should seek the man and not the man the office", (177) should apply to judges as well as to other officers. There is no question but that we need the highest possible type of men to discharge the duties of adjudication. Taft, Storey and Thayer, to mention only three eminent names, all say that experience has shown that the appointed judge has usually been of larger calibre and higher talent than the elected judge. Security of tenure, dignity of position, social honor and professional standing are some of the rewards which must be offered in order to attract the best men to the bench. In this country, as has long been the case in England, a call to the bench should be regarded as the highest success in the career of a meber of the legal profession.

The governor should appoint the members of the Supreme Court. As a general rule they should be selected from the experienced judges of the lower courts, altho a member of the bar of 8 or 10 years' experience should be eligible. The recommendations of the various bar associations thruout the state, or of the organizations of judges, or teachers of law, should guide the governor in his choices. Then the Supreme Court should be given practical control of the judicial system of the state. It should appoint and apportion the judges of the lower courts. No person should be eligible for appointment to a justiceship above the rank of a justice of the peace until he has been a member of the bar in good standing and engaged in actual practice of law for a period of five years, or for three years if he has had two years or more experience in another state. As the minority report quoted above has stated it, the plan is to merge all the courts into one court with divisions

for specialized service, following the British model. (178) The executive board of the Supreme Court should have the power to shift judges from one division to another as the expedition of business may demand.

One of the greatest causes of delay in litigation and of dissatisfaction with the judicial service is the fixity and cumbersomeness of the rules of court. Authorities agree that the only laws the legislature should pass relative to this matter, are acts which give plenary power to the courts to make their own rules and to change them when the exigencies of judicial business demand it. (179) Ostensibly, we have done this in Oregon by giving the circuit judges power to "make their own rules not inconsistent with law", but this statement is followed by nearly 1000 pages of procedural regulation!(180) The Supreme Court is given the same power (Olson's Code, 1920, sec.3046) and is hedged in the exercise of it by very few statutory provisions. The same should be equally true of all the courts.

All the judges in the state should meet annually to discuss their problems and formulate their rules so as to get the necessary uniformity in essentials. (181) The various state bar associations, schools of law, political science, etc., should be given a certain number of representatives at this meeting to assist in formulating rules, discuss necessary legislation, and other questions of general interest. (182) However, such rules as are adopted should allow as much discretion to the trial judge as possible. Thus only, can the requisite flexibility and consequent efficiency be obtained. Likewise, in this yearly meeting, the practical problems of administration, apportionment of judges, division of duties, times and places of sessions, fees, curtailment of costs and simplification of procedure should be discussed.

This annual meeting of the bench should also be competent to impeach a judge for incapacity or incompetency or misconduct. It is

possible that a judge might merit impeachment when his fellows were not cognizant of it, or when they did not think his conduct culpable enuf to warrant such harsh procedure. Hence, the legislature, administration, and perhaps also the state bar association, should be given the right to impeach. All cases of impeachment should be tried before the Supreme Court. If a majority of them think the charges serious enuf and they are proved, the judge should be turned out of his office and disbarred from practice of law in the state of Oregon. Such a decision should also bring the case into the proper court for legal trial if the offense were an indictable one. When a member of the Supreme Court is impeached, a panel of circuit court justices equal in number to the Supreme Court should be selected according to seniority of service, unless kinship, family relations, business or fraternal affiliations or other disqualifying factors should intervene. In such a case, of course the next judge on the list would be taken. In case of conflict due to the same period of service, chronological seniority should determine.

It should be distinctly understood, however, and embodied in law, that no religious, political, legal, social, fraternal, racial, nor any other personal opinions or beliefs should ever constitute sound basis for impeachment or removal from office. If an impeachment were laid against a judge and the court decided that the motive back of it were personal animus or any of the above-mentioned reasons, the impeaching person or group of persons should be suable for damages. Nor should any judge ever be removed because of the unpopularity of any decision or legal opinion he has rendered, unless it were such as clearly demonstrated judicial incompetency. If the law is undesirable or ambiguous, the fault lies with the legislature, administration of the people,-- and can be quickly remedied with the machinery above-described. No judge should be punished for the failure of the law-making branch.

The only reasons for impeachment and removal of a judge should be mental or physical disability, plainly demonstrated incapacity or incompetency, gross immorality, or criminal conduct.

The object is to make the position of judge as honorable and secure as possible and yet provide meand of effective social control. The right kind of man should be selected, and then he should be protected from the possibility of being heckled and harassed by personal spite or political enmity. The judge should be the ideal social servant, unmoved by partisanship, personal interest or private gain; all his thot and energy should be devoted to protecting and advancing the highest interests of all the people. Every decision and opinion should be tempered by this ideal. The primary question should not be merely, "What are the respective rights of these litigants?" but rather, "What are the long-run interests of society in this case? How best shall the controversy be settled so that these two citizens in particular and all citizens in general will have their best interests served?" The judge will be able to achieve this view of his work only if his tenure is secure from the temporary gusts of passion and prejudice which occasionally sweep society.

So much, then, for the selection, tenure and removal of judges, the administrative side of the judicial system, and the general aspects of legal procedure as determined by rules of court. Now we will discuss some of the more fundamental questions of legal reform. One of the most important is a thoro modification of the jury system.

There is little doubt that any proposal to tamper with the jury system will arouse immediate antagonism and resentment in the mind of the average American. We are prone to regard the jury as one of the chief bulwarks of human liberty, a privilege, or right, won by long, bitter and often bloody struggle against tyrants; a sure

relief from grievous arbitrary injustice in the administration of what was often erroneously called"justice". Even such a social-minded man as Justice Benson says, "Modification of the jury system or changes in it, are fraught with danger.. Their mistakes and blunders are the result of the human element. And the general results are still the most satisfactory of which human frailty is capable."(185)

Nevertheless, there is wide-spread and growing dissatisfaction with the jury system as as a means to justice, particularly in civil cases. The conditions under which the jury was adopted have long since passed away. It is a far cry from the jury of the vicinage, composed of the peers of the accused, men who were familiar with the facts in the case, to the modern jury hand-picked by skillful lawyers from a venire drawn by lot; a group of none too intelligent citizens subjected to meticulous questioning and peremptory challenge because counsel does not like "the color of their hair", perhaps; the most intelligent persons in the community,- doctors, lawyers, dentists, teachers, and other professional people,-- exempted; "no knowlwdge of the case desired";hence, the reading, thinking man who forms conclusions of his own is easily "excused". The result is that for most civil cases and for practically all criminal cases, a jury of unintelligent, mentally torpid numskulls is selected and expected to arrive at a unanimous, just and legally sound decision. It is a commonplace among lawyers that the way to win cases is to get the "right kind of a jury",-- that is, one which easily becomes a facile, emotional instrument of ignorance and prejudice upon which the clever lawyer plays as a master upon an organ.(186)

So it is recommended that the grand jury be abolished, and the petit jury used only for criminal trials. The judge should be made responsible for selecting the jury ~~instead of the lawyers~~ and should be given plenary power in charging the jury, taking evidence during the trial and amend-

ing the pleadings. At first blush, these may sound like bold proposals, but I believe a candid consideration of them will stregthen rather than condemn them.

The grand jury is uaually composed of inefficeint, untrained laymen who seldom return an indictment on their own initiative. As a rule, they simply endorse the desires of the prosecuting attorney. (185) In many states they have been found so unsatisfactory that the state's attorney has been given power to docket a case merely by filing an information. There is no reason why this system could not be developed until there would be no further use for the grand jury. At the present time it is little more than a rubber-stamp for the prosecuting attorney. By abolishing them, we would save expense, would concentrate responsibility, and probably get better service than they ever have given.

It should be the duty of the peace officers, individual citizens and groups of citizens to inform the prosecuting attorney of infractions of the law. He should be appointed by the state department of justice and removable by it. In this way the responsibility for enforcing the law would finally center in the chief executive officer of the state where it really belongs. Following out our general scheme of integrating the local groups with the state government, it should be the duty of the local bar associations, commercial clubs, mothers' clubs, or of any social group to suggest names of possible prosecuting attorneys to the appointing officer. The commissioner of justice ought to be largely guided by the consensus of opinion in the community affected. The same procedure should be followed in the removal of these officers. Of course, the law enforcing officers of the state could easily over-see the work of the 30 or 40 prosecuting attorneys in the state. All might be called to the capital for conference at the option of the responsible officer.

In this connection, brief mention must be made of the obverse side of the enforcement of criminal law. The state should provide a public defender as well as a public prosecuter, to the end that justice shall really be "free and without price". Every accused person is entitled to the best possible trial based upon the assumption of innocence, whether he be rich or poor, prominent or obscure. The denial of this on any ground whatsoever is a denial of democracy as well as a travesty of justice. Yet one of the most common criticisms of the courts is that the rich escape the penalties of the law while the poor "get the limit". Doubtless there is some truth to the charge. It would be a constructive thing for the state to provide counsel for the indigent defendant of the same training and experience as the plaintiff-state has available in the prosecuting attorney. (186)

Altho the advocates of the "public defender" do not go so far, it would appear to be sound in principle to compel the defendant in all criminal cases to accept the services of the "public defender" and be prohibited from retaining other counsel, unless the public defender asked for assistance in conducting the case, in which event the state would pay the bill, the defender and his "client" selecting the assistant of their choice. This would give a virtual monopoly to the state in the administration of criminal law. It is based on the hypothesis that it is primarily the business of the state to see that justice is done.

The prosecuting attorney who uses the "third degree" and other questionable means in his mad struggle to get "results", and the wily, cunning, unsavory criminal lawyer who makes a reputation, or notoriety, by"getting men off", would not be so much in evidence if this system were adopted. They idea uppermost in the minds of both the public defender and the porsecutor would be to find the truth and do justice, rather than to win a case and get a fee. The criminal court would be-

come more of a hall of justice and less of a wrangling bull-pen as it now often is.

The public defender should be chosen and removable by the general method outlined for the prosecuting attorney. Their districts should be coterminous.

While it is not recommended that the jury trial be abolished in criminal cases, it would be a good thing to apply the principle of the preponderent vote to criminal cases as over 1/3 of the states have done in civil cases. There is no more reason why uninimity should be required in criminal cases than in civil cases, especially as all the states will eventually abolish the death penalty. The "hung" jury has kept many an arch criminal from hanging or getting his just deserts. If 5/6 of a panel of 12 intelligent men were convinced beyond the shadow of a reasonable doubt of the guilt of a man, it seems as if that ought to be sufficient consensus for a conviction.

However, the principal change should be in the conduct of the jury trial. The judge should have almost complete control of the selection of a jury. Needless to say he would be interested primarily in getting the best jury from the standpoint of returning a just decision. He would be looking for intelligence and character, not for weakness and stupidity, sentimentality or heartlessness, as the case might be. The examination of the jurors should be confined to essential questions; casual opinions should not disqualify; peremptory challenge should be eliminated; and the comfort of the impanelled jury should be carefully looked after.

