POPULAR SOVEREIGNTY IN MISSOURI

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The term "popular sovereignty" generally suggests the idea of a political society in which the ultimate source of authority resides in the people. All participation by the people in the processes of government might be construed as acts of sovereignty. In the literature of political science, however, the term "popular sovereignty" frequently finds a more restricted application, referring simply to those procedures which enable the people to participate directly in the adoption and revision of their fundamental law and in the enactment and modification of ordinary legislation. It is in this more limited sense that the subject of popular sovereignty in Missouri will be discussed in this article.

While neither the Federal Constitution, nor the early state constitutions emanated directly from the people, in the sense at least that the people ratified them before they went into effect, the spread of the democratic idea during the nineteenth century made popular ratification generally compulsory for the state constitutions. As weaknesses developed in our governments, the shortcomings were attributed not to the limitations of the sovereign people, but to the representative character of democratic institutions. The sentiment developed that the cure for the ills of democracy was more democracy. As a consequence during the early part of the present century, western states supplemented established procedures by new devices known as the initiative and referendum. These were designed to short-circuit the legislative machinery and to enable the people directly to adopt and to amend constitutions and statutes. Missouri was one of the states affected by these trends.

1. Constitutional Revision and Amendment

(a) *Procedure*

(1) *Proposals Submitted by a Convention.*

Let us consider first the role of the people in the constitutional revision process. In Missouri, there are three different procedures available for revising or amending the constitution. These

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are submission of amendments or a revised constitution to the people by a constitutional convention, proposal of amendments by a joint resolution of the general assembly, and proposal of amendments by citizens' petitions. All three of these methods require that the proposed amendments or revision be ratified by the people before becoming effective.

The three most important points of popular contact with the constitutional convention procedure are, first, to determine whether there shall be a constitutional convention, second, to elect the delegates to the convention that will have the responsibility of drafting a new constitution, and, third, to approve or reject the constitution submitted.

The general assembly may at any time refer to the people the question, "Shall there be a convention to revise and amend the constitution?" This may be submitted at a general or special election as the legislature may require.[1] This arrangement is the one commonly found in the states for the calling of constitutional conventions. It should be noted that the matter of submitting the question is purely discretionary with the legislature.

In Missouri, however, there is the additional provision in effect since 1920 which requires that the question of calling a constitutional convention shall be submitted in 1921, and "at each general election next ensuing the lapse of twenty successive years since the last previous submission thereof."[2] Unfortunately the provision does not state who shall submit the question. Under an accepted doctrine of constitutional construction, the fulfillment of a mandatory obligation when the responsibility has not been definitely conferred ordinarily rests with the legislative branch. Since the question was due for submission in 1942, it was generally assumed that the legislative session of 1941 would have to pass enabling legislation for this purpose. When the session adjourned without action on the matter, interested citizen groups hoped that the secretary of state would assume responsibility for getting the question before the voters. In November of last year, the secretary announced that the question would be submitted as required by the constitution. There appears to be substantial authority for the secretary's decision

1. Mo. Const. (1875) art. XV, §3.
2. Mo. Const. (1875) art. XV, §4.

because the constitution and R. S. Mo. (1939) §11676 by reasonable construction place a mandatory and ministerial duty upon the secretary of state to submit the question.[3]

The second step in the convention procedure in which the people participate is in the election of the convention delegates. It is a common arrangement in the states where the submission of the question is left to the legislature for that body to prescribe the procedure to be followed in the election of the delegates. In Missouri, however, the procedure is prescribed in detail by the constitution in the amendment adopted in 1920.[4] Apparently the intention of the arrangement is to assure a combination of a bi-partisan and non-partisan convention. Two delegates are to be elected from each of the thirty-four senatorial districts, and fifteen delegates are to be elected at large. Each party is restricted to the nomination of one candidate for delegate in each senatorial district, and such nomination is to be made in the manner prescribed by the senatorial committee of the respective parties. Delegates-at-large are to be nominated by petitions. The number of signatures on such petitions must equal five per cent of the vote cast for governor at the last general election in the senatorial district in which the candidate for delegate resides. The voter receives two ballots: one for the senatorial district delegate, and one for the delegates-at-large. The ballots for electing the district delegates must carry the party labels of the respective candidates, while those used for the delegates-at-large may not use any party designation whatever. While the voter is restricted to one vote for district delegate, he is permitted to vote for fifteen delegates-at-large. In the election, the two leading district candidates in each senatorial district and the fifteen leading candidates in the state for delegate-at-large are declared elected.

