FOURTH OHIO CONSTITUTIONAL CONVENTION.

The work of the Fourth Ohio Constitutional Convention, which convened in 1912, was a part of the legislation of the period which this volume is intended to represent in history, and it was thought proper to include within these pages a comprehensive review of the great work performed by that august body; therefore, the letter which follows was sent to a number of members, with the result which is shown in the several contributions received. The combined arguments contained in the pages which follow will furnish to posterity a complete understanding of what the different elements in the Convention endeavored to accomplish for the people.

COLUMBUS, OHIO, September 10, 1913.

DEAR SIR:—

I am addressing you upon a subject of great importance to the libraries of Ohio, and I sincerely trust that you will give the matter serious consideration, and, if possible, comply with my request.

The 80th General Assembly of Ohio authorized the publication of a complete history of legislation of Ohio for the years 1909-1913, inclusive, in connection with a history of the State Administration for the years 1909-1912.

I was duly appointed by the Lieutenant Governor of the State, as well as by the Speaker of the House of Representatives, "Legislative Historian," to prepare the first volume of this work, and it is expected that the said history will be continued in the future. A number of gentlemen who were prominent in the late Constitutional Convention have suggested that it would be a very proper thing to include in the aforesaid history, a careful review of the work of the Fourth Ohio Constitutional Convention.

I have concluded that the very best review that could be given of the Convention would be a symposium of views by various gentlemen who were members of the Convention, in the form of a contribution from the several gentlemen who will be invited, yourself being among the number.

Of course it is accorded to each gentleman to express himself fully and fairly, according to his best judgment, as to the work of the Convention, and this without fear of criticism.

This proposed volume of political and legislative history is being prepared entirely without prejudice with regard to any man's politics, and it is hoped that the work, when completed, will prove to be of great value as a book of reference, especially to students in the colleges and high schools of Ohio.

Hoping to hear favorably from you, sir, I have the honor to subscribe myself,

Sincerely and faithfully yours,

JAMES K. MERCER,
Legislative Historian.

HON. HERBERT SEELY BIGELOW,

Delegate from Hamilton County and President of the Convention.

Thomas Jefferson said: "As new discoveries are made, new truths disclosed, and manners and opinions changed with the change of circumstances, institutions must also advance and keep pace with the times."

The people of Ohio had lived for sixty years under a Constitution which was framed when steam locomotives were a greater curiosity than are flying machines at the present time. In 1870 a Constitutional Convention was elected to revise the document, but the work of this Convention was rejected by the people. In 1911 another Convention was chosen, which assembled at Columbus as Ohio's Fourth Constitutional Convention.

New discoveries had been made. New truths had been disclosed. Manners and opinions had greatly changed since the Constitution of 1851 was adopted. The Convention set about the task of providing new political institutions, better suited to the needs of the new generation.

It was a great good fortune that the Legislature in providing for the election of these delegates had prescribed a non-partisan ballot, and that the delegates who were chosen without respect to party lines, did their work in the Convention uncontrolled by consideration of party politics. While there was no division in the Convention according to political parties, there were, of course, two groups in the Convention. These groups were described by Macauley, who observed that "The minds of all mankind are so constituted as to fall in two roughly equal groups—those who cling to the past, distrusting change; and those who instinctively challenge precedent." There was also the irrepressible conflict over the liquor question.

The great issues of the Convention which sharply distinguished these two groups of the so-called conservatives and progressives, were taxation, reform of the judiciary, home rule for cities, and the initiative and referendum. A dispassionate review of the work of the Convention must, I think, lead to the conclusion that this work was faithfully and conscientiously done, and while it displeased some people who are called reactionaries and disappointed others who are called radicals, it reasonably satisfied those who believe that orderly progress is the wisest conservatism.

Those disapproving of the work of the Convention have dwelt much upon the fact that the delegates were elected by a minority of the voters

and that the successful amendments were adopted by vote of a m
The ballot used for the election of delegates was a non-partisar
separate ballot. It received, however, as much attention, more,
than non-partisan and separate ballots for judges and members
school board usually receive. As for the vote cast in adopt
amendments, that was quite as large as could have been expecte
special election. There seems to be no basis for the assumpti
the voters who attended this special election were not fairly rep
tive of those who remained at home.

Echoes of the opposition to the work of the Convention h
died away. There is, of course, grumbling among men who
profession of party politics. The cities which have thus far avail
selves of the home rule power have invariably adopted a non-
ballot for municipal elections. The door is open now to municipa
ship of public utilities. The constitutional bars are down and
ple of Ohio cities are free to go browsing in these pastures v
they like. Naturally this does not tend to sanctify the memor
Convention for those whose political views are colored by their
interest in public utility securities.

The adoption of the initiative and referendum in the form
it took was most strenuously resisted. This was regarded as
drastic departure from the ways of the fathers. It is too soc
whether this change is going to vindicate the criticism of its er
justify the expectations of its friends. The Convention took the
that direct legislation through the initiative and referendum cou
expected to produce the best results unless there were prov
means whereby the voters could secure in convenient form a te
measures to be submitted to popular vote with arguments for an
It is to be regretted that the present Ohio Legislature was re
carry out this provision of the Constitution, apparently on the tl
the publicity pamphlet which the Convention provided for migl
to exploit dangerous doctrines of government. It is also to be
that owing, possibly, to some practical defect in the act providir
publicity pamphlet, the people of Ohio were compelled to vot
first two referendum measures without the information at ha
the Constitution intended they should have.

While there has been this failure on the part of some to
the spirit of the initiative and referendum position of the Cons
should also be said that in several decisions involving the pr
the initiative and referendum the Ohio courts have exhibi
reassuring attitude. They have shown an unmistakable disp
construe and enforce these provisions in the spirit in which

framed. The friends of direct legislation could not express too strongly the satisfaction they must feel over the fact that the courts should have at the outset insisted upon the integrity of the new plan.

The first Constitution of Ohio was written by the friends of Thomas Jefferson. The present fundamental law of the State, like the first, was largely shaped by men who acted upon Jefferson's advice when he said: "Do not be frightened into the surrender of true principles by the alarm of the timid or the croakings of wealth against the ascendency of the people."

The work of the Convention is still under fire. But the delegates were men to whom a great opportunity came. They met that opportunity with a high purpose.

Whatever the dispassionate verdict of history may be, the members will always be able to look back to their service in Ohio's Fourth Constitutional Convention and say, with Lincoln:

"I do the very best I know how, the very best I can, and I mean to keep on doing so until the end. If the end brings me out all right what is said against me will not amount to anything. If the end brings me out wrong ten angels swearing that it was right would make no difference."

HERBERT S. BIGELOW.

CINCINNATI, O., Nov. 27, 1913.

HON. EDMUND B. KING,

Delegate from Erie County.

The underlying reason which resulted in holding a Constitutional Convention in 1912 was the emancipation of the lawmaking power from restraints imposed by the Constitution of 1851, principally in these respects:

1. Bringing legislation more within control of the people.
2. Taxation.
3. Regulation of the liquor traffic.
4. Equal suffrage.
5. Government of municipal corporations.
6. Legal protection to laboring men and women.
7. Improvement of procedure in the courts, and such other matters as might be found important when the Convention convened.

The Convention determined not to rewrite the existing Constitution, but to submit the changes agreed on by separate amendments, and did

submit forty-two, of which thirty-four were ratified by the electors the polls. How well did the Convention succeed in carrying out the fo going objects?

1. It adopted and the electorate ratified the amendment to Arti II of the Constitution engrafting upon it the Initiative and Referendu The arguments against it are all based upon specific example in otl States on the ground that it is intended to overthrow representative g ernment. I am satisfied the provision as adopted here is not subject that objection.

Section 3, Article I, of the Constitution incorporated in both Cons tutions of the State in force since 1802, authorized the people to petiti and to instruct their representatives, but authorized no remedy for failu to obey such instructions. This provision simply furnishes the remec It is wise and it is conservative. Defects in the operation, if any, th have been or may be disclosed, can be remedied by appropriate legis tion.

2. Taxation. The Convention was strongly progressive on certa lines, but on taxation it was sadly reactionary. It was the great oppo tunity for Ohio to strike off the bonds from legislative power over th subject; instead, the Convention riveted them on more firmly. It grant some powers not before given, but refused to recognize any differen in kinds of property and so declared that *all property* must be taxed by uniform rule according to its true value in money.

3. In providing for license of the liquor traffic, the Convention a the people have taken a forward step in dealing with a much debat subject. There are two positions: one, prohibition, because the traf is an inherent and unmixed evil; the other, that prohibition is utopi and impracticable and that the traffic is not a sin or a crime, but th proper regulations should diminish and eradicate the evils, and und a license system can the most efficient regulation be had.

I am not quite satisfied that the General Assembly in its legislati has yet measured up to the spirit of the Convention that adopted this pr vision. If not, its faults may be corrected.

4. The Convention fully satisfied those who were asking for su frage equally to women and men, but men defeated it at the election. predict we have not heard the last of it. It was a real misfortune th the electors also defeated the action of the Convention making wom eligible to certain classes of offices.