In the actual conduct of the jury trial , great improvements could easily be made. In the taking of testimony, the judge should interpose to prevent the brow-beating of witnesses and waste of time in questioning. When the judge thinks the lawyer is merely trying to confuse a nervous, inexperienced witness, or to impeach the testimony of an hon-

est witness, he should take charge himself. The jury should be allowed to ask the witness questions, also, by getting permission from the judge. During the examination of any witness, if the judge thinks either attorney has unconsciously or by design omitted to ask a material question, he should do so. In England, it has long been the custom for the judge to make a complete examination of a witness at his option. Often he is able to go to the heart of the matter at once, thus saving time and money for the state and all concerned as well as expediting business. This speedy taking of testimony is also of great assistance to the jury. It keeps the case simple and concise enuf so that the evidence means something to them when they retire to deliberate. The saving of the time and temper of the attorneys and litigants is also an item. Every effort should be made to conduct a trial so as to avoid every semblance of a contest. (187) The judge should be able to amend any immaterial fault in the pleadings immediately upon discovery and to proceed with the trial.

When the trial is over, the judge should be allowed the greatest freedom in charging the jury. He should even go so far as to tell the jury what he thinks the evidence has shown. This was the practice in America until the middle of the nineteenth century. Tennessee was the first state to deny this right to the judge, in 1796. The others followed until by 1840, the right to charge the jury was practically extinct. (188) The difference in jury efficiency when the judge is allowed to tell the jurymen what he thinks the evidence has proved, to discount any erroneous statements the attorneys may have made, and to discount over-emphasized evidence, evaluate testimony, and so on, is shown by the fact that in Ontario, where the judge has this right, the average jury takes 30 minutes to reach a decision and often does do without even leaving the jury-box. Compared to this, the situation in the United States is notorious in the extreme. (189)

No exemptions from jury service should ever be allowed except in specific cases of evident impossibility to serve. Every case of exemption should be determined on its merits by the clerk of the court. It would probably aid some in getting intelligence in the juries if a good stiff fee were charged for exemption even in the cases of "evident impossibility to serve". ~~Formerly~~ at present it ~~did~~ does not greatly matter whether the exempted classes ~~were there~~ are available or not, since the lawyers ~~would likely~~ usually "excuse" them from service if the law or the judge ~~did~~ does not. With the judge as the chief agent in picking the jury, however, the situation is much different. The best men on the jury are none too good for a man who is being tried for his head or his liberty. Since all jury trials would be criminal trials, the biggest part of the jury service, and the most irksome, and popularly (and properly) detested, would be eliminated.

The judge should bear the main responsibility for the right outcome of a trial. The effect of these recommendations would be to put that responsibility upon him and give him the power to discharge it. He is the only really impartial person (with the exception of the ideal juror) present, and certainly the only one with the training and experience to see that justice is done. He should be given a fair chance to put that knowledge into effect.

This brings us to the final consideration of the problem of the jury trial, - its abolition in civil cases. This sounds like revolution, but in reality it is just the culmination of forces which have been in operation for several years.

The arguments against the use of juries in civil cases are too numerous and technical to be gone into fully in this paper. Some of the more important have already been mentioned in connection with criminal cases. All the disabilities therein referred to apply in civil cases with double force. Most of the authorities deplore the use of juries

in civil cases, altho few of them go so far as to advocate the abolition of it. Most of them are satisfied with recommendation of reforms in the bar, voluntary tribunals, giving the judge control of selection of juries and conduct of the trial, and so on. It seems to me that most of these are merely patch-work on a machine which is hopelessly inadequate for modern big scale adjudication. Werner quotes a judge of long experience to the effect that "juries are rarely influenced by instructions of judges, if, indeed, they understand them at all." The ordinary jury decides the cases according to what they think the law ought to be; or else for the under-dog.(190) Storey points out at length the defects of juries in civil cases. He says where an individual and a corporation are litigants, the corporation very seldom gets a square deal. The judge may give the jurymen most specific instructions not to let the fact that one of the parties is a million dollar corporation influence their minds, and yet if the truth were told most of them would be like the old juryman who was asked if he obeyed the judge's instructiions not to let the fact the defendant was a corporation prejudice him. He replied, "Well,--finally, I didn't." It is difficult for the average jury to do exact justice when one party is a sick widow and the other is a transcontinental railroad. Since the majority of our civil cases, or at least an increasing number of them are ones in which one, or both, parties are corporations, this psychological defect of the jury is a serious short-coming in its value as an instrument of justice in civil cases. (191)

The time element is also important. As social control becomes more and more efficient, in the prevention of crime, and as business becomes more and more complex and pervasive, a larger and larger percentage of the cases will be civil. As mentioned above, the trend of society is such that there will undoubtedly be a great increase

in the amount of litigation, mostly civil. Hence, some more expeditious mode of handling them than by the awkward jury trial seems absolutely necessary. Oregon has already recognized the need of greater speed and at the same time has tacitly admitted the disability of the jury trial for civil cases by providing that civil cases involving breach of contract (which includes a large percentage of them) may be tried without a jury if both parties to the action agree. Of the 1793 cases tried in the circuit courts in 1917-18 (June 30 to June 30), 884 of them were without jury. There were over 2000 uncontested divorce cases tried in the same length of time which were of course without jury. This would seem to indicate that the people of Oregon are about ready to make the leap and abolish the use of the jury in all civil cases. (192)

The facts are not the main thing in controversy in most civil cases, or if they are, it is only as they will determine the amount of relief the aggrieved party will be awarded. There is a persistent tendency on the part of the defendant to falsify, gloss over or deny the facts in the case in order to lessen his liability, or to set up grossly exaggerated or fictitious counter-claims for the same purpose. But the principle thing desired is the adjudication of the amount of relief which shall be given to the injured party. The average jury thrown into the average case so presented, is extremely incompetent to disentangle the claims and counter-claims, the hodge-podge and confusion of allegation and denial, the obscuration and over-emphasis of evidence; they have not the patience, training, or ability to evaluate the testimony properly in order to arrive at a just decision. Then over and above this stands the ever-present fact that they are more than likely to be prejudiced in favor of the under-dog. The fictitious personality of a corporation is in reality a fiction to the average, concrete-thinking common man. Justice is done to men and

women of flesh and blood and feeling, not to soulless abstractions. So both from the point of expedition of business and the attainment of justice, the jury trial should be abolished in civil cases. This is the fair implication of the long editorial cited above from the "Oregonian"; it is the statement of what one reads between the lines in criticisms of the civil jury trial by eminent writers on law; it is the conclusion drawn from the action of business-men in taking advantage of section 157 of the Oregon Code; (Olson's, 1920) it is sound commonsense and good psychology applied to law. (193)

If shady lawyers know that they cannot get ignorant, pliable juries whose prejudices and emotions they may arouse in order to get damages from the rich for the poor, from the corporation for the individual, or from the ugly husband for the pretty wife, they will be more chary about bringing questionable cases into court. In case a lawyer does bring in a case which is merely contentious litigation or a "long-shot" chance , "everything to gain and nothing to lose", we ought to follow the English practice and make the attorney, and not his client, pay the costs, and perhaps assess him with a liberal fine into the bargain.(194)

What is the alternative? Civil cases should be tried before a panel of three circuit judges, apportioned by the executive board of the Supreme Court as business may require. Of course, regular districts should be provided, but the idea is that if the docket should get away ahead of the judges in one of the districts, there should be other judges delegated from less congested districts. Particularly in civil cases, it is desirable that the adjudication of controversies be as speedy as possible and the dockets kept clean. The senior judge of the panel should preside and have power to direct the procedure of the case. Such a system would come as nearly eliminating the defects

mentioned above as it is humanly possible to do. By this system we would get, training, experience, impartiality, speed, and justice according to law. If the results were not satisfactory, the fault would lie with the law-making department and not with the law-adjudicating agencies.

With the system outlined above it ought to be easy to have three civil and two criminal sessions a year in every county in the state, or even more, if business warranted. The system would be flexible enuf to respond to all the exigencies which would arise. The same number of judges we now have, or even a less number ought to be able to keep all the judicial business up-to-date and still have enuf time for every judge to have a vacation of a month or so each year. With a centralized control of the administrative side of the courts, simplified procedure and lessened litigation, savings from jury fees and other costs attendant upon our long trials and red-tape methods, it ought to be possible to pay higher salaries to fewer and better men and to get more efficient judicial service at less cost than we do at present.

Such a reorganization would remedy the most flagrant evils of the present judicial system. The judge would become a highly specialized social servant. The only administrative functions he would perform would be the actual conduct of judicial business; his legislative functions would be gone with the denial of the judicial veto. His tenure would be stable and his social honor high. His position would be so enviable and desirable that the aspiration of every lawyer might well be the attainment of a judgeship. This would tone up the whole legal profession with the tonic of social-mindedness. The law would become the servant of the people istead of their bugaboo,- and it would serve the rich and poor alike. Thus the judiciary would be brot into our system by which we hope to correlate intimately, the government and the people, to make them find their best and largest life in the creation and operation of the state.

CHAPTER VI.

## THE SOCIALIZED STATE.

> "If we set our hearts on having a righteous state we can have one more righteous than any individual".(195)

In conclusion, let us try to recapitulate the argument and get a generalized view of the idea we have attempted to present. In the mass of detail which has been presented, the fundamental viewpoint may easily have become obscure. It is the purpose of this chapter to re-state and generalize the propositions previously discussed in order to leave in the mind of the reader a definite outline of the reorganization of the state from the sociological approach.

The purpose of the state is social whatever may have been its origin. People live together by choice, as Giddings says, or perhaps it would be better to say by necessity. (196) The state has developed until it has become the hub from which the other social institutions radiate like spokes from a wheel. However, these radiating institutions are not in any sense conceived as originating in the state or as depending upon it for their validity. They are as fundamental as the state. Both come into existence in response to a felt social need. The state has gained its predominance only because it has proved to be the most powerful and effective instrument for realizing the larger collective purposes of the people. Other institutions have been tried, such as the family and the church, but the state has demonstrated its superiority, at least for the present age and present conditions.. So it is that the people allow the state to coerce them in their various group relations and submit to have the state modify and infringe the personal rights of the individuals and the group rights of most of the other human insti-

tutions. And hence some men are moved to forget the essential social nature of the state and are urged to claim some super-mundane sanction for it. It becomes a be-all and end-all, an absolutism which comprehends and controls all human relations, all other institutions. Thus the doctrine of absolute state sovereignty is born.

But in company with many of the newer political scientists, we have denied the doctrine of absolute, particularized sovereignty and have substituted the idea of socialized sovereignty, a power which is great enuf to actuate and perpetuate the state and yet is always a derived, relative, developing--and sometimes a decaying--power. The state never is; it is always becoming. It is never a unity, never an entity; it is always "infinite diversity". (197) The state is a process of doing something together. It is politics in solution. It is composed of the people, operated by the people, and exists for the people. This is not always true of governments, which may be regarded as the social forces of the state in crystalization. They may be overturned by an election or a revolution and thus resolved back into that great social flux of interests, sentiments, purposes and psychic interactions which are the state as the sociologist conceives it.

