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INITIATIVE AND REFERENDUM

SPEECH

OF

HON. HERBERT S. BIGELOW

IN THE

OHIO CONSTITUTIONAL CONVENTION

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PRESENTED BY MR. POMERENE

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INITIATIVE AND REFERENDUM.

Mr. BIGELOW. Mr. President and gentlemen of the convention, since a certain address was made on the floor of this convention this morning I have received from friends much advice as to the kind of speech I ought to make in reply. I am not sure that I shall satisfy those advisers, because I am going to dispose in a very few words of the matter upon which they were so much exercised.

I response to the address of the member from Medina County [Mr. Woods] I merely want to say that when the member from Medina County will present to this convention a statement signed by any employee of this convention affirming that there is the slightest grain of truth in any word the member from Medina said with reference to my having threatened any employee on the subject to which he referred, or on any other subject, directly or indirectly, then, and not until then, will I give further notice to other charges from that source.

Mr. WOODS. May I make a statement right here?

The PRESIDENT pro tempore. Does the gentleman from Hamilton [Mr. Bigelow] yield?

Mr. BIGELOW. No, sir; I will not yield. I am sorry to have to make even this statement, because but for the very serious reflection of his remarks I would have preferred to brush aside all the personality with this sentiment:

> In men whom men condemn as ill,
> I find so much of goodness still;
> In men whom men pronounce divine
> I find so much of sin and blot,
> I hesitate to draw a line between the two
> Where God has not.

Now, just a word as to the position of the member from Medina with reference to the subject of the initiative and referendum.

I understand that the position he took is in substance, save for the fact that he proposes to penalize the legislators by loss of salary, the so-called Utah plan of initiative and referendum. Utah has in its constitution just a blanket provision that the legislature shall establish the initiative and referendum. Of course, although Utah was the first State in the Union to put that in its constitution, even before Oregon and South Dakota, it has never had the initiative and referendum, because no legislature has paid the slightest attention to that command.

"Oh," but the member from Medina will say, "we will take the money away from them if they don't." But even so, according to his proposition he leaves with the legislature the power to say on what terms the people, who are the masters of these men in the legislature,

shall exercise the sovereign power. I say that the right to name the terms upon which that power may be exercised is the right to destroy the power. And I think the member from Medina knows it as well as I do. This is the fact, that there has not been a time in 10 years when the initiative and referendum has been an issue before this legislature when the corporations that have come here to lobby against it would not have been glad to take the initiative and referendum on the terms that the member from Medina offers us. No, my friends, we have learned too much in meeting the tricks of the corporation lobbies in the last 10 or 15 years to be fooled by any such suggestion as that. Not that the member from Medina [Mr. Woods] offered it as a trick, but it is such in fact, even if it were not so intended.

Now, as to the line of argument indulged in by the member from Medina. All of these constitutional amendments providing for the initiative and referendum start out in language like this (I am quoting from the Oregon one because that happens to be at hand): "The legislative authority of the State shall be vested in a legislative assembly, consisting of a senate and house of representatives. But the people reserve to themselves the power"— To do what? To exercise that same authority to propose laws or amendments to the constitution. Now, it would hardly seem to need anything further to make the very obvious situation more obvious that the power that by that language is conferred on the people is the same power that the legislature itself has, and of course if there is a constitutional limitation on the power of that legislature, that constitution must of necessity so limit the power of the people. If the constitution does not limit the people as well as the legislature, what is the sense of providing that the people may use the initiative to amend the constitution? What sense would there be in the language that the initiative can be used to amend the constitution if there is no constitution to amend? But to meet the objection of the member from Medina, we have placed in the so-called compromise measure, which has been handed around, a sentence stating that all constitutional inhibitions stand against the power of the initiative as well as against the legislature. But as newspaper men say when they want to make an article so simple and plain that nobody can misunderstand it, we have made the thing "fool proof" for the especial benefit of the member from Medina.