5. Municipal Corporations: There were nearly as many views this subject as there were cities to provide for. The provision adopt contains too much of detail, too much of legislation. It will prove to l the most fruitful subject of litigation of any of the amendments.

6. There are several amendments relating to social and financial betterment of wage-earners.

Section 19a, Article I. Prohibiting limitation on amount of recovery in case of death from negligence of another.

Article II, Section 33. Authorizing liens to laborers, mechanics, material men and sub-contractors.

Section 34. Authorizing legislation for minimum wages, and for comfort, health and safety of employees.

Section 35. Authorizing compulsory compensation for injuries to employees.

Section 36. Authorizing regulation of mining, measuring, and marketing minerals.

Section 37. Limiting hours of labor on public contracts and works to eight per day, forty-eight per week.

Section 41. Authorizing legislation for convicts and regulating convict labor.

7. The organization and procedure of courts was somewhat changed.

Section 5, Article I. Authorizes a verdict in civil cases by not less than three-fourths of the jury.

Section 10, Article I. Permits the State to take depositions and its attorney to comment on the failure of defendant to testify.

Section 16, Article I. Permits the State to be sued.

Amendments to Article IV creates the Court of Appeals in place of the Circuit Court, gives it final jurisdiction in most cases, adds a Chief Justice to the Supreme Court and regulates somewhat the judgments of that court, and abolishes Justices of the Peace as a constitutional office, but leaving its continuation to legislation.

Other amendments regulate the veto power of the Governor, provide for registering and transferring land titles, nominating candidates at primary elections, regulating insurance and rates, abolishing Commissioner of Common Schools and Board of Public Works as elective offices, authorizing the regulation and classification of corporations and the sale of corporate stocks, the conservation of the natural resources, requiring appointments to office to be by merit under civil service examinations, and regulating the holding of and election of delegates to future constitutional conventions.

When this work is looked at dispassionately from some future viewpoint, I predict there will be found vastly more of imperishable value than of harmful effect, more that will stand to bless future generations than will fail and be cast aside.

Humanity is more advanced, human rights are better conserved, social duties more respected, and a republican form of government strengthened by these amendments.

The Fourth Constitutional Convention did more and greater work, and on the whole did it better than has been elsewhere in recent years accomplished by any similar convention of any State, within or without this Union.

Upon those who follow us in the future of our beloved State is cast the duty of preserving the good in these amendments, and improving both the good and the bad as experience demonstrates the way and necessity for improvement.

EDMUND B. KING.

Nov. 1, 1913.

HON. JAMES W. HALFHILL,

Delegate from Allen County.

A critical examination of either the constructive work accomplished or damage wrought by the Fourth Constitutional Convention for Ohio is impossible within the brief space allotted. What is written by any member must reflect the angle of his own view point. Be he ever so candid, the net result will embody convictions refined in the crucible of logic and perhaps prejudices that are blind to the light of reason. But what one disapproves and ascribes to prejudice, may be the honest conviction of another in the light of all the understanding he has, and yet his understanding may be helped by proof. That which appalls is the hopelessness of demonstrating anything to the satisfaction of anybody in short article like this.

The intellectual measure of this Convention would, in my judgment compare favorably with the General Assembly of Ohio elected every two years, on partisan tickets by popular suffrage. Those who aspired to membership because of the belief that they would sit in the councils of the mighty found that the mighty had been asleep, and in the meantime the crusaders and outriders of a pure democracy had nominated most of the candidates, pledged them to new doctrines and secured election of a large majority of them at the polls. True, not a third of the voters of Ohio participated in this election and not a member received a majority of the votes in the political subdivision he immediately represented, but the minority had been active and awake. And by the "mighty" is meant

the great body of the electorate in Ohio, who, in common with all true Americans, cherish our institutions, are proud of our history and achievements, and believe above all in representative government.

Let us define terms and in no way be deceived on the fundamental line of cleavage in this Convention. In many of the contests the votes changed back and forth on different proposals, but the leaders of the majority never lost sight of the line. It is possibly a misnomer to classify the Convention as Conservatives or Radicals, for it is a bald fact shown by the record and debates, that the latter believed that the axe should be laid at the root of the tree of representative government and that it should be hewed down and destroyed. Witness the Initiative and Referendum proposal submitted. This was never considered by a committee, was wrought into shape by a caucus held at night in a hotel, and though it was fought over on the floor of the Convention and earnest attempts made to amend it into an instrumentality that would aid representative government, yet the leaders were able to force its adoption by the Convention. Written at great length as a statute carrying the proud boast in the last paragraph that it "shall be self-executing" this pitiable travesty on organic law has within 12 months shown itself to be unworkable, has been declared by the Secretary of State to be an instrumentality of fraud upon the electorate, which finding on review has been approved by the Supreme Court. The General Assembly will have to come to the aid of the Constitution makers and safeguard this "self-executing" organic law. It was ambition over-leaping itself in an attempt to break down and destroy constitutional and representative government.

For these radical leaders told us that our Federal Constitution was made for "stage coach" days; that the three departments of government should not be separated; that representative government was a failure and a return to pure democracy the panacea; that political parties being a prop and stay to constitutional government and political conventions being an anathema, both should be abolished; that the people were competent to enact scores of statutes at a single election; but, miracle of all, the same people are not competent to choose any official but a Governor, who shall have power to appoint everybody else, and hence they cried loud and long for the short ballot.

The Short Ballot doctrine as originated applied only to municipal elections, but being new it was good and should be universally acclaimed and adopted. True, this proposal was defeated in the Convention, but this was not the fault of the radical leaders but the virtue of that considerable membership, sometimes attaining a majority, that would choose the middle course. The sheet anchor of the Convention was this latter class, who sincerely believed we could modify the organic law to meet

all changed social and economic conditions without changing the form of our government. It was this occasional majority that at all times contained within its ranks the men who believed that a democratic republic is the best form of government yet devised by the brain of man; that its police power is potent to prescribe all regulations necessary to promote health, morals, education and the general welfare of all the people and to so legislate for both the industrial worker and the industry that justice may be done and the resources of the State developed without injury to any citizen or class.

It was this occasional elusive majority within whose ranks at all times were found those who, for lack of a better term, were called conservatives, most of whom were progressive in the truest sense of that much abused word. There were found the men who recognized that Ohio in 60 years had changed from pre-eminence in agriculture to a great industrial community, but who yet believed that individual rights should be respected, that property was not a crime and that the home and the home-owner should be sustained and encouraged as the bulwark of the State.

The major portion of the proposals ratified at the polls are good amendments to our Constitution, working without friction, and those not good for us will in due time be cast out, for I have as unbounded faith in the patriotism and intelligence of the people of Ohio, as I have in our form of government.

JAMES W. HALFHILL.

LIMA, O., Nov. 15, 1913.

HON. A. V. DONAHEY,

Delegate from Tuscarawas County.

Sufficient time has not yet elapsed since the adoption in 1912 of a very large number of important progressive amendments to the Constitution of Ohio to definitely determine to what extent the State will be benefited by these various reforms. The real test of all constitutional changes is found only in the exercise of the powers granted. Every member of the Constitutional Convention seemed to have a proper conception of the importance of the work to be performed, and every observer was impressed with the evident purpose of that now historic assemblage to render a great public service to the State. As a member of that Convention, interested in its labors and assisting in every way possible, I believed when final adjournment came, that splendid results had been ac-

complished, and I have watched with earnest solicitude the practical operations of the various amendments ratified. While it is too soon to render judgment on all, yet sufficient is now known to demonstrate the wisdom of the Fourth Ohio Constitutional Convention.

In my judgment, the two most important amendments adopted are the Initiative and Referendum and the Direct Primary. Having served as one of the sub-committee of eight that drafted the Initiative and Referendum amendment in its final form, it is a pleasure to note the confirmation of the wisdom of the committee in making the percentages required on petitions lower than a majority of the people of the State at that time thought should be fixed. The committee's investigations at the time forced them to the conclusion that the percentages should not be placed higher. Recent tests of the Initiative and Referendum have vindicated the actions of the committee and Convention by demonstrating how difficult it is to secure the required percentage in 45 or more counties as stipulated, unless there exists an unusual, determined and widespread public sentiment in the State demanding action. Without such general popular demand, it is practically impossible to secure the required number of names. The fear of many good citizens that the Initiative and Referendum privilege would be abused by too frequent use, can now be dismissed. It is going to be an armor of defense and not a bludgeon of destruction.

The Direct Primary, in contrast with the Initiative and Referendum, accomplishes its intended mission most completely and with greatest benefit where it is participated in by all the people. It will perform a great public service next year in the nomination of State officers and the selection of a United States Senator, and in giving all the people a voice in the selection of candidates for State Senator and Representative. The only criticisms of its operations come from disappointed political bosses and discredited politicians whose ambitions are thwarted. The recent futile attempts in New York and other States to secure the Direct Primary by legislative enactment, vindicates the sagacity of the Constitutional Convention in making it mandatory in the organic law of Ohio.