Of course, this is over-stated and perhaps somewhat distorted for the sake of emphasis, but the fundamental proposition remains: the state is merely and solely a social institution. Its foundations must be uncovered by sociology and its ultimate reality stated in terms of social sanction, social purposes and social activity.(198)

But this is the most generalized view. There is also the human factor to be considered as such. The individuals are the bricks out of which the imposing structure of the state is built. They are born into it and coerced by it; unlike most social institutions which

are voluntary in nature, they must be members of this institution whether they will or no. (199)

How is it that a social institution composed of individuals should be so unsocial as to coerce its components? How can it pursue such a policy and still persist? Because the individuals themselves are socially created and get their chiefest joie de vie out of their functioning in social groups. The vast majority of the acts of the state which are classified as coercive are in reality actively consented to by the people affected. The true coercive element appears only when someone is so inhuman, or un-human, rather, that is, unsocialized, as to disregard the duties or actions which the people have decided are for the best interests of society, c'est-a-dire, for the best interests of the individuals who compose society.

There is no more an absolute individual than there is an absolute state. He comes into his physical existence by a very intimate social relationship. The birth of his psychic being, his human personality, occurs in just as definitely a social manner. He is born to be a living soul, a psychic person as distinguished from a mere physical reaction-system, by the intimate interpenetration of the socially created ideas of other persons. It is give-and-take, stimulate and be stimulated, until sufficient social experience is gained to entitle him to be called a human being. (200)

But there is a third aspect of human life which must be mentioned in connection with our concept of "socialized sovereignty" and "socialized individuality".

Not only is the individual a social product, but he is forced by the very fact of his social origin and social nature to ally himself with other similarly constituted humans in order to accomplish anything, in order to live the human life. The only way a man can work is to work with some one, or with others. He cannot think ex-

cept in terms of words each one of which is a distinctly social fabrication. The measure of his social efficiency is his ability to get the "we-feeling" (Ross?) and utilize it in productive, socially valuable activity. He is not only a'social product' but also a "social producer". The index of his humanity is his "togetherability". He is a group animal and always was so. It is in the small, intimate, primary groups that human beings live most vividly, enjoy must keenly and develop most fully. The family, the ball-team, the picnic, the poker club, the church, the lodge,-- these are the instruments by which man is fashioned. (201)

It is by bringing these three fundamental concepts into proper relation that we derive the material for our final concept,-- the generalized idea which the purpose of this paper has been to delineate. The ever-shifting socialized sovereignty, the ever-expansive socialized individual, and the functional social group are united to produce the socialized state. It is composed of them and dependent upon them in their various activities and subtle interrelations. This is the raw material out of which all political phenomena ultimately must be created. As the "father of sociology" has phrased it, "There must always be a spontaneous harmony between the whole and the parts of the social system.... and the only object of any political system whatever.... is to regulate the spontaneous expansion so as best to direct it towards its determinate end." (202)

To conceive of any one of this trinity of causes as foremost or paramount, fundamental or ascendant, is to fall into the errors of the absolute sovereigntyists, the contract-theory individualists, or the particularistic guild socialists. The sociological student of politics must regard them all, as he also regards every other aspect of human life, as interrelated, interpermeating, each contrib-

uting to the other, all enmeshed, interdependent, intermingled. "We are members one of another" "in deed and in truth". (203) The sociologist must regard all human forces and activities as phases of a unified action, elements in an on-going process, all of which is essentially psychic (social) in its nature. This is the only concept which can redeem our thinking from mysticism, for, as Cooley has well said, the old soul-stuff individualism is just as mystical and unthinkable as Hegel's static concept of the state as the "march of God in the world". The Hegelian mystic simply chooses a bolder and more inclusive abstraction, gives a more cosmic sweep to his imagination than the particularistic individualist. (204)

But neither idea is redeemed from mysticism. No more so is the group expositor of society who conceives the group as an organ in a super-organism, or as an actual personality diverse from the human beings who compose it. Gierke and some of the other political pluralists as reported by Miss Follett, appear to fall into this error. (205) The only reason the Guild Socialists do not is because they do not have a philosophy,-- they have only a program. The concreteness of their proposals and the detailed manner in which they have worked it out saves them from mysticism. If they should try to generalize their theory, it would inevitably land them in mysticism.

So too is the psychological sociologist saved from mysticism. Altho he is dealing with very vague and intangible material, he is saved from mysticism by applying the yard-stick of common-sense to it and refusing to be led away into the luring marshes of metaphysics. He conceives society simply as a complex of working forces. He knows of no social cause apart from a social result; he knows of no social result that is not also a social cause. He regards society as a process of varying goodness, badness and indifference; he describes it, tries

to explain its mechanism, to account for its actions ; attempts to select those modes of response which seem to him to be desirable and beneficial, but he holds no brief for any hypothetical,abstract, absolute "first cause", he seeks no "fundamental origin" or "ultimate destiny". So soon as he does so he ceases to be a scientist and becomes a metaphysician. One reason sociology is in such disrepute in some quarters is because it has too many preachers, propagandists, and metaphysicians passing themselves off as sociologists. Sociology must always be a mathematical, data-collecting and phenomena-interpreting science. Its method is almost entirely psychological,(206)

With this perhaps unwarranted digression, we come to the objectification of this theory in terms of government and its agencies.

Government cannot be divorced from the group concept. It is a "differentiated, representative group performing specified governing functions for the underlying groups of the population." "Political action reflects, represents the underlying groups". "If we say activity,we have said it all; it is a net-work of activities". (207) These groups are all interknit, and yet each one is distinct in its self. They must depend upon the personality of someone within them for direction, or perhaps it is more accurate to say upon the personalities of a relatively small number of members within them, They are most vital and effective when all or nearly all of the members take part. This is what we mean when we say of a certain group that it is a "live organization". As a rule, live leaders make live members, altho it doubtlessly might be more truthfully said that live members make live leaders, i.e., they either liven up the old leaders or get new ones. "Government is more accurately representative when each cooperative group trains its leaders, makes the successful ready to serve the public in larger undertakings."(208)

Now each of these groups has its immediate as well as its sec-

ondary purposes. Each develops a definite plan of procedure to get those purposes realized. It is "organized". It is contended here that the "public will" has its basis in these secondary group wills. Now, since society is becoming ever more and more complex and closely interwoven as a result of increasing wants and diversities of taste which cause and are caused by the more intimate social contacts of education, commerce, travel, modern communication, these secondary purposes are becoming ever more and more pervasive and important. It is not exactly correct to say that they are gaining on the primary wants and needs, or that they are supplanting them, but the satisfaction of the primary desires are becoming more roundabout. It makes a vital difference to a man of today how the working girls are treated in Honolulu while they are putting his precious pineapple into the cans. Therefore, since the secondary group interests are becoming more important, they must find some sort of representation in the larger group undertakings. While the primary group relations will doubtless always remain the most vital in a man's life, at the same time his secondary group interests makes him seek to expand his group influence. This fact must be taken into account in proposing our reforms in government. (209)

Just what have we offered, then, in the direction of getting these results in our socialized state? How are these principles to be embodied in the substantive law of the state?

We have advocated a truly socialized education and suggested some of the steps necessary to its attainment. The essence of this lies in the proper education of the adolescent and the adult based on the principle of self-expression and directed toward the achievement of social purposes. "There are few things that would be more salutary to the life of our people than a lively and effective civic consciousness". (210)

We have suggested a reorganization of the legislative branch of ~~government~~ goverment based upon the fundamental premise that no deliberation is possible without that "animated moderation which quickens and enlivens thot."(211) The members of this small, responsible, unicameral body of law-makers are to be elected by proportional representation in an effort to get them to represent certain groups of opinion instead of certain square miles of land or factions of political parties. They are not expected to be mere puppets of the people, but to exercise their own informed minds enlightened by a sense of social responsibility. They are prohibited from referring measures to the people so that they will be forced to take the responsibility upon themselves. Yet they are made subject to the recall so that the people may have the means to punish the occasional flagrant betrayal of their trust. (212) Further to center legislative responsibility, as well as to allow for the definite and conclusive formulation of the will of the people, the acts of the legislature are not to be subject to judicial veto. The Legislature is to be in session all of the time. Finally, there is definite provision made for the integration of the groups which society is divided into with the legislative and administrative branches and for the integration of the latter with each other.

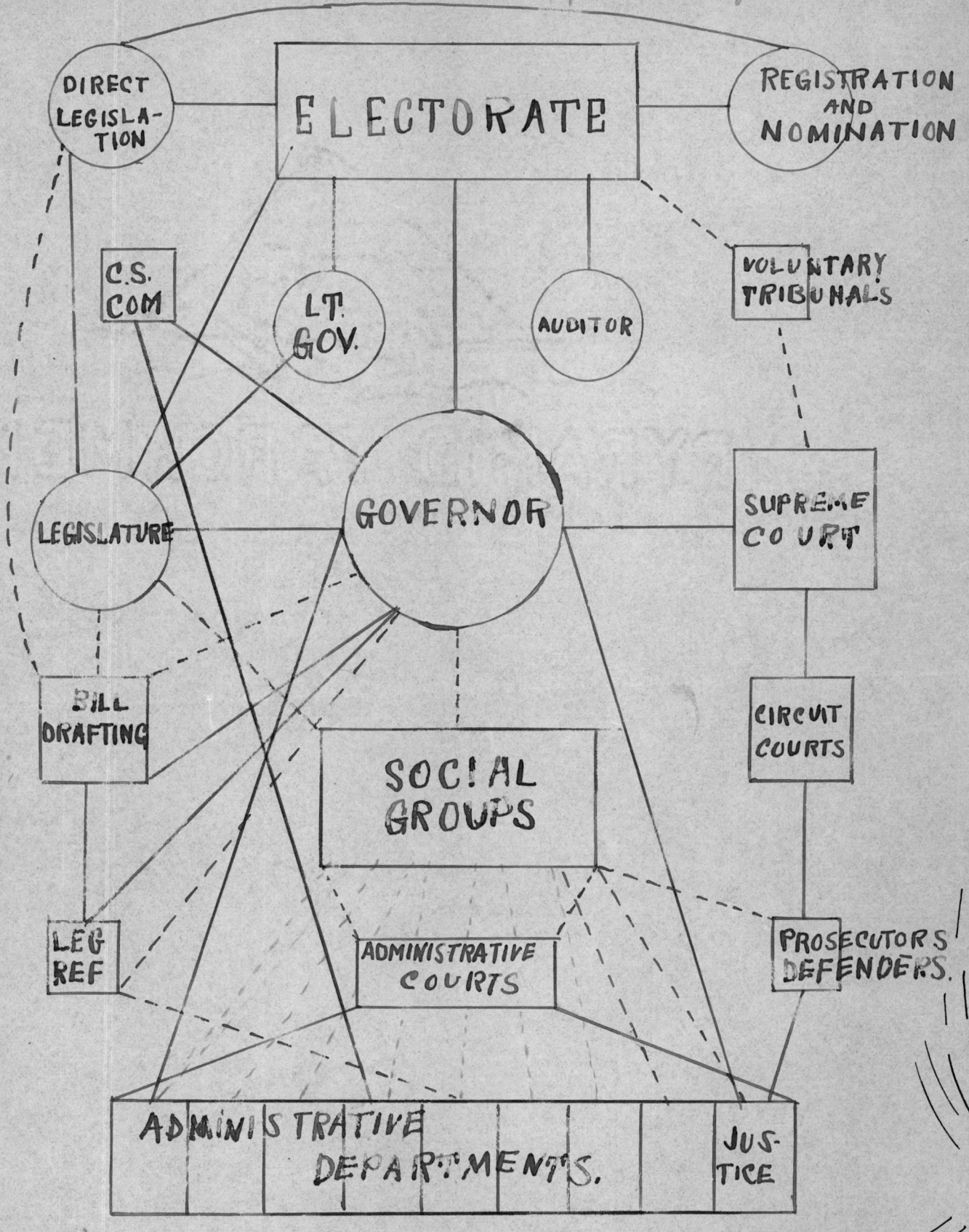
For the administrative branch we have outlined a scheme of departmentalized organization very similar to those which have been adopted in several states and have universally been found to work even more satisfactorily than the proponents themselves had expected. The governor has been made the center and personification of the administrative system. He has the legislative initiative and the courtesies of the house for himself and his department heads; he has the sole power of appointing and removing the heads of the de-

partments and other chief executive officers as well as the justices of the supreme court; he has the veto; he may appeal to the people to carry thru his administrative bills(with 2/5 of legislature). In short, he is expected to be a real executive leader. A budget and civil service system were advocated, as well as a legislative reference and bill-drafting service. (213)