I want to address myself to the subject of this proposed substitute that has been handed about. Yesterday, while we were listening to the debate, I requested the following delegates to the convention to meet and consult with each other as to the possibility of evolving some plan that might satisfy a large number, at any rate, of the delegates. Those invited to help in this work were the vice president, Mr. Peck, Mr. Fackler, Mr. Crosser, Mr. Donahey, Mr. Tannehill, Mr. Keller, Mr. Johnson of Madison, Mr. Cassidy, Prof. Knight, and Mr. Fluke. The gentlemen went out and worked all the afternoon. The result of their work is before you.

I want to refer now to a note I received from the vice president, who, by the way, asked me to request leave of absence for him, as he had to go to Philadelphia. On the way he wrote me this letter to the convention:

EN ROUTE TO PHILADELPHIA,
Tuesday, 26, 1912—7 p. m.

To the convention:

GENTLEMEN: The proposal as now modified to meet the conflicting opinions of the friends of the principle of the initiative and referendum meets with my approval. In incorporates the Peck amendment which provides for the direct initiative for amendments to the constitution upon the petition of 12 per cent.

It provides for the indirect initiative for laws upon a petition of 6 per cent. It adopts the Washington plan for the submission of competing laws, initiated by the people and the legislature. It distributes the petitions in a majority of counties, and it surrounds the signatures with safeguards. It inhibits the single tax and classification of property for taxation purposes.

I think this proposal does what I would like to see done, viz, give the principle to the people but safeguard it so it can not be abused by them.

S. D. FESS.

The position taken by the vice president is the position taken by myself, that this substitute proposal does represent every reasonable concession that we have a right to ask of the so-called ultra group here, and that it concedes all that any other group may reasonably expect the rest of us to concede, and I trust that when you have thought it over you will agree with the vice president that it does present a platform on which we may get together.

Now, as to some words that have been the occasion of more or less jocularity in this debate. I refer, first, to the much-quoted statement of mine that on the subject of the initiative and referendum I have not an open mind.

The member from Hamilton County, Judge Worthington, read approvingly Burke's idea of representative government. I will not take your time to read it again, except to state that Burke's position, and I understand it to be the position of the gentleman from Hamilton, Judge Worthington, is that there are times when it is a virtue in the representative to do that which he knows his constituents do not wish him to do. That may have been the idea of Mr. Burke and it may be the idea of some members of this convention. I accord them the right of their opinion, but that opinion is not mine. Now, I want to quote my idea of the proper function of a representative. I am quoting from an address made by that great Boston patriot, Sam Adams, when in 1764 he as the appointed spokesman of the Boston Town meeting delivered the instructions to the first group of representatives that they sent to the Massachusetts colonial legislature:

> Gentlemen, your being chosen by the freeholders and inhabitants of the town of Boston to represent them in the general assembly the ensuing year affords you the strongest testimony of that confidence which they place in your integrity and character. By this choice they have delegated to you the power of acting in their public concerns in general as your own prudence shall direct. Always reserving to themselves the constitutional right of expressing their minds and giving you further instructions upon particular matters as they at any time shall judge proper.

Now, gentlemen, that is my idea of representative government. A man who is sent to a representative body should do on all general matters as his best judgment and prudence shall direct, but in reference to those matters on which his constituents have spoken he should do not as he thinks, but as they command. The germ of monarchy lurks in Burke's notion of representative government; the spirit of democracy is embodied in Sam Adams's notion. So, I say, on a matter on which my people have spoken, I have no right to an open mind. If they had suspected before the election that

there was any chance of my being persuaded to change my mind on this subject I would not be here, and then I never would have had an opportunity to listen to the glowing eloquence of the member from Ashtabula, Mr. Lampson.

On matters on which for any reason the people have not spoken we should exercise our best judgment and keep an open mind. But I regard a representative as a soldier under orders. The trouble is that when the soldiers get here they forget they are soldiers. They imagine they are generals and they turn straightway to giving commands to the people.