These amendments, together with a number of others of importance, submitted and ratified, have transformed Ohio's government from extreme conservatism into one of the most progressive in the Union. For the first time in the history of the State, labor was accorded the rights and privileges to which it is justly entitled, and it is a source of great satisfaction to the writer in contemplating his work in the Convention, that, as a member of the Labor Committee, he was permitted to actively assist in securing the introduction and adoption of so many important amendments in the interest of labor.

The Municipal Home Rule Amendment has placed within the reach of urban populations, freedom from the domination and extortion of public service corporations, and has made possible beneficial changes in city government.

The license system in regulating and restricting the traffic in intoxicating liquors in wet counties, furnishes the means to eliminate much of the evils resulting from that business.

The Taxation Amendment, while imperfect, establishes equity in methods of assessment of taxes, and authorizes certain special taxes which will permit the removal of some of the burdens from real estate. The amendment should have contained a tax-rate limitation, but the diversity of opinion in the Convention on methods of taxation compelled a compromise.

Many of the other amendments are of great importance and will prove splendid additions to our Constitution. Ohio now has the best Constitution of any State in the Nation. It gives the people of Ohio absolute control of the government, protects the citizens from improper and injurious legislation, makes it possible for the poor to secure their rights in court, transfers some of the burdens of taxation to the rich, places labor on an equality with capital, and removes the shackles from the Constitution itself, so that the organic law of the State can be changed to meet the requirements of advancing civilization.

A. V. DONAHEY.

Oct. 1, 1913.

HON. E. L. LAMPSON,

Delegate from Ashtabula County.

When the Convention met, physical conditions were distinctly unfavorable to that calm consideration and thoughtful action essential to the best expression of the popular will in fundamental law.

Unfortunately, a majority of the membership had been elected, pledged to the support, even in detail, of certain radical and revolutionary amendments, important among which was the "I. and R." Hence the talent of many of the best men in the Convention could not be utilized in framing these radical proposals. However, as the Convention progressed, the minority, perforce of the ability, logic and parliamentary knowledge of its membership compelled changes and modifications of great importance as against the power of numbers. Four times the "I. and R." proposal

rawn by its friends and a substitute offered, but crudities still which, at the first trial before the people, resulted in scandal ed the submission of proposed legislation under it.

quite common in legislative bodies, both State and National, rience to distrust and discredit experience (especially when de interest is seeking to put something over) and this Conven- o exception to the rule; but as the inexperienced became expe- utual trust and confidence increased and the work of the Con- eatly improved. While members differed radically, warm per- idships grew up between those of opposing views and much of st which prevailed at the opening disappeared. It was a body virile men, convened in extraordinary times, when an enthu- ormer with a brand new banner of many colors always got a id the loyal veteran with the "old flag" did well to keep it still n such a convention heated parliamentary conflicts were in-

ther Constitutional Convention, in any of the States, ever wit- h a scene as took place in this one when President Bigelow, o prevent the attachment to the "I. and R." of an inhibition e single land tax, summarily adjourned the Convention. *Where-* antly, there came a roar of voices from all parts of the hall, g that Vice President Fess (now Congressman Fess) assume which he did without hesitating and proceeded with the work nvention, where it had been abruptly dropped by the President, . Bigelow looked on from the lobby, wondering what next. a bit of new experience, which taught that the master is greater ervant in a parliamentary body which knows its power, and it e atmosphere for more harmonious and better work. Next to d R.," the License Amendment, with its 500 population and tations, provoked the most contention and doubtless will affect e of more people than any other amendment submitted.

jority of the proposals were distinctly good and much that was could have been eliminated or improved upon if all members free to exercise their best judgment.

e and sane" amendments were often ridiculed out of Conven- io other reason save that they embodied or applied old and tried . Members forgot for the moment, while listening to outside at both individual and community growth depend upon the rigid e of old and tried laws of God, which men can never amend.

Convention did excellent work in many things, that it failed to nd especially in saving to the people their cherished constitu-

tional rights to elect their principal State, county and township officers, a necessary function of self-government.

While the Convention willingly granted the submission of home rule for cities, it also insisted that home rule should be retained for rural communities, and it is a source of great gratification to many members of the Convention to have their judgment so emphatically endorsed by the electors as was done by the defeat of the "short ballot" or "no ballot" amendments submitted by the last Legislature.

Popular government depends for its life upon popular interest, which promotes intelligent and patriotic activity, and whenever the people are denied the constitutional right to elect their own principal State, county, township and municipal officers, the people's interest will wane and the Republic die. *Long live the Republic of Ohio.*

E. L. LAMPSON.

Oct. 15, 1913.

HON. WILLIAM WORTHINGTON,

Delegate from Hamilton County.

My services in the Fourth Constitutional Convention closed suddenly on April 4, 1912, by my illness. I shall therefore confine my remarks to those of the amendments adopted which were fully debated before that date on second reading, and to others which were fully discussed in committees of which I was a member.

The main causes leading to the calling of the Convention, if one may judge by the topics most discussed in Hamilton County, were dissatisfaction with the then existing systems of controlling the liquor traffic, of legislation, of governing municipalities, and of taxation. And it so happens that these are the particular matters falling within the scope of my service; the first two were discussed on the floor of the Convention, and the last two in committees whose meetings I attended.

LIQUOR TRAFFIC.—The proper methods of lessening the evils arising from the liquor traffic have been the subject of strenuous debate in the State for over 60 years. The framers of the Constitution of 1851 had submitted to popular vote the question of license or no license; and a combination of those favoring on the one hand extreme prohibition and on the other freedom from regulation, led to the adoption of a no-license clause, each thinking that thereby they would attain their end. Each was

lisappointed, and the friction arising from their continued opposition, :ach to the other, seemed interminable and prejudicial to the State.

To put a stop to this continued conflict, to provide a scheme which vould permit proper regulation in communities opposed to prohibition ınd yet permit prohibition in communities which desired it, was the ob- ect of those members of the Convention who could look at the matter lispassionately. These moderate members were in the majority, and the esult of their labors is the present Section 9 of Article 15, which leaves t possible to obtain prohibition by local option elections in any parts of he State, and restricts the traffic in other parts to persons whose char- ıcter has been investigated.

That the new regulation is an improvement over the old system, I ıave no doubt. It has the fault of containing too much legislation and naking part of the fundamental law, and thus rigid, matters which :xperience may prove should be capable of ready change. This, however, vas a compromise found necessary to reach a result. The system adopted ıas worked well for many years in Pennsylvania, without substantial :hange, and it is to be hoped will do the same in Ohio.

LEGISLATION.—The complaints against the system of legislation vere really complaints against the particular representatives sent to the General Assembly and the manner of their selection; in other words, that hey were boss-controlled. Instead of trying to correct the evil, an effort vas made to provide an antidote by the initiative and referendum. The State has just been going through its first experience of this new medi- :ine, and it seems there are difficulties in the way of administering it vhich do not augur well for its success. Behind the difficulties which ıave developed as to the method of appealing to the popular judgment, s the further one whether popular judgment will really be exercised. When a man of some note in the conduct of political affairs in Cincinnati vas asked last summer to interest himself in opposition to the question :hen pending, as to whether the city should take steps to frame its own :harter under the Home Rule Amendment, he replied—in language hardly proper to be quoted in this connection, but which can be paraphrased as—'Oh! what's the use? You can't get people to vote on an abstract ques- tion like that; all that they will do is to vote for a hero or against a knave." This is a pithy summary of our previous experience in popular votes on *measures* as distinguished from *men*. And this experience led me to think it were better to adhere to a republican form of government than to turn to a pure democracy; therefore, in the Convention I opposed this amendment. There is always one danger in submissions of this kind; those who are heartily in favor of the proposition submitted will be sure to vote for it, while those opposed or indifferent may neglect voting upon

the supposition that it will not pass; consequently submissions of this character are very apt to receive a decided majority of votes cast upon the question, although they may fall far short of the votes cast at an election. It will require a greater awakening of civic conscience than has yet become manifest to cure this evil.

MUNICIPALITIES.—The procustean system devised by the Constitution of 1851 for the government of municipalities, had proved unworkable from the outset. Under it all cities, no matter how diverse their needs, should have been governed by uniform rule. Shifts and devices to avoid this command were at once resorted to, and resulted in a conflict of judicial decision and uncertainty in the law which were little short of scandalous. The remedy adopted, Article 18, speaking broadly, provides that hereafter each municipality dissatisfied with the method of government provided by general law, may obtain modifications to suit its needs, either by approval of a special act passed by the Legislature, or by its own action in framing a charter without consultation with the Legislature. Freedom from State interference in matters of *purely* local concern, is secured; and the field of possible municipal activity is greatly enlarged.

That the present system is ideal will hardly be claimed by any of its advocates; but that it is better than the old one seems to me beyond doubt. Difficulties will probably arise in marking the lines dividing matters of purely local concern from those affecting the State at large. But this is a trouble inherent in the subject; no phrase could remove it.