It is not the purpose of this paper to approve or to condemn this plan. To devise a satisfactory and acceptable system for the election of delegates to a state constitutional convention is not easy. Under the Missouri scheme, the election of the district delegates would seem to be a cut-and-dried affair, since the nominees of the two major parties would be assured of election. The strategic position in this situation is held by the senatorial

3. See Note (1942) 27 WASHINGTON U. LAW QUARTERLY 432.
4. Mo. Const. (1875) art. XV, §3.

committees of the respective parties which prescribe the manner of nomination. While these committeemen are chosen in the direct primaries, their positions as a rule are given the least consideration by the rank and file of the electorate. The arrangement for delegates-at-large to be elected on a non-partisan ballot appeals as the redeeming feature of the plan. Even here it is not likely that partisan considerations will be eliminated. In electing the delegates for the 1922-1923 convention, the state committees of the two major parties agreed to the nomination by each party of seven candidates for delegates-at-large, and jointly nominated a candidate for the fifteenth delegate-at-large, so that the entire convention was bipartisan in membership. "This arrangement" to quote a recognized authority on the work of the convention, "prevented the consideration of questions involving party differences, except in one case where agreement was secured upon a compromise plan."[5]

The main problem is to devise a plan that will assure a convention made up of men and women of intelligence and integrity representative of all elements in the state. Certainly representation in the parties is important and desirable, but delegates whose partisanship is of the narrow and prejudiced variety would seem to have no place in a constitutional convention. There is an unfortunate tendency among students of government and citizens to place too much emphasis upon mechanism and to ignore that more important factor of political motivation. In the final analysis, therefore, effective participation by all informed and interested citizens in well organized efforts to secure qualified delegates is of the utmost importance. While the Missouri plan is open to criticism, it is conceivable that with the proper preliminary effort a convention of outstanding delegates could be elected.

The third and final opportunity for the people to participate in the convention method of revising a constitution is in the referendum on the proposed constitution. The form of submission is discretionary with the convention. Although in the past a widely used method has been that of submitting the document as a whole for a "yes" or "no" vote, this practice has obvious limitations. A citizen must vote against the entire con-

5. Loeb, The Missouri Constitutional Convention (Feb. 1924) 18 Am. Pol. Sci. Rev. 18.

stitution to prevent the inclusion of an objectionable provision. There is also the tendency on the part of those who are campaigning against ratification to distort the picture, so that the merits of the document as a whole are not properly weighed. To confine the voter to a "yes" or "no" vote upon a matter as intricate and complex as a new constitution denies to the citizen the opportunity for really effective participation in determining the actual contents of the sovereign instrument. Constitutional conventions entail months and even years of arduous labor. They cost large sums of public money. To make the final outcome depend on a simple "yes" or "no" vote involves too great a risk and does not give the handiwork of a convention a fair chance.

The preferred method is to submit a revised constitution in the form of separate and alternative propositions. This was the plan followed by the Missouri convention of 1922-1923, when the draft was submitted to the voters in a series of twenty-one amendments. All changes in an article were included in one amendment, exception being made in the case of propositions where considerable difference of opinion was anticipated. As previously noted, the results were largely negative, but a little was salvaged, and there was at least the satisfaction of knowing that the people had an opportunity of giving discriminating consideration to the work of the convention. A similar procedure was followed by the Ohio convention of 1912 and the Nebraska convention of 1920. In Ohio, out of forty-one separate amendments submitted, thirty-three were accepted. In Nebraska, all forty-one amendments submitted were approved. The New York convention of 1938 submitted a revised constitution in the form of nine separate sections, and six of the nine were accepted.