Now, just a word as to this Crosser proposal. The member from Hamilton, Judge Worthington, took some of the time of this convention finding fault with the Crosser proposal, because among other things he found in the first paragraph that, intending apparently to amend section 1 of Article II of the constitution, it amended all the sections of Article II. I submit that if the member from Hamilton, Judge Worthington, had found that error in any other proposal before this convention, he would have gone to the author of the proposal and said to him: "My friend, did you notice this? This is evidently a mistake." If he had done that in this case, what would he have found? The member from Cuyahoga, Mr. Crosser, would have turned to the manuscript and shown him that it was a typewritten mistake, that in the manuscript it amended section 1 of Article II, and it was simply a typographical error.

Mr. WORTHINGTON. May I correct the gentleman?

The PRESIDENT PRO TEM. Will the gentleman yield?

Mr. BIGELOW. I think I should on this point.

Mr. WORTHINGTON. The member from Mahoning [Mr. Anderson] first called attention to that.

Mr. BIGELOW. The member from Mahoning [Mr. Anderson] did, but I think the member from Hamilton [Mr. Worthington] dwelt a good deal on it in his address.

Another thing that the member from Hamilton [Mr. Worthington] dwelt upon and that others dwelt upon was the language in the Crosser proposal which said that "not more than" this, that, or the other per cent should be required. The learned constitutional lawyers here—and I think there is none more able as a lawyer and none more honorable as a gentleman than the member from Hamilton, Judge Worthington—dwelt at considerable length upon the faulty construction and slipshod work of the Crosser proposal in that particular.

But the theory of these proposals, or at any rate the theory of the Oregon proposal which has been used as a model, was that the legislature should have the power to reduce the percentages, but that there was to be placed in the constitution itself an inhibition against the legislature requiring more than a certain amount. There is nothing faulty in that. It is just a matter of taste how you want to put it.

Now, what about the language that these constitutional lawyers criticize at such length before the convention, attempting to belittle the work of my friend from Cuyahoga [Mr. Crosser]. The language which they criticize is the exact language, word for word, of the Oregon proposal, and that Oregon proposal has stood the test in every court in the State of Oregon—passed through the Supreme

Court of the State of Oregon, and then was brought before the Supreme Tribunal of the United States and stood the fire there, and if you will pardon an expression that has given some members much merriment here, I may say that although the member from Hamilton, Judge Worthington, seems still to be much dissatisfied with the language of the Crosser proposal wherein it exactly coincides with the Oregon provision, the Supreme Court of the United States did not see fit to "dot an I or cross a T" of that Oregon proposal.

Next in regard to the single tax. My friends, I do not like to and I will not impugn the motives of any fellow delegate here, but I do impugn the motives of the Ohio State Board of Commerce, and I do believe that some delegates here have been unconsciously playing a game to discredit this convention and thwart its purpose to serve the people of this Commonwealth.

But we have silenced one after another the guns of the battery of this corporation lobby from which we have heard such thunderous shots these 10 or 15 years. One after another they have been silenced and put out of commission. Whenever we would try to get something through the legislature some one would get up and say, "Unconstitutional; you can not do it." But the Oregon amendment went from one court to another until finally it got to the Supreme Court of the United States and got out again. At last that gun is silenced. So with one after another of their guns until just one funny little gun is left, and that is the "single-tax" gun. Now we are going to silence that. I will tell you how we will do it. The Ohio State Board of Commerce, whose paid lobbyists have been whispering into the ears of the delegates on this floor, thought that it was going to make the records of this convention wadding for that single-tax gun; but we are going to block them. We are going to agree to the single-tax inhibition, so that our enemies shall not have that issue to confuse the voters and defeat them at the polls.

The substitute proposal contains what has been known among some of the delegates as the "Crites amendment." Of course that has not yet been before the convention, because we have been full up with amendments and there has not been any opportunity to present the Crites amendment.