The amendment adopted is an effort to acknowledge that a municipality is no longer a mere geographical name signifying a restricted territory subject to the will of a sovereign, but is a group of people bound together by ties peculiar to their environment, and entitled within limits to work out their own salvation.

TAXATION.—The taxation amendment is, to me at least, a decided disappointment. The framers of the Constitution of 1851 thought they had provided that general revenue should be raised only by taxes assessed on all property at its true value by uniform rule. The words they used did not adequately express their thought, and in course of time it was established that taxes levied on something else than property might be a source of revenue. The field thus laid open was uncertain of area, owing to a difficulty sometimes existing as to whether a particular tax was or was not assessed upon property. In 1905 an amendment was adopted exempting public bonds.

The amendment proposed by the last Convention and approved by the people, repeals the exemption of public bonds as to those thereafter issued, and leaves the old rule as to taxing property by uniform rule as

t was in the Constitution of 1851, with the qualification that the exemption of $200.00 provided for by that instrument was increased to $500.00. It further gives a specific grant of power to levy taxes other than those imposed on property by uniform rule by authorizing specifically the imposition of inheritance, income, excise, franchise and mining taxes.

Every fault which time had developed in the old system is continued under the new, and other evils are added. The mandate to levy a general property tax is imperative. If in addition the power to levy taxes of the other species be exercised, double taxation in an odious form is apt to result.

The taxing by assessment of all property at its true value according to a uniform rule is denounced by all economists who have given intelligent consideration to the subject, and has proven a failure wherever tried; and the tendency has been toward its abandonment. It is unfortunate that the people of Ohio have resolved to continue in this course.

It may serve a useful purpose, as a warning for the future, to add some thoughts that occurred to me as to the working of the Convention. The membership was entirely too large, and the committees were also entirely too large, to produce the best results; and the rules of procedure, while probably well adapted for a body concerned merely with temporary legislation, were in some respects ill-advised for a Constitutional Convention.

The work in hand—the framing of a body of fundamental law—demanded the skill of trained minds versed in history of government as well as in economics. Twenty men, reasonably well equipped, would have done that work much better, much quicker, and at much less cost, than the six times that number to whom the task was deputed.

Of the nineteen committees through whose mill proposals were passed, thirteen had seventeen members, and six twenty-one. There were six other standing committees, three of which had seventeen members, and the others nine, seven, and five, respectively. As every delegate was on at least three committees, it was almost impossible to get a full meeting of a committee, and difficult to obtain a quorum consisting of the same members continuously. The careful and exhaustive consideration of each member, which should characterize the work of a committee of such a body, difficult to obtain with so large a committee membership under any circumstances, was impossible under these. A natural consequence was the pointing out on the floor of the Convention of objections that should have been raised and met in committee, and the adoption on the floor of amendments to meet a particular objection without due consideration being given to the effect of the amendment on other parts of the proposal.

While the rules permitted amendments in matters of substance as well as form to be made on the third reading, as well as the second, such amendments could be made only on the floor of the Convention after the proposal had been reported from committee prior to its second reading. The rules provided for a reference to the Committee on Arrangement and Phraseology of every proposal, after passing each the second and third readings; but the powers of the Committee were limited to suggesting amendments as to matters of form, and, at least while I was attending the Convention, the Committee deemed it improper to suggest an amendment in matter of substance, although they were agreed that such amendment should be made. Should a Convention ever again be called, it would, I think, find it much better to refer every proposal which had been amended on the floor on second reading back to the standing committee from which it was reported, or to some other committee, for further consideration, unfettered by any restriction.

WM. WORTHINGTON.

CINCINNATI, O., Nov. 5, 1913.

HON. STANLEY E. BOWDLE,

Delegate from Hamilton County.

Constitutions, like every other thing, grow old, and utterly unfit; and when they do, it is well to have them carefully revised lest the people revolt.

In the old days in Europe, when the people grew tired of trying to make the laws decent, they simply took shipping and came to a new world. But today there is no new world. All the world is growing old. We have got to simply stop and revise our organic laws, or fight it out some other way.

The institutions of one epoch do not fit another. Men progress, unlike all other created things. There are no very permanent anchorages.

The State of Ohio had gotten far beyond its Constitution when the Fourth Constitutional Convention was summoned. The old document, as interpreted by numerous judicial decisions, had gotten us bound up hard and fast. Something had to be done.

What we did is best shown by the New Document itself, and I suppose my associates have written volubly on the initiative and referendum and the provision for municipal home rule. But I may be pardoned for referring to two amendments which were introduced by myself; that

allowing the prosecution in criminal cases to comment on the failure of the accused to testify; and that allowing the Legislature to pass laws controlling the introduction and use of expert medical testimony.

The first mentioned provision places Ohio foremost among the advanced States in the matter of progressive criminal legislation. In America generally the accused may sit mute and watch the prosecution stumble about in its effort to convict. He need not take the stand and subject himself to a single question; and when he does not, the prosecution dare not comment on his silence. This situation is unique in the world's jurisprudence. All the nations of Europe allow the accused to be examined—a most rational course, well illustrated lately by the trial of the Blackhanders at Viterbo, all of whom were convicted after themselves testifying. But we have never allowed this. Our Constitutional provisions in the various States simply represent a reflex from the old torture processes to which our English forefathers were subjected, under which accused persons were put to the torture in hopes of extracting a confession. When our fathers set up government over here they thought to get rid of such processes forever, and fell backwards in their effort to stand up straight, so they proceeded to protect the accused by allowing him to remain silent and forbidding comment on that silence. To simply forbid torture was not enough. Our criminal jurisprudence has labored along under this thing for a century, but now Ohio is rid of it. While we cannot force an accused person to testify, we can successfully smoke him out by allowing the prosecution to comment on his silence. This is a great advance.

President Taft recently said, "The administration of criminal law in this country is a disgrace to our civilization." It has also been pointed out recently by Mr. Yandell Henderson that "murder is ten times as frequent in the United States as in England, and fifteen times as frequent as in Canada." These facts would certainly justify some Constitutional Amendments, and would arouse some suspicion as to the alleged value of our judicial mechanism.

As to the provision relating to medical testimony, we all know what a farce a first-class criminal trial is where there is a big enough purse to buy experts. These experts have rendered such trials terrifying to the county in point of cost, and puzzling to jurors who are compelled to listen for days to high-priced experts, one set denying the evidence of the other set. But all this is placed under the jurisdiction of the Legislature. A code may be adopted which will render a criminal trial sane and speedy. Without this provision this could not have been done, for the law could not limit a man's witnesses.

Judicially, then, Ohio is a well-advanced State.

We have given the State an advanced Constitution; but it will require intelligence to use the powers and privileges granted. This intelligence, however, is necessitated all along the line in civilized government. With the growth of complication in a mechanism there must be increased intelligence and patience to manage it. Just so with the modern State. The demands of the hour are for increased intelligence and morality. Without this increase, the modern State cannot stand—its complexity forbids it. But I am satisfied that this intelligence will come.

STANLEY E. BOWDLE.

CINCINNATI, O., Dec. 15, 1913.

HON. GEORGE H. COLTON,

Delegate from Portage County.

In a brief review of the work accomplished by Ohio's Fourth Constitutional Convention it is possible to speak of but few of the proposed amendments whose importance appeals strongly to the writer. The Convention was composed of men earnestly desiring to recommend what would be best for the people of the State, but whose opinions as to what was really best naturally differed widely. The result was a full and free discussion of all proposed changes in the Constitution and a final decision representing the well-considered judgment of the majority. While there was probably no member of the Convention who approved all that was done, it is doubtful if there were any who did not recognize the work as a whole to be as emphatically on the side of the good as could have been expected even by those who were most optimistic. That this opinion was shared by the people of the State also is shown by the fact that, at the polls, they approved almost the entire work of the Convention.

The decision not to submit to the people an entire new Constitution, as did the Convention of 1874, but, instead, to submit each amendment separately, was a very happy one. By this method of submission each amendment stood upon its own merits and each received the unbiased expression of the will of the people concerning it.

Probably no feature of the work has attracted more attention than has the amendment providing for the Initiative and the Referendum. The principle involved — the final settlement of all questions of public policy in accord with the popular will — is the very cornerstone of our free institutions. However, the writer has always felt that the various Legislatures of this State have shown themselves so responsive to the

will of the majority of the people as to render a resort to the cumbersome and expensive direct method of enacting and repealing laws unnecessary and of doubtful expediency. Legislators, specially charged with the responsibility of enacting proper laws, have seldom failed to be alert, while voters have often shown a surprising indifference to important public questions. Besides, the very small per cent of signatures required on the petitions may lead to the too-frequent use of these powers, and, therefore, to their abuse. The redeeming feature of the amendment is the requirement that laws proposed by the initiative shall be first submitted to the Legislature, thus permitting the people to be heard concerning them before committees and insuring their careful consideration. It is to be hoped that time will prove this amendment to be as progressive as its advocates believe it to be.