(2) *Proposals Submitted by the Legislature.*

The second and the most widely used method of revising a state constitution is that of proposal of amendments by the state legislature and subsequent ratification by popular vote. In Missouri, the joint resolution proposing the amendment must be approved by a majority of the members elected to each house. An amendment proposed by the legislature is submitted at the next general election, although the governor has the authority to call a special election for that purpose.[6] In contrast with many states,

6. Mo. Const. (1875) art. XV, §2.

the Missouri procedure is relatively easy and simple. Some states require that the joint resolution proposing the amendment must be adopted by an extraordinary majority, such as three-fifths or two-thirds of the two houses. In others, such as Pennsylvania, the resolution proposing the amendment must be adopted by two successive sessions of the legislature, before it can be referred to the people. In the popular vote, Missouri requires a simple majority of those voting on the propostion in order to make the amendment effective. In several states, including our neighboring state of Illinois, a majority of those voting at the election must approve the amendment. Since the vote on propositions is invariably considerably less than the vote on candidates, such a requirement erects an almost insurmountable barrier to constitutional change.

(3) *Proposals Submitted by Popular Initiative.*

The third and newest method for revising the fundamental law is known as the initiative. This has been in operation in Missouri since 1908. While the methods of proposal by conventions or legislative resolutions have found general acceptance, the constitutional initiative has been adopted in only twelve states. With the exception of Ohio and Michigan, these states are all west of the Mississippi. This device is one of the products of "the Progressive era" of 1908 to 1912. Unlike the older methods, the constitutional initiative operates, at least in theory, independently of any intermediary agent. The procedure as set forth by the Missouri constitution and statutes is as follows: To place an amendment on the ballot a petition containing the full text of the measure and signed by five per cent of the legal voters in each of at least two-thirds of the congressional districts must be filed with the secretary of state not less than four months before the election. The total vote cast for Justice of the Supreme Court at the regular election last preceding the filing of such petition is the basis for determining the number of legal voters required to sign the petition. The amendment is ratified, if a majority of those voting on the proposition approve it.[7]

(b) *Operation*

With this brief description of the possible procedures in mind, we can examine more closely the operation of popular sovereignty

7. Mo. Const. (1875) art. IV, §57.

in relation to constitutional revision since the adoption of the Constitution of 1875. The table which follows lists by years the number of constitutional amendments which have been proposed by the respective methods above outlined and the number of such amendments adopted by the people.

Number of State Constitutional Amendments Proposed and Adopted: 1876-1940

Year	Number Proposed by G. A.	Number Proposed by Initiative	Total Number Submitted	Number Ratified
1878	1	0	1	0
1882	1	0	1	0
1884	2	0	2	1
1886	1	0	1	0
1890	1	0	1	1
1892	1	0	1	1
1894	2	0	2	0
1896	4	0	4	0
1900	7	0	7	7
1902	8	0	8	8
1904	5	0	5	0
1906	2	0	2	2
1908	8	0	8	2
1910	9	2	11	0
1912	5	4	9	0
1914	8	3	11	0
1916	1	2	3	1
1918	6	3	9	0
1920	12	1	13	9
1921	3	0	3	3
1922	3	0	3	2
1924	(Proposed by Const. Convent.)		21	6
1924	4	2	6	1
1926	0	1	1	1
1928	1	1	2	1
1930	3	3	6	0
1932	1	2	3	3
1934	3	1	4	2
1936	2	2	4	3
1938	4	4	8	1
1940	2	5	7	1
Total	110	36	167	56

A study of the table reveals that 167 amendments have been proposed to the Constitution of 1875. Up to 1900, or during the first twenty-four years following the adoption of the present constitution, only 13 amendments were considered. Since 1900, however, there has been a steady flow of amendments to the people. While the period since 1930 does not show the heavy concentration of the two preceding decades, the fact that 8 amendments were submitted in 1938 and 7 in 1940 hardly suggests a letting up of the process. Of the total of 167 submitted, 110 have been proposed by the general assembly, 36 by the initiative method, and 21 by a constitutional convention. It is evident that the initiative method has neither supplanted nor discouraged the use of the general assembly method of proposing amendments, since almost twice as many have been proposed by the latter as by the former in the period since 1908 when the initiative method first became available.

While the impression prevails that Missouri voters vote "no" on amendment propositions, the actual figures indicate that the citizens have ratified one-third of all the amendments submitted. To give the exact figures, 56 of the 167 have been approved. This is not a discouraging average on constitutional referenda. With the exception of three special elections, amendment propositions have always been submitted at the general elections in November of the even-numbered years. In the period from 1900 to 1940 inclusive, amendments have been submitted at twenty-four separate elections, an average for each election of seven submitted and from two to three ratified.