Let us not dodge the issue. Let us not cover anything up. I am going to point out the difference between the Lampson amendment, which we propose to strike out, and the Crites amendment, which we propose to put in. I do not want you to vote for it under misapprehension. I would rather you would defeat it and adopt this exceedingly obnoxious amendment of Mr. Lampson than have any misunderstanding as to the Crites amendment. I will tell you what it is in a few words. The Crites amendment says this. It says to the people what the present constitution says to the legislature, that no single-tax measures can ever be passed by the people in the State of Ohio until they have first submitted, in whatever way may be provided, an amendment to the constitution permitting such legislation. If such an amendment is submitted, either by the legislature or by the initiative, and the people by direct vote at the polls indorse it and it is passed, then the constitutional door is open for the single tax; but then a law would have to be passed carrying it into effect, and that law passed by the legislature would, of course, be subject to referendum, and if passed through the initiative would, of course, have

to go to the people, so that in either case not only the constitutional amendment submitting it but the law carrying in into operation would have to go to a direct vote of the people, and there would have to be at least two years between those votes. If the people of Ohio with all the publicity provided for under these provisions do twice, once on the constitutional amendment and two years afterwards on a law—do twice by their votes indorse that or any other proposition, I am not the one to say that they should not have the right to do it, and I would rather go down to defeat than agree to any other kind of inhibition.

We come now to the "caucus." That also has been a subject of much caustic comment. I will justify the caucus, if you choose to use that offensive name, by telling you a fable from a book of fairy tales recently presented to my children.

Last Saturday afternoon when I got home I thought I was going to write a speech on the initiative and referendum, but I didn't have a chance to see the inside of my study. Instead I was taken into custody by the boy of 9 and his 6-year-old sister. I had to sit down and read these fairy stories to them, and I spent my week-end vacation that way. Here is one of them, by which I think the principle of the caucus is fully justified. It was the story of a curious kingdom far away. The King had no palace. He lived in a house that was not nearly as pretentious as many of the houses of his subjects. Of course, there was a reason for this. The reason was that long ago in this Kingdom there had been a most marvelous palace. But one day an earthquake had opened the earth and this wondrous palace of the Kingdom was swallowed up and disappeared. There was nothing left but a barren tract of land. According to the legend, this palace had not been built by the hands of man but by the power of music. Music, however, had lost its primitive power, and when the palace was destroyed no one could rebuild it. Yet it was the great ambition of the musicians of the Kingdom to regain the lost art, to learn how to play well enough to conjure the palace back. But the trouble was that each musician wanted for himself the credit of restoring the palace to the Kingdom. They would steal out early in the morning, each one thinking to get out ahead of the others to the place where the palace had been to play on his lyre or fife and try to bring the palace back. No one could succeed. Many tried, but everyone failed, until at last two boys, not thinking themselves great musicians, made a remarkable discovery. They found that while they were indifferent players themselves that it was possible for each of them to play the same tune and not strike the same notes, but not make a discord, and by so doing to make more beautiful music than either could by playing alone. Making this discovery, they went to the master musician of the Kingdom and told him about it. He paid no attention to them. Nevertheless, they were not to be discouraged. A holiday came and they determined to go out early in the morning before any other musician arrived and try what they could do. On the road out that morning they met an old man with a sad face. He had come from a distance. What was the trouble? He had been out there trying to play the palace back but had failed. The boys told him of their discovery and besought him to turn around and go back. The three went back and found that all the musicians in the Kingdom had likewise thought that they would steal out ahead of the

rest. They were all there. Every one of them was standing around waiting for the others to go home so that he could play the palace back and get the credit from the King. The boys waited for a time. Finally, since the musicians in their jealousy were unwilling to play, the boys said to themselves and the old man, "Let us try to play together," and they began to play, and the three of them together made music more wonderful than any of the musicians in that country had heard, and the musicians forgot their suspicions of one another and began to join in until they were all taking part in the most wonderful music that had ever been heard. Then the people came rushing from all quarters with the cry, "Look, look! the palace, the palace!" The palace was rising out of the ground.

With that story I justify the caucus, the effort to get men together as brothers to work out a great problem for their State and for the coming generations.