The amendment permitting a verdict to be rendered in civil cases by the concurrence of not less than three-fourths of a jury; that giving the State in criminal cases the same right to take depositions in prosecuting its case that is accorded the accused; that permitting suits to be brought against the State, and that reorganizing the judicial department, deserve the hearty endorsement which they received at the polls. The last can hardly fail to make less pronounced the evil at which it was aimed, namely, the law's delay.

In making the method of amending the Constitution less difficult the Convention followed the general trend of opinion in this country, and in providing that each amendment shall be submitted on a separate ballot t effectually prevented the stealthy passage of an amendment by the nethod authorized by the Longworth and similar laws, according to which the amendment was printed as part of the general ballot, so that ıll who voted a straight ticket and all who, having scratched the ticket, lid not erase the word "Yes" after the amendment, were counted as having voted for its passage. Hereafter no one will vote for, or against, an ımendment without knowing that he has done so.

The Woman Suffrage and the Good Roads amendments deserved a nore generous treatment at the hands of the voters than they received. The former will triumph ere long and the end aimed at by the latter is ikely to be reached in a different manner, but with less dispatch.

The amendment authorizing the fixing of a minimum wage must be egarded as quite experimental. There are no doubt abuses; such as hose connected with the sweatshops, that may be remedied by a wisely ixed minimum wage, but such minimum should always be established vith the full knowledge that production may be reduced by it and some abor thrown out of employment. While this amendment was proposed

in the interest of labor, it is evident that too high a minimum wage will work greater injury to labor than to the employer of it.

By authorizing the levying of graded income and inheritance taxes the taxation amendment makes a decided step in advance. The "classificationists," and of course the "single taxers," fought determinedly against the retention of "taxation at a uniform rate," but fortunately they were in the minority. In restoring public bonds to the tax list the Convention recognized the fact that such bonds are notes and that if any notes are to be taxed these notes should be. Were such bonds, or notes, to be exempt simply from the tax levied by the taxing district issuing them, no injustice would be done, but when a resident of a district having little or no bonded indebtedness invests his means in the bonds of a city and thereby escapes all local taxes, an injustice is done to other residents of the same district, since they must bear a greater burden of taxation because of it.

The limits set to this note forbid reference to other amendments.

GEO. H. COLTON.

HIRAM, O., Oct. 6, 1913.

HON. HENRY W. ELSON,

Delegate from Athens County.

Not only as a member of the Fourth Constitutional Convention of Ohio, but also as a citizen of the State and a student of the science of government, I have been deeply interested in the work of that Convention. The thirty-five amendments ratified by the people in September, 1912, make so great a change in the old Constitution that it is quite proper to speak of the present instrument as the Constitution of 1912.

The Convention was a body of strong, serious men, representing almost every class of our five million people. For five months they labored with the utmost diligence. It happened that a large majority of the delegates were Democrats, but the work of the Convention was wholly non-partisan. A few represented special interests, but the great majority were free to serve the people. A small part of the work of the Convention did not meet with my approval but the greater part was, in my opinion, most excellent. In this brief survey I shall confine myself to three prosposals accepted by the people, any one of which, I firmly believe, will save the State far more than the entire cost of the Convention.

First, the change in the jury system. The Convention decided that the Legislature be enabled to pass a law permitting three-fourths of a jury to render a verdict in civil cases. Such a law has since been enacted and is now in force.

For nearly a thousand years the jury system had been in force in England and it was adopted by this country unchanged, including the requirement of unanimity in rendering a verdict. But why should a unanimous verdict be required? Except for its hoary age little can be said in its favor; but much can be said against it. It often happens that there is at least one wrong-headed person on a jury. Perhaps he is bribed by some corporation interested in the verdict. Whatever the cause of his perversity, he can "hang" the jury against eleven men and render the trial abortive. Why should a unanimous verdict be required? If twelve men render a correct verdict, nine can do so with almost equal certainty. It would then require the bribing of four men in order to secure a mistrial — almost an impossible thing. The late Constitutional Convention did no better piece of work than when it changed the jury system.

Second, the change made in the judicial system. The Ohio judicial system was antiquated and cumbersome. The Circuit Court was a kind of sieve through which cases would pass from the lower courts to the Supreme Court. The Supreme Court was usually from one to three years behind in its work, and there were long delays in meting out justice.

Here I shall quote, with slight changes, from an article which I wrote for the Review of Reviews, of New York, issue of July, 1912:

"According to the new method the Circuit Court is changed to a Court of Appeals, which shall have final judgment in all cases coming from the lower courts, except those of felony and cases involving great public interest or a constitutional principle. The plan provides for one trial and one review in all ordinary cases. It will greatly lessen the law's delay and the cost of litigation. Hundreds of cases, especially those for personal injury against big corporations, formerly carried to the highest tribunal, will hereafter be settled in the Court of Appeals."

Suppose a workman is killed while attending his duty through neglect of the company to install safety appliances. His widow brings suit for damages. If she were successful in the trial the company would carry the case to the higher courts. This would occasion years of delay and large expenditure. The widow, unable to continue the contest with the great millionaire corporation, would probably agree to a compromise and to accept whatever pittance that might be offered her. Under the new amendment there will be no such advantage to the rich. Justice will be meted out far more swiftly, more equitably, and with much less expense than it was under the old plan.

Third, Home Rule of Cities. Under the Federal Government a State has independent powers with which the National Government has no right to interfere; but the subdivisions of a State have no such powers as against the State. Counties, cities and townships are creatures of the State and are wholly dependent on it for their political rights. In so far as the State is a government at all, it is a consolidated government with no federal features. This arises from the fact that when the States are first settled and organized they are wholly rural and no provision is made for the cities, which are a later growth. Herein lies a weakness. Cities have peculiar needs which the rural portions of a State do not understand. A legislature, a majority of which are from the rural sections, lays down the rules for the government of the city, whereas the city knows its own problems and could solve them better if left to itself. The old Constitution of Ohio, following the example set in other States, made the city wholly dependent on the State Legislature, and the rural members of that body have hitherto stood in the way of a free and unhampered development of the social, commercial and political life of the city.

The Ohio Convention of 1912 recognized the great need of change in this respect. "It recognized the vital fact," to quote from the above mentioned article, "that a city is an organism, an administrative unit, and that it should have a free hand in working out its own salvation. It may frame and adopt its own charter, may adopt the commission plan or any other plan of government through a referendum vote of its electors, and, indeed, it may, subject to general State laws, exercise all the powers of local self-government, all the powers of a business corporation."

The Constitution, however, reserves the right to the Legislature to make a debt limit to the city, to limit its power of taxing its people, and it may require reports from the municipality as to its financial condition and transactions, to examine its books and call its officials to account.

HENRY W. ELSON, Ph. D., Litt. D.

ATHENS, O., Oct. 7, 1913.

HON. SAMUEL A. HOSKINS,

Delegate from Auglaize County.

Self-government is an inherent right of the natural man. All men are born free and equal, and it is only when we enter into organized society and accept its protection and benefits that we surrender some of our natural rights and receive in lieu thereof the will of that organized society which is called government. All just government is simply the concrete expression of the popular will, and throughout the development of republican government the American ideal has been to determine that popular will in the best practical form.

The Fourth Constitutional Convention of Ohio was called in response to the popular will. The State had outgrown the Constitution of 1852 and the people were demanding a larger share in their government.

No sooner had the delegates been elected than the ancient contest between conservatism on the one hand and progress on the other broke out, and it continued until the last amendment was written, and again until the ballots were counted at the polls. The result at the polls showed that the people of Ohio are distinctly progressive and that they were determined to have a larger share in their government.

The "high spots" in this progressive program were most distinctly shown in the approval by the people of the following amendments:

1. The adoption of the Initiative and Referendum.
2. Providing for primary nominations.
3. The amendment relating to the welfare of employees.
4. The workmen's compensation amendment.
5. The modified form for the recall of public officers.
6. The abolishing of prison contract labor.
7. The regulation of corporations.
8. Municipal home rule.
9. Providing a compulsory civil service system as a permanent part of our government.

These measures are distinctly in the line of progress and in response to the demands of a more intelligent citizenship.

The adoption of the Initiative and Referendum was the high-water mark in the work of the Convention, and perhaps the most advanced proposal adopted by the Convention.

Another of the distinctive measures, adopted in response to the growing demand of the people for a larger share in their government, was the

amendment to Article V of the Constitution, providing for all nominations by direct primary, or by petition, except in townships or municipalities of less than two thousand population.

Much was said during the Convention and since against the direct primary and the Initiative and Referendum, because they might result in nominations, or the adoption of measures, by a minority of those who would be entitled to vote. This objection seems puerile and almost foolish. These two measures come nearer furnishing a medium for the expression of the concrete will of the people than any reform that has yet been devised, and as measuring the progress of popular government they constitute a wonderful advance over the old boss-ridden convention manner of expressing the will of the people.