The vagaries of the voters in these elections are an interesting study. At times the mood has been negative, at other times affirmative, frequently it has been discriminating. In seven of the twenty-four elections, all amendments submitted were approved; in another six, all submitted were rejected; in the remaining eleven a sense of discrimination prevailed. When a small number of measures, four or less, is submitted in a single election, the ratio of acceptance to rejection is much greater than when a larger number is submitted. Notable exceptions occurred in 1900 when of seven submitted, all were approved; in 1902, when of eight proposed, again all were approved; and in 1920 when of thirteen proposed, nine were approved.

If we view popular ratification in relation to the different methods of proposal, the figures indicate that the voters show the least respect for measures proposed by the initiative method. Since 1908, when all three methods have been available, thirty-eight per cent of the general assembly amendments have been accepted, twenty-eight per cent of those proposed by a constitutional convention and only twenty-five per cent of those originating with initiative petitions. One might conclude from this that in the matter of constitutional amendments the general assembly has a better sense of what is politically feasible than either initiative sponsors or convention delegates.

To what extent do citizens in Missouri actually participate in elections on amendment propositions? The impression is accurate that votes on measures are never as heavy as votes on personalities. The percentage of participation has been relatively high with respect to measures submitted at the quadrennial general elections when we are electing both a president and a governor. If we consider only the eleven presidential elections occurring during the period 1900 to 1940 inclusive, we find that an average of about sixty-three per cent of those voting for gubernatorial candidates voted on the measures submitted at those same elections. That there is considerable fluctuation in the percentages from election to election is evident from the following table:

Percentage of Those Voting for Governor Voting on Amendments

1900—44%	1916—86%	1932—75%
1904—47	1920—54	1936—67
1908—44	1924—67	1940—53
1912—78	1928—73	

It should be noted that the percentage for any one year is an average figure, since there is a slight variation in the vote on individual propositions. For example, in the 1940 election the heaviest vote cast on the seven propositions was that on the repeal of the conservation amendment. The total vote for and against this measure was fifty-six per cent of the vote cast for candidates for governor. On the amendment providing for the non-partisan court plan, only fifty-one per cent of the voters participated.

If we consider the general elections that occur in the even-numbered years between presidential elections, the vote on propositions is relatively light. During the last ten years, the average vote on propositions submitted at these interim elections has been about fifty per cent of the vote cast for governor at the election two years previous. But the picture that is most discouraging to the advocate of the principle of "direct" democracy is that presented by the vote on measures submitted at special elections. As previously indicated, three such elections have been held: one in August, 1921, to determine whether a constitutional convention should be called and to vote on three amendments proposed by the general assembly; one in February, 1924, to vote on the twenty-one amendments submitted by the constitutional convention; one in May, 1934, to vote on a ten million dollar bond issue amendment for rehabilitating the penal and eleemosynary institutions. In the 1921 special election, the average vote on the propositions was only twenty-three per cent of the total vote cast for gubernatorial candidates the preceding year. In the vote on the constitutional convention amendments of 1924, the average vote was approximately twenty-five per cent of the vote cast for governor later that same year. In the 1934 special election, the combined vote for and against the bond issue amendment was twenty-eight per cent of the total vote cast for governor two years previous.

2. Direct Legislation

(a) *Initiative*

Under the Missouri constitution, it is possible for the people to participate directly not only in the writing of the fundamental law, but also in the framing of ordinary statutory law. Exactly the same initiative procedure available for the adoption of constitutional amendments can be utilized for the enactment of statutes. But resort to the initiative for legislative purposes has been infrequent in Missouri. Although the procedure came into existence in 1908, no initiative statutes appeared on the ballot until 1922, when two measures were submitted. Two were again submitted in 1924; two in 1926; one in 1928 and one in 1930. None has been proposed since 1930. Of the eight submitted, all except one were rejected by the voters.