Now, just a word more. I have an unpleasant part of my speech which I think I will leave out altogether. I have some cartoons and some postal cards, and I have circulars from the Ohio Journal of Commerce appealing for funds. I have a letter from the Ohio Manufacturers' Association telling how much it is costing them for the efforts they are making against the work of this convention. I have some interesting letter heads giving the names of some men. I have here a Nickel Plate folder, and on it it tells how the initiative and referendum and recall is going to injure us. I have a lot of interesting things, but if I introduced them it would lead me to say unkind things. It was the member from Allen [Mr. Halfhill] who said that he was afraid of the Huns and Vandals. Ah, these words will rise up against him at the judgment seat. The Huns and Vandals! As though the poor disinherited children of the earth that cry out from their gold-crushed hungry hell, as though they were Huns and Vandals to be feared. I say that the Huns and Vandals that this Republic has to fear are the men whose pockets are gorged with the plunder of the people and whose gold drips with the tears of bondmen. Ah, my friends, it is a pitiful thing—it is a pitiful thing! To hear men talk for two weeks about the Huns and Vandals, about vested interests and property rights, about homes and farms, as though there were any of us dishonest enough to favor anything that we conceived to be in any way an injury to any man who earns an honest dollar on the farm or in the factory or accumulates property in any useful way. But it seems to me a pitiful thing that we should be so dead to the tragedies of the unfortunate that we should wrangle for two weeks here without a lofty note of love or concern for suffering humanity; that we should be so dead to the appeal of Him who said "Inasmuch as ye have done it unto one of the least of these my brethren, ye have done it unto me." I do not want to say anything unkind about anyone.

Mr. HALFHILL. Will the gentlemen allow me——

The PRESIDENT pro tempore. Does the gentleman yield?

Mr. BIGELOW. Mr. President, I have sat for two weeks——

The PRESIDENT pro tempore. The gentleman declines to yield.

Mr. BIGELOW. I have sat for two weeks and listened to a discussion of this subject by men who have not known as much about it as I think I do, and I do not think these men ought to begrudge me now just a little uninterrupted time. I do not want to say anything

unkind, but I think I will quote a sentence of Scripture that will express my philosophy of history, that will portray in just a word the opposition to truth and humanity that has been manifested through all the ages, and that is at work here in this convention now against this present effort to enlarge the freedom of men.

Oh, I remember the venerable member from Harrison [Mr. Cunningham] making, at the very beginning of the debate, some allusion to the Martyr of Galilee, attributing, of course, His martyrdom to the fickle mob. Even if that were so, it is not a very fortunate illustration for the member from Harrison. It is not fortunate to liken the people of the great Commonwealth of Ohio to an oriental mob. But it was not true that the people murdered this Man of Galilee. Here is the story:

"Then assembled together—" Who? The people? No. "Then assembled together the chief priests and the scribes and the elders." That is to say, the representatives of the people—"unto the palace of the high priest and consulted that they might take Jesus by subtlety and kill Him. But they said, Not on the feast day, lest there be an uproar among the people."

In conclusion, I wish to submit two reasons for making this modification of representative government. Right here in this capitol, at this time, I think it is pertinent to plead for this change, not for our sake, but for the sake of the representative himself. To illustrate what I mean I will tell a story. I do not say it is true. I say it is typical. I will not use names. I will let you judge whether or not it is a faithful picture of what has gone on in many cities and States of this Union. Here is the story:

There is a city council. A franchise is pending in that city council. The paper on which that franchise is written is worth $10,000,000. It is worth that to the company getting the franchise. A United States Senator is chief counsel for the corporation asking for the franchise. The dominant political boss of the town is a large owner of the stock of that corporation. Most members of the city council are political friends of the United States Senator and the boss. Yet such is the storm of indignation in the town that even they are afraid. It all turns, as everybody knows it is going to, on the vote of one councilman. His neighbors say he is honest. But the agents of the corporation confidently claim his vote. They say they will have him when the time comes. The time comes. The night arrives. They begin the roll call—A, B, C, down the list, until they reach that man's name. He rises in his seat. How does he vote? Remember that on his yea or nay turns $10,000,000. How does he vote? Oh, you know how he votes. You know how they all vote. He votes "aye." Very well. Why were the agents of the corporation so sure of that man's vote? Because they knew what the people did not know—that three days before, behind the drawn curtains of a hotel room in a distant city this councilman was met by a lobbyist who counted out on the table before them $20,000 in crisp banknotes. This man made $18 a week. He had never before seen so much money. He never dreamed of having it. It would pay off the mortgage on his house. It would set him up in business. It would make him independent for life. The lobbyist had carried the money into the hotel room; the councilman carried it out. For $20,000 he sold the rights of 300,000 people in the streets of their city. What have you to say about that? Indict the