With that class of thinkers who believe the people are incapable of self-government I have no argument, for I accept as true the fundamental fact that ours is a government for, of and by the people, and that whatever comes nearest expressing the popular will, after due consideration, is the best form of government to adopt. Those who know the evils of the old convention form of nominations hail with delight the new Constitution, which gives every citizen the right to express his choice of candidates either through the primary or petition. Those familiar with the history of legislation in Ohio must also admit that with the coming of the Initiative and Referendum, and the adoption of the primary system, legislators have been far more responsive to the popular will, and the old annual lobby that met each recurring session of the Legislature is now almost a thing of the past.

The glory and safety of a republican government are based on an intelligent citizenship, and all close observers must admit that the submission of measures and the nomination of candidates by the people themselves constitute the best means of education in the duties of citizenship, and the very discussion of these questions makes a great university in which all the voters have a part.

Another mandatory amendment written in the Constitution is of scarcely less importance for the public good. The "spoils" system has long been a curse in the administration of our State Government, but the Convention by mandatory amendment provided that a civil service system should take its place and adopted Section 10 of Article XV, which reads as follows:

"Appointments and promotions in the civil service of the State, the several counties, and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. Laws shall be passed providing for the enforcement of this provision."

Under this amendment the Legislature has provided a comprehen-

sive law for the administration of the civil service of the State, and hereafter appointments must be based on fitness ascertained by competitive examination and not upon political services to any party. This law must be administered in the face of the long-established custom that "to the victor belongs the spoils," but with the support of the popular will behind it the old "spoils" system will be supplanted by the merit system and our civil service will be held out as a career to the young and not as a reward for services to a political boss.

Perfection in governmental affairs cannot be attained, but the theory of government is that the people must rule, and the advanced ground taken by the Constitutional Convention of 1912 marks distinct progress in attaining the ideals of self-government. Under the Constitution of 1852 the people surrendered all final authority into the hands of their representatives, but under the progressive Constitution of 1912 the people have retained the right of original legislation as well as the right to veto the acts of their representatives when those acts do not respond to the public will.

My approval of these popular measures does not mean that I personally agree that every proposal was wise and its adoption in the public interest. Much has been claimed for the adoption of the judicial amendments, and these may prove wise, but I am one who does not believe that our whole judicial system was faulty. The jury system has proven the bulwark of our liberties for ages and the old system of requiring a unanimous verdict has not been the subject of any gross abuse; minorities on juries, and even single men, have often proven to be right and prevented gross injustices. I quote here from the debates of the Convention and an address upon this subject by Judge King:

"There might be three men, and very able men, disagreeing with the nine, and yet they would not be called upon to stop and discuss the case before them; they would simply take one vote, and the nine would return the verdict. The three may be entirely right. I have known many cases where a minority of three or less has convinced a majority of nine men that they were wrong in their first impressions of the case."

The defects of our judicial system have been more the fault of the administrators than in the system administered.

I also question seriously the wisdom of the amendment to Article V, Section 10, allowing depositions to be taken in criminal cases, and also allowing comment on the failure of the accused to testify in his own behalf. I quote from a speech delivered by J. W. Halfhill, a member of the Convention, in which he quotes the language of Judge J. J. Moore, as follows:

"I had always supposed that a party accused of crime was to be convicted by the evidence adduced by the State and not by the comment of counsel. You can convict an accused without sufficient evidence by loud and long appeals because the defendant did not testify. I have in my general practice both prosecuted and defended accused persons, and fail to see any merit or justice in the proposition. Many defendants in criminal cases are uneducated and ignorant, and although innocent their counsel feel it is not safe for them to be placed upon the witness stand to be annoyed and badgered by unscrupulous prosecuting attorneys seeking to establish popularity by securing convictions."

In any event, the people have retained to themselves the right to correct these evils if the judicial amendments should not prove wise.

The general work of the Convention must be approved by all thinking men, and I am sure as the years go by the great intelligent citizenship of Ohio will look back to the year 1912 as marking the birth of a new freedom, a new Declaration of Independence, a time when the people took back to themselves that right of self-government surrendered in our earlier history. Those occupying the fortress of special privilege will mourn for the "good old days," but the people, growing more and more intelligent from year to year, will demonstrate their capabilities for self-government in building up the greatest Commonwealth the world has ever known.

SAMUEL A. HOSKINS.

WAPAKONETA, O., Nov. 25th, 1913.

HON. EDWARD W. DOTY,

Delegate from Cuyahoga County.

The rules of the Fourth Ohio Constitutional Convention were modeled upon the procedure of the Ohio House of Representatives. This House procedure has been used in Ohio for more than twenty-five years. The underlying principle of this procedure looks to the life of each measure rather than to its death; the theory is based upon the assumption that each measure submitted to the body ought to be enacted into law or carried to its final affirmative conclusion.

If this principle of life for each measure be a proper one for the Ohio House of Representatives, to which is submitted more than a thousand proposed laws at each session, all the more could the same principle be applied to the comparatively limited number of proposals that would naturally arise or be offered in the Constitutional Convention.

While the general structure of the rules was the same as that

of the House rules, some minor modifications were indulged in. For many years, up to 1912, the House had been in the habit of debating its measures upon what they called third reading. After a bill had been read a third time, debated and passed, the House was through with any consideration of it. It was thought wise in drafting the rules for the Constitutional Convention to modify this procedure by shifting the debate upon the proposal to second reading and this practice was for the first time in Ohio begun. In this way the Convention had ample opportunity for the discussion of not only the principles sought to be set down in the law but also the form that the law was to take, giving another opportunity upon third reading for consideration of both substance and form. This plan was, of course, very necessary in the drafting of any part of the Constitution of the State, but in passing it might be observed that the House of Representatives meeting next after the Constitutional Convention changed its rules and carried out the same idea, and bills were debated upon second reading instead of upon third reading as heretofore.

The rules of the Convention were drafted in advance of the meeting of the Convention in an unofficial way, and were sent to each member of the Convention in printed form for his consideration and criticism. After the Convention met, the rules, as set forth in the draft submitted before the Convention met, were introduced in the form of a resolution, and as soon after the organization of the Convention as possible this resolution was referred to a special committee appointed for their consideration. This committee was afterwards the Committee on Rules of the Convention. Very careful consideration was given to each of the rules by every member of this committee, and some minor modifications were recommended. The report of the committee was then submitted to the Convention, and so jealous was the Convention of the rights of its members in the future consideration of its work that one whole session was given up to the very minute and discriminating examination of each rule and each part of a rule. The records of the Convention will show that many verbal amendments were offered, and some minor changes were made, but none affecting the general structural principles that the rules were built upon.

These rules were found to be ample in their scope and fair in their application throughout all the sessions of the Convention, and no rule involving anything except times of meeting was disturbed during the life of the Convention. E. W. DOTY.

CLEVELAND, O., Dec. 10, 1913.

HON. GEORGE W. KNIGHT,

Delegate from Franklin County.

The work of the Fourth Constitutional Convention is the most important and, measured by its results, the most significant event in the governmental history of Ohio since 1851. That the work was uniformly well done, or that all of the amendments submitted to the people were equally important, necessary or wise, no one can honestly affirm. It is possible that some of the amendments may not long endure, and that others conferring new powers on government or people may not be used, but the great majority embodied distinct improvements in the organic law of the State.

Ohio as a State had long been notable for two things — an antiquated and exceptionally inflexible Constitution, and a decidedly conservative mind and tendency in matters of government and State policy. Hence the changes and advances in government, legislation, and judicial procedure which in many other States had from time to time been made in order to meet the tremendous changes in American life, had not been achieved in Ohio; either because the Constitution as judiciously interpreted would not permit them and the Legislature would not propose amendments making them possible, or because the General Assembly would not use adequately or wisely its existing powers of legislation. As the result there was in the State a strong feeling of discontent, quite special to Ohio and additional to the general radical wave of dissatisfaction and progressive demand that began to sweep over the country a few years ago. This wave was near its crest when the members of the Convention were elected and assembled. The body as chosen was distinctly representative of this public feeling, but to more than one delegate it seemed not wholly fortunate that a Constitutional Convention should be assembled at just such a moment. There is little room for doubt that the body was more radical, and that the amendments proposed were in some features more far-reaching and experimental than would have been the case had the election and meeting of the Convention occurred when the atmosphere was less abnormal—say two or three years earlier or, perhaps, two or three years later. This by way of explanation of some features of its work.

That the amendments submitted by the convention — radical as they may seem to some — were not more numerous or more radical

is due in higher degree to the efforts of a fairly compact group of "middle-of-the-road" members who, while progressive in spirit and having no sympathy with the standpat-ism" of the small band of ultra-conservative delegates, labored, with fair success, so to temper the extreme proposals of the ultra-radicals as to make the resultant Constitution meet modern conditions without giving it the character of a revolutionary document. That the remodeled Constitution is abundantly adequate to the present and prospective needs of all types and interests of our citizens and to the administration of government seems evident from the work of the present General Assembly.

The main purpose and spirit of the Convention was to make the State Government in all its branches — legislative, executive, and judicial — more quickly and directly responsive to the needs and demands of the citizens. This was beyond doubt accomplished in a degree approaching closely to the limits of reasonable safety.