The reasons for this scant use of the legislative initiative in

contrast with the more liberal use of the constitutional initiative are fairly obvious. Since the five per cent signature requirement applies in either case, citizens sponsoring a measure tend to prefer the form of a constitutional amendment. The latter affords protection both against legislative interference and against attacks on constitutionality. The failure of the initiative procedure in Missouri to distinguish between the method to be followed in amending the constitution and that to be used in adopting ordinary legislation tends to blur to an even greater extent than is commonly true in other states the difference between our fundamental law and our statutory law. Since the initiative provision of the constitution stipulates a signature requirement of "not more than eight per cent," it would be possible for the legislature to make separate requirements for the two types of measures in place of the five per cent now uniform for both. The constitutional convention of 1922-1923 gave extended consideration to this problem and submitted an amendment for modifying the present arrangement. The number of voters required for petitions was to be increased from "not more than eight per cent" to "at least eight per cent" for the initiation of laws, and from "not more than eight per cent" to "twelve per cent" for the initiation of constitutional amendments. The basis on which the percentages were to be figured was made the total vote for governor instead of that for judge of the supreme court, thus still further increasing the number required. The initiative, furthermore, was to be restricted to constitutional amendments and general laws, instead of being applicable to all laws as at present.[8] The voters, however, rejected these proposed modifications of the system.

(b) *Referendum*

Both the constitutional and legislative initiative were designed to enable the sovereign authority to correct legislative "sins of omission." The initiative is essentially a device for positive action. Another device, technically known as "the referendum" and also available in Missouri, was designed to prevent legislative "sins of commission." It is negative in character, since it enables the people to exercise a veto on legislative measures before they go into effect. Petitions to place a measure on the ballot

8. *Official Manual of the State of Missouri* (1923-1924) 522.

must be filed within ninety days after the adjournment of the legislative session which passed the bill on which the referendum is demanded. Not all measures passed by the general assembly are subject to the referendum. The constitution exempts "laws necessary for the immediate preservation of the public peace, health or safety and laws making appropriations for the current expenses of the state government, for the maintenance of the state institutions and for the support of public schools."[9]

By the attachment of "the emergency clause" it becomes possible for the legislature to circumvent the possibility of a referendum on any particular measure. To add this clause, however, requires a two-thirds vote, and this is not always obtainable. The table which follows indicates the number of laws (exclusive of appropriation acts) with the emergency clause attached in relation to the total laws passed during each of the last six legislative sessions:

Session	Number of Laws	Number with Emergency Clause
1931	157	16
1933	153	28
1935	87	28
1937	115	20
1939	338	30
1941	141	24

While the number is substantial, it can hardly be considered excessive. Measures without the emergency clause may not go into effect until after the expiration of the ninety-day period.

The final determination of whether an emergency actually exists is a matter of considerable importance. The Missouri initiative and referendum provisions were copied from the Oregon Constitution, but the Missouri Supreme Court has not followed the Oregon Supreme Court in their interpretation. While the latter held that the legislature had the power, finally and conclusively, to determine whether or not an act is necessary for the immediate preservation of the public peace, health and safety, the Missouri court declared that the question was one for judicial determination. In Missouri, therefore, the legislature cannot prevent an act from being referred to the people, if the supreme

9. Mo. Const. (1875) art. IV, §57.

court should decide that the act is not of an emergency character.[10]

The constitution stipulates a signature requirement of five per cent for referendum petitions, and unlike the initiative procedure permits the legislature no discretion in fixing the percentage. In the amendment proposed for modifying the initiative procedure, there was included a change from "five per cent" to "at least ten per cent" for the referendum signature requirement. It was also proposed that in the case of the referendum the form of the question on the ballot should be changed to read "Shall the act of the general assembly be rejected," thus requiring an affirmative vote to reject instead of a negative vote as under the existing provision. The thought here was that the tendency of the uninformed voter to cast a negative vote would be an advantage instead of a detriment to the legislative act subject to the referendum.[11] Since constitutional amendments or initiative measures are likely to be submitted at the same time that legislative measures are referred, the adoption of the proposed reform would certainly have created a very confusing situation for the voter. It would have meant that in order to approve certain propositions on the ballot, he would have had to vote in the affirmative, and to approve other propositions on the ballot, he would have had to vote in the negative.