In the judiciary, we have made all the judges appointive, the Supreme Court by the Governor and the judges of the lower courts by the Supreme Court. The jury trial should be abolished for civil cases and modified in criminal cases. The trial judge should have definite control of the selection of the jury, taking of testimony, and should have complete liberty in charging the jury when the case has been closed. We advocate the complete monopoly of criminal justice by the state. The grand jury should be abolished and the responsibility for the prosecution of crime placed squarely upon the district attorney. The state should furnish both the prosecutor and the defender of the accused, so that the criticism recently made by an eminent jurist would no longer hold true. He said,"Complete justice to the poor man is still a dream in our civilian courts".(214) All accused persons should have the same talent defending as the state now provides for prosecuting, and no man should be able to "buy" his way off in a court of criminal justice. We have outlined various means of keeping cases out of court and have provided methods od handling them efficiently when they do get in. We have noted the necessity for a higher professionalization of the bar; have outlined administrative and procedural requisites for a serviceable judicial system. The judiciary is regarded as a subordinate and specialized branch of the general administrative function.

We have retained intact the system of direct government but

Figure 3. Chart Complete Plan of State Government




Legend.
Dotted lines show voluntary, unofficial relations.
Solid, official - elective, appointive, statutory.

have modified somewhat the methods of using it. We have provided for the petitioning of measures by signature at time of registration or at any other time one cares to visit the registration officer's office thus abolishing the the paid petition circulator. We have given the legislature a chance to enact the initiative petitioned law, or repeal the referendumed law before it finally goes on the ballot. The nominating system, together with the system of proportional representation, is calculated to complete the destruction of the political party as a factor in state and local government. There are only 3 elective state administrative officers and 25 legislative, about 5 to the district, This ought to be satisfactory to the most rabid short ballotist. Fig,3 gives a graphic explanation of the relations between all of the parts of the proposed organization.

We have tried to get away from the idea that voting is synonomous with democracy. We are in essential agreement with the criticisms quoted below. "The number of voters to whom the processes of politics are intelligible.. or interesting.... is lamentably small; and at a time when the problems before us are increasingly technical in character, no one can fail to see in the popular attitude the very heart of our difficulties," "Majority rule is democratic when it is approaching not a unanimous but an integrated will. We have seen that the adding of similarities does not produce the social consciousness; in the same way the adding of similar votes does not give us the political will." "Do we not feel the dispersive, numerical, uninspiring character of the greatest good of the greatest number" as a call to faith and action? The ideal society must be an organic whole, capable of being conceived directly, and requiring to be so conceived, if it is to lay hold on our imaginations," (215)

So we have provided for a minimum of voting in our proposals. What voting there is, should be done with a most vital consciousness of high, almost holy, civic responsibility. We should place our hope of democracy not in counting heads, but in using them. Likewise, we must get over the idea that if a man disagrees with those in control he is politically damned. We do not want a democracy based upon breaking heads any more than we want oned based on counting them. A man's disagreement may be just the stimulus his associates need. He may see an angle of truth that they have not seen. The social-minded political servant of the people will instinctively take Laski's advice when he says, "We shall make the basis of our state consent to disagreement,. Therein shall we ensure its greatest harmony",- and he might have added permanency. (216) From all that has been said about discussion, the representation of minorities, the responsiveness of the state to the various group wills, this must be hailed as sound doctrine.

This is true not only of the man who is actively engaged in the active conduct of governmental affairs; it is equally true of the average man. "The doctrine of true democracy is that every man is and must be a creative citizen". "We must bring to politics passion and joy". (217) Since the state is bound to become more and more the means of attaining these secondary social purposes of the citizens as mentioned above, each and every citizen must be given an active part in the realization of those purposes. The only way to do this is to make the state simple, concrete, responsible and objective enuf so that he can directly conceive it and at the same time to organize it so that he can do something in and thru it. This is the "passion and joy" of politics.... that we do something together. "The success of democracy depends (1) upon the degree of re-

sponsibility ~~it is possibility~~ it is possible to arouse in every man and woman and 2 on the opportunity ~~they~~ they are given to exercise that responsibility." (218)

Finally, we may ask what is that "determinate end" of society spoken of by Comte? What will be the next step if the socialized state is achieved? Duguit says, "State activity emanates from individual wills, (we would say from "socialized wills", "group wills") but it is essentially collective in its end, which is the organization and management of public services."(219) This statement is concrete and direct and might be taken as a final statement if it did not imply state socialism as the final end and aim of the socialized state. But this is emphatically not the case. While there is no doubt that the state will continue to furnish more and more services to the people, these will be chiefly of the public utility variety. It is unlikely and probably undesirable that it should organize and manage all services. Duguit does not say "all". Perhaps he means only public utilities. Certainly the socialized state should monopolize these, but its main function should undoubtedly be the regulation of ~~the~~ private services, the amelioration of human conditions, and the modification of institutions of private property to the end that all men shall enjoy the maximum of utilities. The socialized state will see that the wheels of the complex and delicate social machine are kept oiled and that no untrained and irresponsible hand gains control of it. The socialized state will see to it that the natural resources are not exploited, that they are made subsidiary to the human resources; that equality of opportunity is provided; that the public health is fostered and maintained; that mating is determined by desirability rather than by desire; that a universal and maximum standard of living is supplied; in short, that all mankind is given a fair chance

to live up to capacity. These are some of the aims of the socialized state.

Finally, the attainment of it is possible only by intelligent citizens, -- men and women who have seen the vision. These citizen-seers of the new state are those who have had cultivated in them a "socially efficient imagination"(Todd). We must also have exact knowledge before we essay to follow the difficult path of political experimentation. But we have that knowledge here in Oregon. It has just been reviewed in the main body of this paper. And a sufficient number of us have seen the vision. Our fancies have pictured many roseate Oregons, -"fairy lands of heart's desire". Then what do we lack? That one requisite to all salvation, political, social or religious. It is Faith. Until our knowledge and imagination are backed by faith, our facts will be fruitless and our imagination a vain thing. This is what we mean when we say "the courage of our convictions". We do not have it here in Oregon. The mountains of mischief,--- inefficiency, disservice, ever-increasing taxes and ever-decreasing comprehensibility,-- will remain unremoved until we move them with the magic wand of faith. (220)

Until that time, we can only watch and pray- and preach assiduously the gospel of the socialized state. There is no doubt that the time will soon come when Oregon follows Illinos with a civil administrative code. It will be a vast civic misfortune if at the same time we do not lead the rest of the Republic with a thoro over-hauling of the other two branches. Thus we would live to enjoy the fine satisfaction of having Illinois and others follow us again as they did in the matter of direct government.

The forces are rapidly being generated here in Oregon as elsewhere which sooer or later will drive us to reorganization. Illinois

was on the verge of bankruptcy in 1916. We should show more intelligence than many commonwealths have shown in the past and go before we are driven. We should make our adjustment by fiat rather than by harsh compulsion. The 70 mill tax which is reported in one Oregon city is a powerful argument for state and local reorganization. Most likely it is the only one the people ever will listen to. If every community had a 70 mill tax, that fact would gain more converts to the cause of reorganization than 7 times 70 dry and rambling master's theses.

But I do not want to close with a pessimistic note. There is no occasion for that. Oregon has a social and political record behind it of which to be proud. But she has a much greater opportunity in the future. The people of Oregon are proud of their record and proud of the state in which they live. They are determined to make it better and to realize in the future the fine things their progressive past gives us a right to expect. "Better Schools and Better Roads" is a slogan that indicates the trend. Our future gives greater hope than our past gives pride. So we are entitled to apply to ourselves the constructive implications of the following eloquent quotation from the dean of American sociologists. By apprehending and applying the ideal of these words we shall make our future fulfill the promises of our past. (221)

> "The social system will become not simpler, but more complex; not harder and more resistant, but more adaptive; not more authoritative, but more intelligent.....Only in the individual hearts of the people can the honor of the state be kept untarnished; in their individual souls its glory lives."

BIBLIOGRAPHY.

A partial list of authorities consulted.


1. Adams, Brooks. "Theory of Social Revolutions".
Macmillan, 1913. pp. viii+240.

2. Bagehot, Walter. "Physics and Politics".
Appleton, N. Y., 1893. pp. 228.

3. Baldwin, J. Mark. "Social and Ethical Interpretations in Mental /Development."
Macmillan, 3d ed. pp. 606.

4. Baldwin, J. Mark. "The Individual and Society".
Badger, Boston, 1911. pp. 211.

5. Barnett, J. D. "The Operation of the Initiative, Referendum and Recall in Oregon."
Macmillan, 1915. pp. xii+295.

6. Barnett, J. D. "Reorganization of State Government in Oregon".
Am. Pol. Sci. Rev., vol. 9:287-93, no. 2. May, 1915.

7. Barnett, J. D. "Bicameral System of State Legislation."
Am. Pol. Sci. Rev., vol. 9:449-566, no. 3. August, 1915.

8. Beard, Charles A. "An Economic Interpretation of the Constitution"
Macmillan, 1919. pp. viii+330.

9. Beard, Charles A. "Reconstructing State Government".
New Republic Supplement, Aug, 21, 1915.

10. Blue, Leonard A. "Governor and Executive Organization".
Submitted for Ph. D. thesis, Univ. of Penn., 1902. pp.47.

11. Bryce, James. "The American Commonwealth".
Macmillan, 3d ed. rev. and enl., 1909/ vol. I, pp. vii+904; vol. II, xv+742.

12. Bullock, E. D. "Short Ballot".
H.W.Wilson Co., NY.Y., Hand-book Series, 1915. pp.xviii+160.

13. Bureau of Municipal Research, New York City.
Bul. no. 62, June, 1915. "Budget Reforms"
" " 63, July, 1915. "State Administration".
" " 90, Oct., 1917. "State Movement for Efficiency and Economy". pp.vi+163.
" " 91, Nov., 1917, "Recent Movement for State Budget Reform, 1911-17". pp. v+155.

14. Cole, G. D. H. "Self Government in Industry".
Macmillan, 1919? pp. x+283.

15. Childs, Richard S. "Short Ballot Principles".
Houghton Mifflin, 1911. pp. x+171.

16. Clark, Justice Walter, et al. "Report of the Commission on Law Reform and Procedure in North Carolina".pp. 16. No date.