The legislative power was amply enlarged, and the initiative and referendum provision (which the writer regards as the best form of the principle yet adopted by any State) affords all needed spur to and check upon the General Assembly. The amendments affecting the judiciary and the jury system clearly tend to expedite the work of the courts, though it is probable that in some features they need modification in the interest of clearness and simplicity. The municipal corporations article gives to the urban communities the local home rule and self-government which the problems of modern city life require if our cities are to be or become fit places of residence and work for so large a part of the people. The group of so-called labor amendments certainly gives ample scope for the adoption of any desirable legislation in the fields of industry and of social betterment. The two educational amendments open the way for the much needed shake-up and modernizing of Ohio's educational system. Lastly, and perhaps most important of all, the future amendment of the Constitution was made simpler and far less difficult. Hereafter desirable changes cannot be blocked by the indifferent or stay-at-home voter.

As compared with State Constitutions in general, the amendments of 1912 contain a large amount of what is properly legislative matter. Some of this was clearly unnecessary and to that extent propably unwise, but the greater part of what seems legislative rather than organic was deliberately inserted for one or both of two good reasons — first, to remove from the field of constant controversy certain definite questions of policy, and second, because in times past

the law-making body of the State had been derelict or vacillating in its action.

On at least one subject the action of the Convention was distinctly non-progressive. It failed to grasp and utilize its opportunity to adopt a taxation provision making possible a thorough-going, modern, scientific, and equitable system of taxation. While some features of the amendment on this subject are good, at least one is decidedly reactionary, while the retention of the absolute uniformity rule dooms the State indefinitely to an antiquated basis of taxation. The single-tax bugàboo — the writer is not a "single-taxer" — unfortunately prevented the adoption of the classification feature in the taxation article, and Ohio is thereby barred from modernizing her system in accordance with the best thought and practice of many other States.

Taking the work of the Convention as a whole after making all proper allowance for its imperfections, the writer believes it has made possible a new and better era in Ohio government and policy. The net effect of the whole work may be expressed in the one word "opportunity." The people of Ohio have now the chance to do substantially what seems to them good, wise, or desirable. If they fail to embrace the opportunity or to use it wisely it will be their fault and not that of the Fourth Constitutional Convention, which opened the door to that opportunity.

G. W. KNIGHT.

COLUMBUS, O., Nov. 20, 1913.

HON. JOHN D. FACKLER,

Delegate from Cuyahoga County.

The Fourth Constitutional Convention of Ohio demonstrated the complete absurdity of the old partisan divisions between men when fundamental questions of government are considered. There was not a single vote of the Convention on which the members divided with reference to party lines. Radical and conservative, the natural division in political thought, marked the line of cleavage among the delegates who voted, almost without exception, from conviction and without dictation from outside influences. Radical Republicans and radical Democrats worked enthusiastically and harmoniously together for the reforms in which they believed; conservative Republicans worked in perfect accord with

conservative Democrats in honest support of the principles in which they believed.

The party lash and the lure of place exercised no influence in the deliberations of the Convention, and the votes of the delegates constituted the clearest possible prophecy of the certainty of a new political "line-up," for no power can long hold together such discordant elements as the Convention disclosed in the old political parties.

On the conservative side, men like Mr. Halfhill and Mr. Norris think alike, believe alike, and are sincere, honest, and courageous enough to advocate with high intelligence the principles in which they believe, and you would never have suspected from their actions in the Convention that they belonged to opposing political parties.

Among the radicals, Mr. Doty and Mr. Crosser never had the slightest trouble in finding common ground; yet, one called himself a Republican, and the other proudly proclaimed his Democracy.

That in the very near future the men of Ohio will be divided into opposing groups, based on a difference of opinion on economic, rather than historic, questions, was one of the clear indications of Ohio's Fourth Constitutional Convention.

JOHN D. FACKLER.

CLEVELAND, O., Dec. 1, 1913.

HON. PERCY TETLOW,

Delegate from Columbiana County.

A brief review of Ohio's Fourth Constitutional Convention of 1912 opens up many avenues of thought and shows the revolutionary changes taking place in a great State of a mighty nation which is developing wonderful resources and advancing civilization.

Ohio's first constitutional convention, in 1802, when it became a State, came shortly after the adoption of the Constitution of the United States and when happiness and human liberty were new in the land, and when the protection of these principles was the dominating thought. The State's second constitutional convention, in 1850-51, marks an era of progress, from the clearing of forests to the development of agriculture to a high degree and the awakening and beginning of an industrial period.

The work of the third constitutional convention of 1873-74 failed when submitted to the people, so the constitutional convention of 1912 was convened to repeal, revise or amend the Constitution of 1851.

The Convention of 1912 decided to submit amendments only, recognizing the stability and the fundamental truths embodied in the organic law of the Constitution of 1851, which in principle was much the same as the Constitution of 1802.

From the year 1851 to 1912 the State witnessed a remarkable period of industrial development, agriculture gaining, but standing still when compared with other industrial progress. During this period concentration along all lines of effort developed rapidly, and with centralization of industry, congested industrial districts sprang into existence, and naturally a reduction in the percentage of those engaged in agricultural pursuits resulted.

With this industrial development and centralization came grave labor problems, and it was with these problems that the Fourth Constitutional Convention devoted much of its time. The problem of the past dealt with establishment of fundamentals, but the constitutional problems of the future must deal with the perpetuation of popular government.

The conservation amendment was adopted by a majority of 126,299, and paves the way for conservation and should hold a prominent place in future legislation. Our timber is rapidly vanishing and laws should be passed to aid forestry; our mineral resources are diminishing, with the consumption and demand increasing rapidly.

The State by legislation can prevent millions of tons of coal annually from being lost, by regulating the system of mining. Laws should be passed under which the State will conserve and retain for itself the streams and water power, that future generations can harness and utilize its power and prevent private monopoly. The time has come for conservation, not to limit or to prevent one generation from utilizing that which it needs, but to prevent that which it wastes.

The amendment to Article II, Section 35, known as the Workman's Compensation Amendment, which compensates workmen or their dependents for occupational accidents and diseases; the amendment to Article II, Section 24, the amendment permitting laws fixing and regulating the hours of labor and establishing a minimum wage and providing for the general welfare of employees; both of these important amendments, along with other amendments for the protection of workers, show the industrial trend and the problems industrial development has brought. The amendments dealing with the judiciary show that sentiment is against judicial invasion of legislative functions.

The Initiative and Referendum was not a substitute for, but an aid to representative government in order to maintain the basic principle of our government, that all political power remain inherent in the people and that they should hold direct the reins that control its destinies. Now

:hat initiative on constitutional amendments lies directly with the peo-
ple. When will it be necessary to hold Ohio's fifth constitutional
convention? Will the Initiative and Referendum broaden the people
on governmental affairs? Surely none can deny that in the last
analysis, intelligence of our people will be the barometer that will
measure our standard as a State and Nation.

PERCY TETLOW.

Dec. 20th, 1913.

HON. ROBERT CROSSER,

Delegate from Cuyahoga County.

Of the membership elected to the Fourth Constitutional Convention of Ohio which convened in Columbus in January of 1912 more than a majority were supposed to be committed to the principles of the initiative and referendum.

In the organization of the Convention I was made Chairman of the Initiative and Referendum Committee, and within a very few days thereafter introduced the first proposal on the subject of direct legislation. From that time on the membership of the Convention was divided into three groups in respect to their views upon the subject. There were very few who were opposed to the principle entirely. There were thirty or forty who were enthusiastic believers in the principle of popular control of lawmaking by the people and the remainder consisted of those who had either publicly or privately, prior to the election, expressed themselves in favor of the initiative and referendum. It was found, however, that the members last referred to were exceedingly solicitious about having the initiative and referendum "properly safeguarded."

Those members of the Convention, including myself, who were enthusiastic in our support of the initiative and referendum were termed radicals. We contended that if it were a good thing for the people to have the right to initiate laws, which the Legislature had refused, and the right to veto objectionable laws passed by the Legislature, then it should be made reasonably easy for them to do so. Accordingly, in the first draft of my proposals I provided that the signatures of fifty thousand voters should be required to an initiative or referendum petition relating to laws and sixty thousand for the proposal of a Constitutional amendment by an initiative petition.

Immediately there were objections to the fixed number idea. Some, no doubt, in accordance with the law of inertia, hesitating about it because it was a different plan than had been in general use where the initiative and referendum was adopted, and the greater number insisting upon the percentage basis for the reason that they saw it would make more and more difficult the use of the initiative and referendum. I favored it because it would not become increasingly difficult to make use of this remedy as population increased. I also argued, and believe still, that this is the sound principle, not only for the reason already given, but for the further reason that according to our representative form of government, wherein an agent of the people known as a legislator could initiate laws, the number of people required to elect a member of the Legislature is fixed and not based upon percentages. Therefore, the right of the people to initiate laws directly should not be made any more difficult than to initiate them indirectly through their members of the Legislature.