Although the referendum has not been frequently used in Missouri, resort to it at least on one occasion aroused a bitter controversy. This occurred in 1922, when fourteen measures which had passed the general assembly were referred to the people, and all were rejected. In the 1920 elections, the Republicans had gained control of both the executive and legislative branches of the state government. The party was pledged to the accomplishment of certain reforms and proceeded to enact legislation accordingly. The fourteen measures referred pertained to reorganization of state and local government and to congressional district reapportionment. In the popular vote on these measures, the Democratic party lined up against the Republican enactments and was successful in securing their rejection. On this occasion, therefore, the referendum made it possible for the minority party to block the legislative program of the party in power. This

10. State ex rel. Pollock v. Becker (1921) 289 Mo. 660, 233 S. W. 641.
11. Loeb, The Missouri Constitutional Convention (Feb. 1924) 18 Am. Pol. Sci. Rev. 26.

intensive partisan use of the referendum provoked sharp criticism of the system and was largely responsible for the procedural changes suggested by the 1922-1923 convention.

There have been only eight other legislative measures subjected to the referendum. Four were referred in 1914, two in 1920, one in 1926, and one in 1938. Of the total of twenty-two measures referred during the thirty-four years that the system has been in effect, the voters have upheld only two legislative measures submitted: a workmen's compensation act and a prohibition enforcement act. The votes on referred measures have been relatively light, generally averaging about fifty per cent of the vote cast for governor.

3. Appraisal and Conclusion

Since 1875, a total of 197 propositions has been submitted to the voters, if we consider all classes of measures. Our study of popular sovereignty in Missouri would be very incomplete, unless we gave at least some indication of the content of these proposals and the reactions of the voters to them. What have the Missouri voters been for? What have they been against?

Let us review, first, the affirmative results. Among the more important items approved have been the following: indictment by information; permitting counties to adopt township government; allowing three-fourths of a jury to find a verdict in civil cases; extending the terms of sheriffs; establishing the system of the initiative and referendum; providing for the periodic calling of a constitutional convention, and prescribing the method of electing the delegates; authorizing pensions or retirement systems for the blind, for firemen, for policemen, for persons over sixty-five years of age, and for teachers; enabling women to hold office; sustaining a workmen's compensation law; prohibiting nepotism in the public service; upholding a prohibition enforcement act; authorizing bond issues to pay soldiers a bonus, to establish a state highway system, to rehabilitate the state's penal and eleemosynary institutions; authorizing the consolidation of St. Louis City and St. Louis County; authorizing absentee voting for soldiers; requiring United States citizenship as a qualification for voting; providing for an executive budget system with an item veto for the governor; creating a conservation commission with broad regulatory powers over the forests and wild life

resources of the state; creating a non-partisan system for the selection of certain judges. There are a number of miscellaneous items involving minor or technical changes which have not been included. The above list is sufficiently complete to give a comprehensive picture of the affirmative results of popular sovereignty in Missouri, in so far as that term applies to the right of the people to pass upon constitutional amendments, initiative measures, and legislative enactments.

Of the total of fifty-nine propositions accepted, fifty-six were in the nature of constitutional amendments. Since such amendments are not always self-executing, it should be understood that many of the measures ratified were only of an enabling character. Only one of the measures accepted was an initiative statute. The remaining two of the fifty-nine were simply endorsements of legislative measures subjected to the referendum. Of the fifty-six constitutional amendments accepted, only nine were proposed by the initiative method. These were the amendments relating to pensions for policemen, a state highway bond issue, the executive budget system, legislative organization and procedure, St. Louis City and County consolidation, the procedure for adopting a new constitution, conservation, teachers' retirement, and non-partisan judges. The initiative statute approved pertained to the raising of funds for completion of the state highway system. These ten measures constitute the net accomplishments of thirty-four years of the initiative in Missouri. Of the remaining forty-seven amendments approved, forty-one were submitted by the general assembly and six by the constitutional convention of 1922-1923.

When we look at the negative side of the story, the list of items rejected is almost too long to permit of enumeration. Some propositions the voters have not hesitated to turn down repeatedly. Increasing the salaries of legislators has been rejected thirteen times. Prohibition was defeated three times. Included among the proposals that have been twice rejected are the single tax, a direct state levy for educational purposes, consolidation and reorganization of the state administrative structure, changing the signature requirements for initiative and referendum petitions. Several propositions suffered defeat at the polls at least once, before they were finally accepted. Included here were

a bond issue for a state highway program, workmen's compensation, the initiative and referendum procedure, pensions for the blind, and teachers' retirement. Occasionally propositions have been submitted to repeal a measure which the people have previously ratified. The people, however, have rejected such repeal proposals. The most recent illustration of this occurred in the rejection by the people of the conservation repeal proposition in the election of 1940. Another test of the staying qualities of popular sentiment will occur this November when the proposal of the last general assembly to repeal the non-partisan court plan will appear on the ballot.