17. Commons, John R. "Proportional Representation".
Crowell, Boston, 1896. pp297.

18. Cooley, C.H. "Human Nature and the Social Order".
Scribners, 1902. pp. viii+413.

19. Cooley, C. H. "Social Organization."
Scribners,1914. pp. xvii+436.

20. Cooley, C. H. "Social Process".
Scribners, 1918. pp. vi+430.

21. Crennam, Charles H. "Survey of State Executive Organization and a Plan for Reorganization".
Submitted for Ph. D. at U. of Penn., 1916. Geo. Banta, Menasha, Wisconsin. pp. 87.

22. Croly, Herbert. "The Promise of American Life".
Macmillan, 1909. pp. viii+468.

23. Croly, Herbert. "Progressive Democracy".
Macmillan, 1915. pp. viii+438.

24. Davis, Horace A. "The Judicial Veto".
Houghton Mifflin, 1914. pp. viii+148.

25. Dodd, W. F. "The Revision and Amendment of State Constitutions".
Johns Hopkins Press, 1910. pp. xvii+350.

26. Dodds, H. W. "Procedure in State Legislatures".
Am. Acad. of Pol, and Soc. Sci., Philadelphia, 1918. vi+112.

27. Duguit, Leon. "Law in the Modern State". (Tr. Laski.)
B. W. Huebsch, N.Y., 1919. pp. xliv+248.

28. Eaton, Allan H. "The Oregon System".
McClurg, Chicago, 1912. pp. ix+195.

29. Ellwood, C. A. "Sociology in its Psychological Aspects".
Appleton, 1915. 2d ed. pp. xiv+417.

30. Eliot, Storey, Brandeis, Pound Rodenbeck."Efficiency in the Administration of Justice."
Preliminary Report. National Economic League. No date.

31. Follett, M. P. "The New State".
Longmans, Green, N.Y., 1920. pp. vii+373.

32. Giddings, Franklin H. "The Responsible State".
Houghton, Mifflin, 1918. pp. xi+108.

33. Haynes, George H. "How Massachusetts Adopted the Initiative and Referendum".
Pol. Sci. Quart., Sept.,1919.

34. Hoag, C. G. "Effective Voting".
Senate Document 369, 1914. pp. 33.

35. Hodges, George H. "Commission Form of State Government".
Message of Governor,(Kansas), 1913. pp.3.

36. Holcombe, Arthur N. "State Government in the United States".
Macmillan, 1919. ppxiv+498.

37. Hughes, W. R. "New Town".
J,M. Dent, London and Toronto, 1919. pp. 141.

38. Humphreys, J.H. "Proportional Representation".
Methusen & Co., London, 1911. pp. xxi+400.

39. Judson, Manley O. "Proposed Regulation of Missouri Procedure by Rules of Court."
Bullitin of University of Mo., vol. 17, no. 3, Law Series 13, 1916, U. of Mo. Press. pp. 79.

40. Kales, A. M. "English Judicature Acts".
Jl. Am. Jud. Soc., vol. 4, no. 5, Feb., 1921.

41. Kansas Legislative Reference Bureau. "Legislative Systems".
Bullitin no. 1, Jan., 1914. pp. 143.

42. King, Judson. "State-wide Initiative and Referendum".
Sen. Doc. 736, 64th Cong., 2d session, Mar., 1917. pp.16.

43. King, Judson. "New Dangers to Majority Rule".
Sen. Doc. 897, 62d Cong., 2d session, 1912. pp. 14.

44. Lamprecht, Karl, "What is History?" (Tr. E.A.Andrews)
Macmillan, 1905, pp. xi+227.

45. Laski, Harold J. "Democracy at the Cross-roads".
Yale Review, July, 1920. pp. 788-803.

46. Laski, Harold J. "The Problem of Sovereignty".
Yale University Press, 1917. pp. 297.

47. Lobinger, C. S. "The People's Law."
Macmillan, 1909. pp. xxii+429.

48. Manahan, James. "The Recall of Judges".
Sen. Doc. 941, 62nd Cong., 2d session, 1912. pp. 13.

49. Mathews, James M. "Principles of American State Administration".
Appleton, 1917. pp. xiv+534.

50. Mill, John Stuart. "Considerations on Representative Government".
Longmans, Green, 1907. pp. viii+141.

51. Moore, B. F. "The History of Cumulative Voting and Minority Representation in Illinois, 1870-1919."
University of Illinois Studies in Social Science, vol.8, no. 2, June, 1919. pp. 70.

52. Oklahoma, Bullitin of University of. "Unicameral Legislatures"
New Series, no. 77, Univ. Extention Series no. 15. pp. 71.

53. Parsons, Frank E. "Direct Legislation".
Sen. Doc. 360, 63d Cong., 2d session, 1914. pp 65.

54. Pound, Roscoe. "Justice According to Law".
Col. Law. Rev., Dec.-Feb., 1913-14. pp. 61.

55. Ralston, Jackson H. "Judicial Control over Legislatures as to Constitutional Questions".
Report for the AM. Fed. of Labor, 1919. Law Reporter Print, Washington, D. C. pp. 80.

56. Ransom, William L. "Majority Rule and the Judiciary"(Intro. by Roosevelt.)
Scribners, 1912. pp. xx+183.

57. Reed, Thomas H. "Forms and Functions of American Government".
World Book Co., Yonkers, 1918. pp. xv+549.

58. Ross, Edward Alsworth. "Social Psychology".
Macmillan, 1913. pp. xvi+372.

59. Ross, Edward Alsworth. "Principles of Sociology".
Century, 1920. ppxviii+708.

60. Smith, J. Allen. " Spirit of American Government".
Macmillan, 1910. pp. xvi+409.

61. Storey, Moorfield. "The Reform of Legal Procedure".
Yale Univ. Press, 1911. pp. x+263.

62. Texas, Bullitin of U. of. " Judicial Reform in Texas".
U. of Tex. Press, Feb., 25, 1916. pp. 39.

63. Thayer, Ezra Ripley. "Recall of Judicial Decisions".
Sen, Doc. 28, 63d Cong., 1st session, 1913. pp. 9.
Appendix:F.E.Chipman, "Veto Power of Judges".

64. Todd, A. J. "Theories of Social Progress".
Macmillan, 1919. pp. xii+579/

65. Wallas, Graham. "The Great Society".
Macmillan, 1914. pp. viii+452.

66. Ward, Harry F. "The New Social Order".
Macmillan, 1919. pp. xi+384.

67. Weber, Gustavus Adolphus. " Organized Efforts for the Improvement of Methods of Administration in the United States"
Appleton, 1919. xv+391.

68. Wigmore, J, H. "Lessons from Military Justice".
Jl. Am. Jud. Soc., vol. 4, no. 5, Feb., 1921.

69. Young, James S. "The State and Government".
McClurg, Chicago. 1917. pp. xv+180.

NOTES.

CHAPTER I.

1. Bryce, "American Commonwealth", 1906 rev., p.637 et seq.

2. Croly, H., "The Promise of American Life", 1909, p. 317.

3. Recent political science writers have argued with apparent success that the old conception of absolute sovereignty vested in the state is no longer tenable. Some of these are: Duguit,L.,"Law in the Modern State", ( tr. by Laski); Follett, M. P., "The New State"; Laski, H., "The Problem of Sovereignty" and "Authority in the Modern State"; Cole, G. D. H., "The World of Labor"; Giddings, F. H., "The Responsible State". These writers all have a decidedly sociological approach. Giddings says on page 47-8 of the book cited above, "Sovereignty, accordingly, is not, it never was, it never can be, an 'original, unconditional,universal and irresponsible power to compel obedience!" .... "Finite and relative, it(the state) is, of necessity."

4. Bryce, op. cit. p. 459.
Gov. Edwards, "New Jersey and the Eighteenth Amendment", Literary Digest, May 15, 1920.
Lit. Digest, March 27, 1920, "Vermont and Suffrage".

5. Cole, "Self Government in Industry", ch. V.
Follett, "The New State", ch.XXIX.

6. Ellwood, C. A. , "Sociology in its Psychologocal Aspects", p.35-6.

7. Jacob Abrams et al. v. U. S., dissenting opinion by J. O. W. Holmes, J. Brandeis concurring, Nov. 10, 1919. Reported in the New Republic Nov. 26, 1919.
8. Cooley, C. H., "Social Organization", p. 183.

9. See Cooley's "Human Nature and the Social Order"; Baldwin's "Individual and Society" and "Social and Ethical Interpretations"; Wallas's "The Great Society"; Follett's "The New State"; McDougal's""Social Psychology"(1909); and Elwood's "Sociology in its Psychological Aspects".

10. Cooley, "Social Process", p. 405ff.

CHAPTER II.

11. Cooley, "Social Organization", p. 322-4.

12. A Mr. B---- told me in 1916 that he had too much self respect,too much regard for his reputation, to go to the legislature, altho his friends had importuned him for years to go. At last he consented and tried it out in the 1921 session. I asked him what he thot of it. He said that all his former impressions were corroborated by experience: he found 'political bargains', ppersonal spite, personal favoritism, incompetency, inefficiency, demogoguery, illicit lobbying, stupidity and cupidity,-- all the evils he had heard about were there, and more.

13. As evidence of this statement, I shall cite editorials taken at random from recent issues of the two leading newspapers in the state.

"Oregonian".

2/21/17. The representative nature of the legislature is questioned.
2/12/17 and 2/14/17/ The lobby system is berated and the legislators are accused of inefficiency.
2/14/19/ The reconstruction policy is criticised.

"Oregon Daily Journal".

1/10/15. Criticism of the party system.
1/11/15. "Legislature is on trial"; strong sentiment for the abolition of the senate.
1/1/19. Legislature severely criticised.
2/9/19. Same.
2/17/19. Economic reorganization predicted.
12/13/18. Judicial system severely arraigned.
12/23/18/ Taxation system shown to be illogical and unfair.
12/30/18. Local government criticised.

This is enuf to show that the press of the state is far from satisfied with the present operation of state government. While there are few definite suggestions of needed changes in organization, there is decided criticism of the quality of legislative service the people obtain, as well as other governmental functioning. These references were selected more or less at random over a period of only two or three years, so they may be taken as fairly representative. An investigation of the editorial opinion of the rest of the state papers would doubtless show a similar feeling. Indeed, casual conversation with average citizens reveals the general attitude that the state government is a necessary evil, something to be tolerated only because there seems to be no available substitute for it.

This is graphically shown by the vote of 1914 on the abolition of the state senate. 62,376 voted to abolish it while only 123,439 voted to retain it. (1920 Blue Book,p.160) Yet there was no extended campaign to abolish the senate, no influential paper favored it, no recognized political leaders were advocating the change; on the other hand, all the "safe" forces of the state were urging the defense of our "traditional institutions". The adoption of the I. R. & R. in 1902 (62,024, yes; 5,668, no), and the continuous appearance on the ballot of measures modifying or attempting to modify the organization of nearly every phase of the state government, show the existence of the attitude of mind on the part of the people which was described in the text. The Consolidation Commission of 1917 is additional evidence. At least 6 of the 11 measures on the 1920 ballot relate to the organization of the state government. While the legislative deficiencies seem uppermost in the public mind, the above citations show that the dissatisfaction is general.