I further provided that the signatures might be obtained anywhere in the State regardless of county boundaries and to this there is no logical objection. The idea of distributing signatures over half the State had its chief support among those who were really opposed at heart to the initiative and referendum. Keeping in mind the fact that the laws adopted or rejected by the direct vote of the people are State laws and voted upon by all the people of the State, is it not perfectly clear that in a very populous county the efficacy of a citizen is only a fractional part of that enjoyed by the citizen of the more sparsely settled counties?

The same alignment of the membership took place in regard to the form of the initiative. Those whom we might say were mildly for the initiative and referendum insisted upon what was known as the indirect initiative, which required that any law proposed by the people should first be submitted to the Legislature for enactment. The so-called radicals opposed this requirement and insisted upon the simple plan of submitting it to the people directly. I have not here the space to give the arguments for and against each of these plans. I believe, however, that it is perfectly clear to the casual observer that those who, in their arguments before the Convention invariably showed that they were in doubt about the soundness of the initiative and referendum principle, were always to be found lined up for these so-called restrictions and clamored loudly and long to have the initiative and referendum power "properly safeguarded." I say this without impugning the motive of any man who insisted upon these restrictions.

While the Convention may not, perhaps, have accomplished all that some of us would have liked, yet it effected changes in the fundamental law of the State, which, in my opinion, will have far-reaching results for the good. The adoption of an amendment permitting home-rule for the cities and villages of the State was itself worth the calling of the Convention.

The tendency of the Convention's work generally was decidedly in the direction of fundamental democracy and has put the people of Ohio in a position where they will not be compelled in the future to depend upon the will of any despot or despots, however benevolent or democratic they may claim to be.

ROBERT CROSSER.

CLEVELAND, O., Dec. 20, 1913.

HON. C. B. GALBREATH,

Secretary of the Convention.

A constitutional convention is a great event in the history of any State. The Fourth Constitutional Convention of Ohio is entitled to inclusion in this generalization, while it presents some distinctive features that attracted wide attention while it was in session, and gave it a place peculiarly its own in the constitutional history of the State and Nation. Attention will be directed to a few of these in the course of this brief review.

Inasmuch as the contests for the election of delegates had been almost without exception non-partisan, it was presumed that the organization of the Convention would be along similar lines, that the preliminaries would be conducted with a decorum unprecedented in the history of the State and worthy of imitation by organic lawmakers for generations to come. It can hardly be said that this expectation was realized. Party lines were ignored, but that did not prevent a lively contest. Some days before the Convention assembled the struggle for supremacy began, and the corridors of the Neil House took on the familiar aspect of a political convention, an organization of the General Assembly, or a contest for election to the United States Senate. There were headquarters and candidates and managers, and the race for principle and place waxed warm in spite of editorial expostulation and the chilling blasts of January.

When the delegates assembled in the hall of the House of Representatives, January 9, 1912, they were called to order by the temporary chairman, Judge Dennis Dwyer, the oldest delegate that ever sat in an Ohio Constitutional Convention. He had reached his majority when the Constitution of 1851 was adopted, and his review of the events covered by the long period of his active life made a deep impression on all who heard his address.

The election of a President was next in order. After a spirited contest Rev. Herbert S. Bigelow, of Cincinnati, an independent Democrat in politics, and for years a recognized leader of the movement for direct legislation in Ohio, was elected on the eleventh ballot. He promptly assumed the duties of the office, and the election of a Secretary and Sergeant-at-Arms completed the organization. On the fourth day of the session Dr. S. D. Fess, Republican, President of Antioch College, was elected Vice President, a position created by amendment of the rules.

The membership of the Convention has been variously classified. By political affiliation there were 63 Democrats, 49 Republicans, 4 Independents, 2 Socialists, and 1 Independent Republican. To their credit, be it said, partisan division was manifest at no stage of the proceedings. On not a single roll call or vote was there such alignment. Even the natural division of progressives and conservatives was not clearly marked, and whenever there seemed to be a disposition to mould a portion of the Convention into a faction to control definitely its policy, the plan was promptly brought to naught. In their consideration of measures the members were untrammeled and exhibited a freedom and independence consistent with their trust and the high character of the work that they were called upon to perform. It was this fact, more than any other consideration, that caused the people to forget the controversies attending the organization of the Convention, and changed the adverse criticism of the press to an attitude of toleration and favor.

As in the previous Conventions of the State, with the possible exception of the first, lawyers were most numerously represented in the membership. Grouped by professions, there were 46 lawyers, 25 farmers, 6 teachers, 5 bankers, 4 physicians, 4 ministers, and 29 who followed a variety of vocations. The latter included the union labor group, not numerically large, but wielding a powerful influence in the Convention. Among the teachers were some of the leading educators of the State, and their contribution to the work proportionately far surpassed their numerical representation. The farmers, while they

did not occupy much time in debate, included many of the "middle-of-the-roaders," the real conservatives whose influence and votes were frequently potent in guiding the work of the Convention between the extremes of radicalism and reaction. A number of the delegates had previously had experience in the public service. Some had been Circuit and Common Pleas Judges; others had served in the Legislature, one as Speaker of the House of Representatives; and one had been a member of Congress. To summarize in a brief sentence, the Fourth Constitutional Convention of Ohio was in the broadest and best sense representative of the citizenship of the State. Such will be the impartial judgment of history.

The Convention from its inception to its conclusion attracted wide attention throughout the United States. The progressive wave then sweeping over the country was approaching its crest. The initiative and referendum, the recall, judicial reform, municipal home rule, woman suffrage, regulation of corporations, conservation of natural resources, welfare of employees, the issue of injunction in controversies between capital and labor, and other subjects considered had an interest not limited by State lines. Beyond the borders of Ohio students and men of affairs were eagerly watching to see what solution an important State of the middle west would offer for these problems.

This general interest was attested in the willingness with which distinguished men accepted invitations to address the Convention. Those from our own State, who in any event would have responded, were President William H. Taft, Governor Judson Harmon, ex-Senator Joseph B. Foraker, Senator Theodore E. Burton, Mayor Henry T. Hunt of Cincinnati, Mayor Brand Whitlock of Toledo, Mayor Newton D. Baker of Cleveland; speakers from outside of the State who were attracted by the Nation-wide interest in issues under consideration were ex-President Theodore Roosevelt, William Jennings Bryan, Governor Hiram Johnson and Judge Ben Lindsey. The addresses of Governor Harmon and ex-President Roosevelt were regarded as the platforms on which they sought nomination for the Presidency, and as such they will for years to come attract attention of the student of political history.

In addition to the progressive issues already noted, the Convention had to struggle with the eternal taxation and liquor questions. To consider so many important measures, the major portion of which were new, and reach conclusions on each that would command the support of electors, was an undertaking of great magnitude, and the

results are a tribute to the good judgment and representative character of the Convention.

Forty-two proposals in the form of forty-two amendments were submitted to the people, with opportunity to vote on each separately. These with explanations were extensively published and distributed in every county of the State. Thirty-six of the amendments were approved at the special election of September 3, 1912. One of those defeated has since been submitted by the Legislature and approved by the people. A short ballot proposal for State officers was voted down in the Convention, as was an amendment to another proposal, exempting public bonds from taxation. A bond exemption and a State short ballot amendment have since been submitted by the Legislature and both have been voted down, the former by 20,000, and the latter by 210,000 majority — a further evidence that the Convention was truly representative and responsive to the popular will.

It is strictly within the limits of impartial truth to say that the work of the Convention as a whole is of a much higher order than the people anticipated at the opening of the first day's session. Out of the maze of conflicting views, interests and ambitions came our new and progressive Constitution. To the net result the entire membership of the Convention contributed. The appeal of the most fervid radical was necessary to give the forward impulse, and the argument of the most pronounced standpatter was just as necessary to restrain the propulsion to limits of sanity and safety. Out of the combat of radical and reactionary ideas was evolved a product of organic law, not perfect we may grant, but much more nearly so than if either extreme had been dominant in its creation.

The Convention closed its labors in a harmonious frame of mind. Through the campaign that followed most of the delegates were before the people advocating the adoption of practically all of the proposed amendments. This attitude contributed much to the favorable results of the special election.

Considering the vigilant and critical spirit of the times, it is worthy of note that no question has been raised in regard to the integrity of the Convention or its membership—that it has never been charged with subserviency to bossism or corruption. It was its own master, and with clean hands it submitted its work to the people.

Not only in the range of views on public questions now recorded in the two large volumes of proceedings and debate, but also in the wide span of years that separated the oldest from the youngest members, was the Convention unique in the history of the State. Judge Dennis Dwyer, of Montgomery County, passed the limit of his 82nd birthday on Febru-

y 2nd when the convention was in session, while William P. Halen-
mp, of Hamilton County, was only 27 years old.

In these times prophecy is the vanity of vanities. It is safe to say, owever, that the work of the Fourth Constitutional Convention of Ohio ill stand until it has had a fair and honest test, and that much of it will ermanently endure as a distinctive and salutary contribution to the basic w of our progressive and powerful Commonwealth.

C. B. GALBREATH.

OLUMBUS, O., December 1st, 1913.