councilman who sells his vote? Convict him and send him to the penitentiary and disgrace his wife and his children? What about the directors of the corporation who buy councilmen? Indict them, too, if you can; convict them and disgrace their wives and their children. But what about ourselves? Gather the skirts of civic righteousness about ourselves and point the finger of scorn at men who have been tempted and who fall. But we know that if the city council or the State legislature did not have the final say as to grants of that kind; if the people could upset the bargain at the polls, we know that the corporations would soon get tired of buying councilmen or State legislators who could not deliver the goods, and if they no longer had that power the motive for bribery would cease. Thus you could not only protect your public property, but, more than that, you could protect your representatives from temptation, and that is your duty and mine. "Lead them not into temptation, but deliver them from evil." I say unto you, it is a finer justice, instead of hounding men into the penitentiary after they have been tempted and fallen, it is a finer justice to save them from the temptation before they fall.

One more argument. I have said we wanted the initiative and referendum for the sake of the representative. We want it for the sake of the people. You may have a fairly successful monarchy if you have an efficient king; but you can not run a republic that way. The only safety for popular institutions is in the education of the people of the republic. I want the initiative and referendum, because it will make a great school of our political life. Who can tell me that the system they have had for 10 years in Oregon, by which the people know and feel that they are always a part of their government, that they are never divorced from it, but that they always have a reservation of power, and can step in and stop anything they don't like and can accomplish anything that the legislators refuse to do—who can tell me that this plan, by which, when questions are submitted to a vote a pamphlet goes to every voter containing the text of the question submitted and the argument for and against, so that all the voters of the State receive that pamphlet 6 weeks before the election—(of course, it is thrown in the wastebasket by some people and, of course, it is an expense); but who can tell me that that system persisted in will not in time develop the most intelligent citizenship that the world ever saw? And that is what we want, my friends. Men have talked here for 2 weeks about the distribution of percentages and about the size of the percentages. We have been assaulted by petty complaint, captious criticisms, and dire forebodings. For 2 weeks and more this discussion has fairly groveled in distrust and suspicion and fear. It has forced upon my mind that fine passage in Dombey and Son, where Dickens expressed the prayer that some good angel might uncover the housetops that we might for a single night behold the scenes of our too long neglect. Then men would arise and brush away the obstacles of their own making, that are after all nothing but specks of dust on the pathway between them and eternity. Oh, my friends, we are striking down tyranny. We are forging the greatest tools democracy ever had. We are building grander institutions for freedom and for humanity than the world has ever known. We are engaged not only in an important civic work. Our task is a profoundly religious one. Do you remember how Manson, the Servant in the House, attempts to describe for the Bishop of Stocks and

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Bonds the church of the Bishop of India? That church of the bishop—is not that what we are trying to build? "The pillars of it go up like the brawney trunks of heroes; the sweet human flesh of men and women is molded about its bulwarks, strong, inpregnable; the faces of little children laugh out from every cornerstone; the terrible spans and arches of it are the joined hands of comrades; and up in the heights and spaces there are inscribed the numberless musing of all the dreamers of the world. It is yet building—building and built upon. Sometimes the work goes forward in deep darkness; sometimes in blinding light; now beneath the burden of unutterable anguish; now to the tune of a great laughter and heroic shoutings like the cry of thunder. Sometimes, in the silence of the nighttime one may hear the tiny hammerings of the comrades at work up in the dome—the comrades that have climbed ahead.

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