In proof of the statement that our government is no more costly and inefficient than those of other states is given in the following table. If anything, the advantage is in favor of Oregon. The western states are grouped together so that states in which conditions are approximately the same may more easily be compared. All figures are in dollars. Taken from Abstract of a Special Bulitin on Wealth, Debt and Taxation, U. S. Bureau of Census, 1913, Table 5, p.15 and Table 21, ppp. 44-50

COMPARATIVE COSTS OF STATE GOVERNMENT, 1860-1912.

| | Per Cap. Levy | | Tax-$100. Val. | | Per Cap. Cost State |
|---|---|---|---|---|---|
| | 1912 | 1860 | 1912 | 1860 | Govt. 1913. |
| Mass. | 22.27 | 6.04 | 1.72 | .96 | 7.02 |
| N. Y. | 22.80 | 3.96 | 1.99 | 1.10 | 6.93 |
| Ill. | 14.37 | 3.58 | 3.62 | 1.57 | 2.21 |
| Kans. | 16.55 | 1.83 | 1.02 | .87 | 2.96 |
| Va. | 6.49 | 2.30 | 1.60 | .56 | 3.22 |
| Miss. | 5.28 | 1.21 | 2.41 | .19 | 2.29 |
| Texas. | 7.90 | .88 | 1.50 | .20 | 2.97 |
| Oreg. | 22.64 | 3.79 | 1.89 | 1.05 | 4.17 |
| Wash. | 23.21 | 4.94 | 3.10 | 1.30 | 4.47 |
| Calif. | 23.50 | 7.85 | 2.15 | 2.13 | 7.98 |
| Idaho. | 18.35 | 9.32* | 4.15 | 3.30* | 7.81 |
| Colo. | 19.17 | 7.27* | 4.01 | 2.09* | 3.46 |
| Utah. | 16.13 | 1.61 | 3.26 | 1.56 | 6.09 |
| Mont. | 26.83 | 7.71* | 3.24 | 2.00* | 6.66 |

* 1870-Gold Basis.

14. Follett, op. cit., p.294.
Ward, H. F., "The New Social Order", ch. III.
Croly, "Progressive Democracy", pp. 426-7.

15. Ross, E. A., "Principles of Sociology", ch. X.

16. The 'philosophical anarchists. P. Kropotkin, "Anarchy: Its Philosophy ans Ideals"; Tolstoi, "My Faith"; Bakunin, "God and the State".

17. By "highly organized", I do not necessarily mean "highly centralized". cf. Cooley,"Soc. Organization", pp.21-2. He defines social organization as "nothing less than this varigation of life, taken in the widest sense possible". The implication is that since the "state" must be conceived simply as a social institution, and not as a sovereign, divinely ordained entity, a high degree of organization may be the very antithesis of centralization. So by "highly organized" I mean "widely functioning in the most efficient manner".

18. Kantor, J. R., "A Functional Interpretation of Instincts", Psychological Review, Jan., 1920,pp.50 ff.
Cooley, "Social Process", ch. XXXIX.
I like to think of an individual as a "social organization," as a sort of social institution.

19. Cooley, "Social Organization", part II,on "Communication"
Ellwood, C.A., "Sociology in its Psychological Aspects", pp. 13, 141-6, 153-4.

20. Cooley, "Human Nature and the Social Order", ch. V.
Follett, op. cit., ch. XIII.

21. Follett, op. cit., ch. VI.
Giddings, "Inductive Sociology", p. 6.

22. Hughes, W.R., "New Town", ch. VI.
Follett, op. cit., p. 294.
Young, F. G., "Achievement of the Democracy the People Have Set Their Hearts Upon", Commonwealth Review, vol. I, no. 4, new series, Jan., 1920

23. Taussig, "Inventors and Money-Makers"; Parker, "The Casual Laborer" and "The Technique of American Industry"; Tead, "Instincts and Industry"; Mechlin, "Introduction to Social Ethics"; and Patrick, "Psychology of Social Reconstruction", outline this view of the new approach to economics.

24. "Essay on Liberty", p.205.

25. Mill, J.S., op. cit., p. 187.

26. Ross, "Principles of Sociology", pp. 433-9

27. Ross, "Social Psychology", p. 208 and p. 231 ff.
Cooley, "Social Organization", pp344-9.

28. Todd, A. J., "Theories of Social Progress", pp. 512 ff.

29. Lamprecht, K., "What is History?", pp. 39-88.
Adams, Henry, "Degradation of the Democratic Dogma", chapter on "Rule of Phase Applied to History", pp. 267-310.

30. Todd, op. cit., p. 422.
Croly, "Progressive Democracy", ch. XIX, "Social Education", p.426ff.

31. Bagehot, W., "Physics and Politics", pp 161-4.
Follett, op. cit., Appendix, p364.

32. Todd, op. cit., pp. 525-6.

33. Follett, op. cit., p. 367 ff. has a suggestive treatment of this idea.

34. Giddings, "The Responsible State", pp. 106-7, says the state must based on the character of the people.
Lindsay, S.M., Teachers College Record, Sept,, 1916, p.324, says, "We need in America, a social psychology that will instill in the youngest pupils in the public schools and will disseminate thru the entire population of all ages, the spirit of faith in public service and willingness to participate in public service for the state, not because the state is superior to the individual..... but because ir is our collective organization for doing things we cannot do as individuals".

CHAPTER III.

35. Allport, F. H., "Influence of the Group on Association and Thot", Journal of Experimental Psychology, June, 1920.
Bagehot, op. cit., p. 204.

36. Wilson, Woodrow, Speech at Kansas City, May 5, 1911.
Bryce, op. cit., 1910 rev., vol. I, pp. 464 and 556.
Croly, "Progressive Democracy", pp. 136-7.
Croly, "The Promise of American Life", pp. 319-20.

37. Representative B---- assures me that at least 40 and possibly 50 of the members of the House do not vote intelligently. They do not know what 90% of the bills are really about, what would be the effect of them if they were passed. He related the following

incidents as cases in point. In the fourth week of the session a member whose seat was next to his leaned over and said, "Say-uh-ah-why-er-I always thot we got a chance to vote on some of these here measures, but all they do is refer 'em to committees". I suggested that the man had a sense of humor, but Mr. B---- assured me that he was deadly in earnest. Thinking to test the knowledge of another grave Solon to see if the friend who wanted to vote was merely an accident, Mr. B---- approached him and said apologetically that he was a little new at the business and would appreciate a little information if said Solon would be so kind. S. S. was obviously pleased. So my friend asked what they meant by a 'market road'. Solon drew himself up proudly and deposed as follows, "A market road? Uh- a-why a market road is a road connecting two state highways!" My friend appeared to be very grateful and mightily impressed with the wisdom of Solon. Then he asked what a post-road was. Solon never even hesitated. "A post-road! Why, a post-road is one running over a hill!" My friend's conclusion is that there is no honor in being a member of the state legislature if a man has any self-respect. He said he was about decided to introduce a bill to abolish both houses and substitute a "commission form" of state government.

38. Reed, "Forms and Functions of American Goverhment", pp. 15 & 30.
Smith, J. A., "Spirit of American Government", pp. 18-21.

39. Dodd, "Revision and Amendment of State Constitutions", p 24.

40. Dodd, op. cit., p. 29.
Beard, "An Economic Interpretation of the Constitution", ch. V.
Beard says 5/6 of the interests represented by the group that adopted the constitution were economic.

41. Reed, op.cit., p. 33.
Croly, "Progressive Democracy", pp. 248-50.

42. Smith, op.cit., ch. IX and p. 235.
Croly, in reference cited in 41, emphasizes the effect of the judicial ascendancy.
Adams, Brooks, "Theory of Social Revolutions",p. 4, and pp. 218-26.

43. Croly, "Promise of American Life", p. 67; p. 321.

44. Dodd, "Revision and Amendment of State Constitutions", pp. 132-6.

45. Croly, op. cit., p. 319. "It must be as radical as are the existing abuses and disorganization."

46. Croly, "Progressive Democracy", pp. 298-302.
National Municipal L. Convention, Indianapolis, Nov., 1920.
Beard, "American Government and Politics", pp. 519-20.
Franklin, B., "Life and Writings" (Sparks), vol. V, p.164.
Sheldon, A.R.,"Science of Politics", p. 238.
Ford, H.J.,"Cause of Political Corruption",Scribners, vol.49:60ff.
Barnett, J.D., "Bicameral System in State Legislatures", Am.Pol. Sci. Review, Aug., 1915. Dr. Barnett's summary is particularly pertinent to conditions in Oregon.
Mathews, J.M., "Principles of American State Administration",p508ff
Holcombe, A.N., "State Government in the U,S.", p. 478.

47. Wallas, G., "The Great Society", pp. 260 & 272.
Follett, op.cit., p. 33 ff.

48. Matt., 7:16-20.

49. House and Senate calendars, 1915, 1917, 1919.

50. Oregon Session Laws, 1917, 1919.

51. House and Senate calendars, 1919.

52. Senate calendar, 1919.

53. Oregon Voter, Jan. 13, 1917:'the Lobby constitutes the Third House of invisible, irresponsible, selfish legislators'. It names the following interests represented by flourishing lobbies: timber, grange, railways, power companies, and private interests such as automobile companies, etc. Paving, road and port lobbies might be added to the list.

54. Bryce, "American Commonwealth", 1910 rev., vol. I, p. 464.

55. Humphreys, J. H., "Proportional Representation", p. 10, states Mill's famous doctrine that the mihority must be adequately represented.

56. Commons, J. R. , "Proportional Representation", (1896) p. 185.

57. Moore, B.F., "History of Cumulative Voting and Minority Representation in Illinois, 1870-1919", p. 70. "Cumulative voting intensifies party "bossism" and machine control..... merely gives minority representation".

58. Smith, J.A., "Spirit of American Government", p. 211.
Croly, H., "Progressive Democracy", pp. 343-4.

59. Voting along strict party lines seldom occursin the legislature. The chief sortof partisanship shown is sectional. The predominance of Republicans in the legislature is not due entirely to the fact that the people elect merely party men, but rather that they do not know the men whom they elect very well and when in doubt they give preference to the party candidate.

60. Commons, J.R., op.cit., pp. 169-70.
Humphreys, J. H., op.cit., p. 225.

61. Oregon House Calendars for 1917-19 sessions show 63 and 61 standing and special committees for the respective years; Senate Calendars for 1915 and 1919 show 54 and 48 respectively. That this is not confined to Oregon is shown in H. W. Dodds' "Procedure in State Legislatures", p. 40. Iowa House has 61; Kansas House,55; Michigan Senate, 62; Kentucky House, 70. Dodds says these examples are among the worst, so it is easy to see where Oregon stands, particularly when we consider that Oregon has smaller sized legislatures than many other states.

62. Wallas, G., "The Great Society", p. 241.

63. Wallas, G., op.cit., p245-7.

64. Allport, F. H., "Influence of the Group on Association and Thot", Journal of Experimental Psychology, June 1920.
Follett, op. cit., p. 40 ff.
Bentley, M., "Studies in Social and General Psychology", Psychological Monograph no. 92, June , 1916.