Other items that have been rejected were propositions authorizing or providing for the levying of a dollar poll tax, the removal of the state capitol, the use of voting machines, woman suffrage, local option for counties, reapportioning senatorial and congressional districts, a system of land banks, a county unit system for local school administration, a federated plan of metropolitan government for St. Louis City and St. Louis County, extension of the home rule charter plan for cities, a homestead loan fund, excess condemnation, the state treasurer and county sheriffs and coroners to be eligible to succeed themselves. In addition, the list of rejections includes a variety of propositions relating to special taxes for state and local purposes, to the indebtedness of local governments, to elections and election procedure, and to judicial reorganization.

The application of popular sovereignty has an important bearing upon the constitutional problem which is facing this state at the present time. It is not our intention here to go into all the defects of our constitution and to prescribe the remedies. But the opportunity cannot be missed to point out that the antiquity, the elaborate detail and the highly restrictive clauses that characterize our basic law compel frequent recourse to the amending process. Fifty-six amendments have made it a patchwork affair. Furthermore, amending the constitution has become more and more a method of direct legislation, instead of a method of changing the fundamentals of governmental organization and authority. Unfortunately, the idea has been abandoned that a distinction should exist between fundamental or constitutional law and ordinary statutory law. The Missouri constitution of

today is a document of almost forty thousand words, being surpassed in length by the constitutions of only six states. Constitutions freighted with statutory material create a strait-jacket that renders government impotent when confronted with the rapidly changing needs and intricate problems of modern society.

In conclusion, it is not suggested that we abandon popular sovereignty. It should be apparent, however, that the highly complex and dynamic character of our present social order renders impractical too great dependence upon a system of legislation by direct vote of the people. If we leave out of consideration propositions submitted at the three special elections and consider only those submitted at the biennial general elections, the Missouri voter has had to pass upon the merits of an average of seven propositions at each of the last twenty of such elections. Imposing this excessive burden on the voter tends inevitably to discredit the whole institution of popular sovereignty. Because of the confusion created by the number and intricacy of the measures, many voters refuse to participate in the election on propositions or resolve their doubts by voting in the negative.

The key problem in this whole situation has been the unwillingness of the people to reorganize the general assembly, to enlarge its powers, and to make it a really effective mechanism of government. If we rehabilitate our legislative system, and content ourselves with a constitution that confines itself to the fundamentals of governmental organization and to the rights of citizens, then the application of popular sovereignty might be restricted to its appropriate sphere, namely, that of rendering decisions on broad issues of general and basic importance.

It would not be necessary formally to abandon either the initiative or the referendum. That these instruments are of great potential value cannot be denied. But if we can revise our constitution, make it more simple and flexible, and at the same time improve our representative system of legislation, making it both responsive and responsible, then the need for the initiative and referendum will gradually disappear.

The arrangements in the present constitution for popular participation in constitution and law making are in general adequate and compare favorably with those found in other states. There are, however, several specific problems or suggestions which

might well receive the careful consideration of a constitutional convention. First, the indefinite provision of section 4, article XV should be changed to make definite that it is the mandatory duty of some official, such as the secretary of state, to place the question of calling a constitutional convention on the ballot. Second, the present method of selecting convention delegates might be altered, either to permit the election of delegates not too strictly bound by partisan politics, or at least to enable the people to have a real voice in the choosing of the district delegates. Third, there is obvious need for distinguishing between statutes and constitutional law making by the initiative method. This could readily be done by making a substantially higher signature requirement for proposing constitutional amendments than for proposing ordinary legislation. Fourth, the signature requirement should be based upon the vote cast for governor instead of for justice of the supreme court. The adoption of the new method of selecting judges makes this change imperative. Fifth, with respect to the referendum, it might be desirable to raise the signature requirement and to make the referendum applicable to emergency legislation. The attachment of the emergency clause would permit the legislation to go into effect immediately, but would not operate to exclude it within the ninety-day period from being subjected to a referendum.

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