65. Follett, op. cit., p. 40.

66. Wallas, G., op.cit., p. 271.
Mill, J. S., "Representative Government", p. 109.
James, H. G., "Reorganization of State Government", Political Science Review, vol. 9: 298.
Dykstra, C. A.,"Reorganization in Kansas", Pol.Sci.Rev. v.9:264-72.
Beard, C. A., "Reconstructing State Government", New Rep. 8/21/15/
Hodges, G.H., Address to the House of Governors, Colo.Springs, 1913.

67. Hodges suggested 16 members.

68. Croly, H., "Progressive Democracy", p. 274 ff.

69. Croly, op. cit., p. 273.

70. Oregon Blue Book, 1919-20, p. 161.

71. James, H. G., op.cit., Pol. Sci. ~~Rev.~~ acad., vol. 9:302.
Croly, op.cit.,p. 283.
Jefferson, Writings of, (Washington edition-1854) vol. 8:363-7.

72. "Representative Government", ch. vii. p53-4 of Peoples' Ed.

73. Humphreys, J.H.,"Proportional Representation", p. 13.

74. Lenin, N., "The State and Revolution".
Cole, G.D.H., "The World of Labor".

75. Follett, op.cit., Ch. XXXIII.

76. Ross, E. A., "Principles of Sociology", pp. 54 & 471.
Cooley, C. H.,"Social Process", pp. 348 & 419.

77. Cooley, op. cit., pp. 249-50.

78. In a sense, has a "soviet" government, - a "legal soviet". In the 1921 session, 16 members of the Senate and 21 of the House were lawyers. Oregon Voter, 1/1/21/ In 1919 the percentage was about the same. In 1917, there were 33 lawyers and 11 bankers in both houses. Oregon Voter, 1/6/17. These figures are sufficient to show that the lawyer element is the predominant one. We have practically surrendered the whole govermental function to the lawyers. They make the laws, and then proceed to try the rest of us by them.

79. Bryce, "American Commonwealth", (1910), p. 556.
Croly, H.,"Promise of American Life", pp. 328-9.
Beard, C. A., "Initiative, Referendum and Recall", pp. 48 & 62.

80. Cooley, "Social Process", p. 419.

81. The methods of conducting such an election are explained at length in Supplement no. 50 to the Proportional Representation Review of April, 1919. (Third Series) These would need some modification to fit particular cases, such as application to a whole state, or use in recall elections.

82. cf. the Model State Constitution of the National Municipal League "adopted" at the convention in Indianapolis, 11/17-19/20, reported in the National Municipal Review, Nov., 1920 & Jan.,1921.

83. From an abstract furnished by the Secretary of State, 1921.

84. Proportional Representation Review Supplement, April, 1919, p. 4.

85. cf. sec. 5, Model Constitution of the National Municipal League, in National Municipal Review, Nov., 1920.

86. Hughes, C.E.,"Fate of the Direct Primary", National Municipal Review, Jan., 1921.

87. Barnett, J.D., "Operation of the Initiative, Referendum and Recall in Oregon", p.186.

88. Taft, W.H., "Selection and Tenure of Judges", 38 American Bar Association, 1913, p. 422.

p. 3,

89. In the National Municipal Review, Jan., 1921, J. D. Barnett says 'there is opinion that the initiative and referendum law has about run its course in Oregon and that the use of it will gradually die out'.

90. Ross, E. A., "Principles of Sociology", p. 550.

91. cf. National Municipal League's "Model Constitution", sections 12 and 13, National Municipal Review, Nov., 1920.

92. Weber, G. A., "Efforts for Improvement of Methods of Administration", p. 363.

93. Oregon Session Laws, 1919, pp. 232-3.

94. Weber, G. A., op. cit., pp. 327-50. Ala., Ariz., Calif., Ill., Ind., Kan., My., Mich., Mo., Mont., Nebr., N. H., N. Car., N. Dak., Ohio, Pa., R. I., S.Dak., Ver., Va., W. Va., Wis.

95. Weber, op. cit., pp. 353-63. Calif., Conn., Ga., Iowa, Maine, Mass., N. J., N. Y., Oreg., Tex./ Oregon should be included in the above list, too, (94) on account of the act of 1919 which expires in July 1921 unless renewed by the present legislature (1921).

96. Weber, op. cit., pp. 350-1.

97. Chamberlain, James,"Legislative Drafting and Reference Bureaus", Survey, Jan. 6, 1917, holds they should be united.

American Bar Association Report, 1913, is neutral but hold that they should at least work together in a very closely cooperative way. Since the reference is more or less preliminary to the drafting, if there is to be any hegemony it should be in the latter department. p. 622.

98. Weber, op. cit., p. 315.

99. Chamberlain, cited above.
American Bar Association Report, 1914,pp. 637-9.

100. Barnett, J. D., "Operation of the Initiative, Referendum and Recall in Oregon", pp. 210-13.

101. Barnett, op. cit., p. 106.

102. Barnett, op. cit., p. 124-5. "At least the equal of representative legislation".

103. Oregon Constitution, Ar. IV, sec. 1.

104. House Journal, 1905, p. 210.

105. Session Laws, 1915, 1917, 1919. (Oregon)

106. Oregon Constitution, Ar. IV, sec. 1.

CHAPTER IV.

107. Letter to writer from Omar H. Wright, Director of Finance, of date April 1, 1920.

108. First and Second Annual Reports of Illinois Director of Finance,, June 1917-June 1918 amd 1918-19.

109. Report of Oregon Consolidation Commission, 1918, p. 5.

110. Of the 17 states reported by Moley, R. in no. 90, Bureau of Municipal Research, 10 of them had "economy" or its equivalent in the title of the commission,

111. Todd, A.J., "Theories of Social Progress", p. 60.

112. Cooley, C. H., "Social Organization", p. 313.

113. Cooley, "Social Process", p. 252.

114. Croly, H., "Promise of American Life", pp. 338-41.

115. Bureau Municipal Research, Bullitin no. 63, 1915, pp. 576-77.

116. Gov. Lowden's (Ill.) Biennial Message, Jan. 8, 1919.

117. Oregon Blue Book, 1920.

118. Report Oregon Consolidation Commission, 1918, pp. 10-11.

119. Cremman, C. H., "Survey of State Organization and Plan of Reorganization", pp. 37-44.

120. Mathews, J. M., "American Principles of State Administration", p. 171.

121. Wisconsin Blue Book, 1919, pp. 215-30.

122. Weber, G. A., "Organized Efforts for Improvement of Methods of ~~Stat~~ Administration", pp. 114-61, notes 18 states as follows: N.J., Mass., N. Y., Pa., Ill., Minn., Iowa, Conn., Kan., Ala., Colo., Va., La., Tex., Oregon, O., S. Dak., and Miss. Bur. Mun. Research Bul. no. 90, Oct., 1917, p. 2., mentions Wis., W. Va., in addition. Idaho, Nebr., and Wash. should be added.

123. Cremman, op. cit., p. 33.

124. General Laws of Mass., Ch.350, part I, section 1, 1919.
Civil Administrative Code of Illinois, 1917, sec. 3. /1919/
Idaho Senate Bill 19,-Administration Consolidation Bill, Ar I, sec 2.
Wash. Gen. Laws, Ch. 7, sec. 2, 1921.
Final Report Oreg. Consol. Commission, 1919, sec. 3, p. 5.
N. Y. Constitution, 1915, (rejected) Ar. IV.
Iowa Commission on Retrenchment and Reform, 1914, pp. 10-12.
Minn. Final Report of Economy and Efficiency Commission, pp. 2-4.
National Municipal Review, Oct., 1920, p 636.

125. Idaho Civil Administration Consolidation law, 1919, Ar. I, sec 1.

126. National Municipal Review, Oct., 1920.

127. Final Report Oregon Consolidation Commission, 1919, sec. 3, p. 5.

128. Wash. General Laws, Ch. 7, sec. 2, 1921.

129. Idaho Senate Bill 19, sec. 2, p. 4, 1919.

130. Citations are in the order mentioned in the text:
Final Rept. Oreg. Consol. Com.,1919, sec. 12, pp. 9-10; sec. 17, p.14.
Wash. Gen. Laws, 1921, Ch. 7, sec. 96-100 from p. 49 to 56, section 54, p. 31.
Idaho Sen. Bill 19, 1919, sec. 31, pp. 18-9; sec. 28, pp. 15-6.

131. Wash. Gen. Laws, 1921, Ch. 7, pp. 10-2.

132. Oreg. Consol. Com. Rept., 1918, p. 19.

133. Oreg. Consol. Com., Final Rept., 1919, sec. 21, provides that commissioners of education and labor be elected.

134. Oreg. Consol. Com. Final Rept., 1919.

135. Croly, "Progressive Democracy", pp. 364-9.

136. Duguit, L., "Law in the Modern State", p. 161. (tr. Laski, 1919)

137. Duguit, op. cit., pp. 149 ff. As early as 1872 (p. 155) the Court of Conflicts rendered a decision that a certain cause was "administrative" and refused to decide it on yhat grounds. Since then the growth of administrative law has been stady and persistent until now the power of the administrative courts is practically sypreme in their own fields.

138. There is a suggestion of this idea in the Wash. Civil Administration Code, 1921, sec. 106.

139. This "cabinet meeting" would serve somewhat the same purpose as the proposed "Legislative Council" of the National Municipal League Model Constitution, Nat. Mun. Rev., Nov., 1920.

140. Crennan, C.H., "Survey of State Executive Organization and a Plan of Reorganization", p. 67.
Proposed Constitution of Ohio, Nat. Mun. Rev., dec.(?) 1920.
Crennan, op. cit., p. 59,. His conclusion is doubtful.
Rept. Ill. Efficiency & Economy Com., p. 148.
Rept. Oreg. Consol. Com., 1918, pp. 13.

141. Bur. Mun. Research, bullitin no. 90, Oct., 1917, pp. 55-9.

142. Oreg. Consol. Com. Rept., 1918, pp. 14-5.

143. Oreg. Consol. Com. Rept., 1918, p. 42.

144. Hanford, A. C., "Report on Civil Service Laws", Ill. Effieiency and Economy Committee, Appendix 12, p. 920 ff.

145. Hanford, op. cit., pp. 930-8.

146. Bur. Mun. Research, bul. no. 90, Oct,, 1917, pp. 70-85.
" " " " " 91, Nov., " the whole pamphlet.
" " " " " 62, June,1915, " " "

147. Holcombe, A.N.,"Organizing Democracy", New Republic, July 17, 1917.

148. Holcombe, "State Government in the United States", p. 282. "Growth of the veto made the governor the chief legislator".
Mathews, J. M., "Principles of American State Administration", p.36.

149. Crennan, Op. cit., p. 79.
Beard, C. A., "Reconstructing State Government", New Rep., Aug. 21,'15.

150. Croly, "Progressive Democracy", pp. 168-83.

CHAPTER V.

151. Montesquieu, "The Spirit of Law", (Nugent's tr.) pp. 162-74, vol. I.
Blackstone, W., "Commentaries on the English Law", (Lewis' tr.) vol. 1, Ch, II, "Of the Parliament" states the supremacy of Parliament, but Ch. III, "Of the King and his Title" states that the executive is just as supreme in its field. From Ch. VII, in which the king is called the "fountain of justice", we deduce that there was no doubt in the mind of Blackstone that the judiciary is merely a subordinate of the executive power.

152. Blackstone, op. cit., vol. 1,p. 41. The judge cannot alter the common law and ought to follow precedent in all other cases. Thus there is a conflict between his ideas of the static, unvarying common law and the sovereign, law-making power of Parliament. In the chapter on "Of the Nature of Law in General" he deduces human law from divine, unerring law, or at least draws a very close analogy, from which it follows,....."subsequent judges do not pretend to make a new law, but to vindicate the old one from misrepresentation. For if it be found that the decision is manifestly absurd or unjust,it is declared, not that such sentence was "bad law", but that it was "not law", that is, that it is not the established custom of the realm as had been erroneously determined. ....law is the perfection of reason. What is not reason, is not law". pp. 58-9. This has no importance, of course, except as showing how the static idea of static law arose. Blackstone has been the patron saint of American lawyers to a greater degree, probably, than he has been to the English.

153. Ransom, W.L., "Majority Rule and the Judiciary", pp. 4 & 176.
Roosevelt, T., "Right of the people to Rule", Outlook, March 23, 1912, p. 620, and other writings.
Smith, J.A., "Spirit of American Government", p. 92.
Adams, Brooks, "Theory of Social Revolutions", p. 75.
Davis, H.A., "Judicial Veto", pp. 44 & 121.
Beard, C.A., "Supreme Court and the Constitution", pp. 17 & 51.
Beard's conclusion is that the Convention which made the Constitution did not intend to confer judicial veto upon the courts; Davis' argument is that the states which adopted the Constitution did not expect the Supreme Court to exercise that power. He agrees with Beard's findings as to the Convention. op. cit., p. 113.
Freund, Dodd, Clark, (J, Walter) Jackson H. Ralston and others might be cited to the same effect.

154. Judge Wannamaker, Ill. State Bar Association, 1912, pp. 181-2, says, "The exercise of this unwarranted power and usurped power against the public interest, against the public health, safety and life, has done more than any other single thing to arouse the present popular hostile feeling towards our courts of last resort."

155. De Tocqueville, "Democracy in America", vol. 1, ch. V.

156. Bryan once said that he was 'not criticizing the Supreme Court,- he was merely disagreeing with it; if one wanted to read criticisms of it, they should read the dissenting opinions.' Haines, C.G., "The American Doctrine of Judicial Supremacy", p. 327, shows that of the 78 cases in which statutes were set aside by the United States Supreme Court, 1901-1907, the voting was as follows:

In 29 cases, 5 to 4;
in 46 cases, 6 to 3;
in 3 cases, 5 to 3.

Evidently there is some grounds for Bryan's remark.

157. Merely intended as examples, not as a difinitive list.

158. Pound, R., "Justice According to Law", Columbia Law Review, Dec.-Jan.-Feb., 1913-14, pp. 1-5.

159. Pound, op. cit., p. 9.

160. Pound, op. cit., pp. 59-61.

161. Oregon Daily Journal, Dec. 13, 1918. (editorial)

162. Oregonian, Feb. 13, 1921.

163. Senate Joint Resolution no. 2, 1917 session.
Report of Commission on Law Reform, printed by Oregon State Bar Association, Dec., 1918.

164. pp. 4-6 of foregoing.

165. pp. 12-7 of same.

166. See citation in 164.

167. Letter to writer from Justice Henry L. Benson, Feb. 18, 1921, "It is safe to say that ill-considered, slovenly drawn bills is the cause of an appreciable portion of the Court's labor".

168. Werner, P., "Jury Trials versus Voluntary Tribunals", Public, Sept. 13, 1919, pp. 980-2.

169. 211 Mich. Repts., pp. 622-38.

170. 211 Mich. Repts., p. 623, J. Sharpe's opinion.

171. "Preventative Justice", New Republic editorial, Jan. 19, 1921, pp. 218-9.

172. Blanchard, E. M., The Declaratory Judgement", New Rep., January 12, 1921, p. 192.



173. Justice Benson to writer, Feb. 21, 1921, "The delays and expenses of litigation are largely due to the attorneys themselves. The only effective remedy appears to be the education and reformation of the bar".
Storey, M., "Reform of Legal Procedure", p. 32 ff.

174. Pound, R., "Social Problems and the Courts", Journal of the American Judicature Society, vol. 18:332-3.
Ross, E. A., "Principles of Sociology", p. 477.

175. "Efficiency in the Administration of Justice", p. 119, Eliot, Pound, Brandeis, et al, for the National Economic League. (no date)

175. Pound, R., "Justice According to Law", Columbia Law Review, 1913-14, p. 14.

176. James, H.G., "Reorganization of State Government", Acad. Pol. Sci., vol. 9:302-3.

177. Taft, W.H., "Selection and Tenure of Judges", 38 Am. Bar. Assn., 422.
Storey, op. cit., pp. 177-80.

178. Report of Commission on Law Reform to Greg. Leg., 1918, p. 15.
Kales, A.M., "English Judicature Acts", Journal of the American Judicature Society, Feb., 1921, pp. 135 ff.

179. Blount, W.A., "Struggle for Simplicity of Legal Procedure", 38 Am. Bar Assn., p. 466.
Pound, R., "Practical Progress of Procedural Reform", 22 Green Bag, p. 443.
Hudson, M.V., "Proposed Regulation of Missouri Procedure by Rules of Court", 13 Law Series, U. of Mo. Bul., vol. 17, no. 13, p 27-9.
"Efficiency in the Administration of Justice", Pound, Storey, et al, for National Economic League, p. 18. (no date).

180. Olson's Oregon Code, (1920) sections 916 & 924.

181. Oregon Commission on Law Reform Report, 1918, p. 15.

182. Pound, R., "Practical Progress of Procedural Reform", 22 Green Bag, 443.

183. Letter to writer, Feb. 18, 1921.

184. Storey, M., "Reform of Legal Procedure", p. 100.
Mathews, J.M., "Principles of American State Administration", p. 467.
Report on "Efficiency in Administration of Justice" for Am. Eco. L., Pound, Storey, Brandeis, et al, p. 27. (no date).

185. Mathews, op. cit., p. 465.
Holcombe, A.N., "State Government in the United States", p. 354.

186. Goldman, M. C., "Public Defender", Public, Sept. 6, 1919, pp. 955-7.

187. Storey, "Reform of Legal Procedure", p. 98.

188. Sunderland, E.R., "Inefficiency of the American Jury", 13 Mich. Law Review, Feb,,,1915,,pp. 306-9.
Storey, M., op. cit., p. 142.
Natl. Eco. L. Rept. on "Efficiency in Administration of Justice" by Pound, Storey, et al, pp. 26-7.

189. Sunderland, op. cit.,pp. 309-14.
Perkins, W. B., "Some Needed Reforms in Methods of Selecting Juries", 13 Mich. Law Rev., Mar., 1915, p. 393.

190. Werner, P., "A Substitute for Jury Trials in Civil Cases", Public, Sept. 6, 1919. We have cited and outlined his plan of voluntary tribunals above, vide note 168.

191. Storey, op. cit., ch. II.

192. Olson's Oreg. Laws, (1920) sec. 157.
"Exhibit 4" of the report of the Oregon Commission for Law Reform, 1918, p. 26, indicates that the courts were also about two years behind their dockets. Of 9,982 cases filed, only 3, 874 were tried and 2,081 of these were uncontested divorces.

193. A friend of mine, Mr. B----, has a large business the nature of which involves a great many civil suits. He says he shudders everytime he has a case which has to go to a jury. He knows that either he or his opponent is going to have injustice done to him. But if the case can be tried by a judge, he says he always feels satis-

-fied even if the decision goes against him. The jury trial always takes on the nature of a fight--and his nature urges him to win all of hid fights if he can. The judge trial takes on the nature of a conference,-- and his nature is to come to a fair agreement with people who want to do the right thing by him even if he has to make sacrifices of interest to do so.

194. Blackstone, W., vol. IV, (Lewis' edition) pp. 135-5. Maintenance, barretry, and champerty were crimes at common law. The English have always enforced this ~~xxux~~ rule mudh more strictly than we have. Even where maintenance cannot be proved, the English judge has no hesitancy to assess costs of court to an attorney who appears to be entering merely litigious cases. The English regard their courts as instruments of justice, while we appear to regard ours as self-ordained protectors of private property, personal privilege and a sort of legalistic prize fight.
Kales, A.M., op.cit. p. 132.

CHAPTER VI.

195. Cooley, C.H., "Social Organization", p. 323.
196. Giddings, F.H., "The Responsible State", p. 61.
Ellwood, C.A., "Sociology in its Psychological Aspects," p. 126.

197. Todd, A.J., "Theories of Social Progress", p. 351.

198. Elwood, op. cit., p. 36-7.

199. Ross, E.A., "Principles of Sociology", p. 617.

200. Cooley, "Human Nature and the Social Order", 90 ff.
Ellwood, op. cit., p. 143.
201. Todd, op. cit., 547.
Baldwin, J.M., "Social and Ethical Interpretations", P. 539.
Baldwin, "Individual and Society", p.156.
Ross, op. cit., p. 104. The unsocialized person commits crime, suicide or goes insane.
201. Gumplowicz, L., "Outlines of Sociology", p. 85.
Cooley, "Social Organization", p. 23 ff.

202. Comte, A., "Positive Philosophy", (tr. H. ~~Maxixxxxxx~~ Martineau) vol. II, p.65.

203. Eph.,4:25; I John, 3:18.

204. Cooley, "Social Process", p. 418.

205. Follett, M.P., op. cit., Chap. XXIX.

206. Cooley, op. cit., pp. 43-51.
Todd, op. cit., p. 16.
Ross, op. cit., preface, p. viii.
Ellwood, op. cit.,pp. 388-95.

207. Bentley, A. F., "The Process of Government", pp.210, 217,222, 261.
Cooley, "Social Process", p. 250.

208. Patten, S.N., "The New Basis of Civilization", p. 118.

209. Ellwood, op. cit., p. 190. "Elaborate a group will".
Cooley, "Social Organization", p. 395.

210. Hughes, W.R., "New Town", pp 99 & 106.
rogressive Democracy", chap. XIX.
it., pp. 408-9.

"Physics and Politics", pp. 200 & 204.

"On Representative Government", p. 96.

"Restructing State Government", Supplement to
blic of August 21, 1915.
ise of Americah Life", pp. 337-8.
t., p. 104.

214. Wigmore, J.H., "Lessons from Military Justice", Journal of the American Judicature Society, vol. 4, no. 5, Feb. 21, 1021, p.153.

215. Laski, H.J., "Democracy at the Cross-roads", Yale Review, Jl, '20.
t, op. cit., p.142.
"Social Process", p. 417.
Problem of Sovereignty", p. 25.

, op. cit., pp. 335-40.

, op. cit., p. 342.
op. cit., p. 406.
op. cit., p. 21.

., L., op. cit., p. 206.

"Progressive Democracy", p. 424-5.
, op. cit, p. 148.
t, op. cit., p. 360.
E. A., "Social Psychology", p. 130.

221. Giddings, F. H., "The Responsible State", pp. 107 & 108.