which it was intended, that in my amazement I forget to be indignant.

There are more things in the law—plenty; and here is another example of "how not to do it." Under section 46, paragraph 3, the party rules may provide that—

> A candidate for election as member of a committee may be designated either by the member or members thereof from the same unit of representation or by such other committee, chosen by the enrolled party voters within such unit, as the rules and regulations of the party may prescribe.

—which is rather involved, but being interpreted is equivalent to saying that enrolled voters may be limited to the election of only one committee, and that all other committee and delegate selections may be made without the direct action of the voters; which is precisely the privilege they had before, with no direct primary law at all.

After the passage of that law there was an election, and the Democrats lost all that could be lost in an off year, namely, the Assembly. Thus it became necessary, in order to pass amendments, that there should be a meeting of minds of the Democratic majority in one House and the Republican majority in the other. Both of them being of the opinion that there was more than enough *directness* in the law already, they contented themselves with a few amendments not requiring extended notice. One of them, however, is worthy of mention as indicating the spirit in which they approached their task. In the original law it was enacted that county committees should be composed of at least one member from each election district in the county. In an amendment it is provided that "the number of members from any unit of representation shall be not less than the number of election districts within such unit." So that while we had a chance of knowing something about our representatives in the county committee under the law as it was, the amendment makes it possible to take the whole number from one or two election districts in an Assembly district under the law as it is. This is the most important amendment, and it is distinctly bad.

To sum up, the only comfort that can be extracted from the passage of this miserable pretense of direct primaries is that, however grudgingly given, it is nevertheless a recognition of the public demand, and in that fact lies hope for future improvement.

A. J. PORTENAR.

INCIDENTAL SUGGESTIONS

THE COURTS AND CONSTITUTIONAL PROBLEMS.

Grand Junction, Colo.

In your issue of February 9th Herbert S. Swan asserts that the only valid argument for the Recall of judges is that they pass upon the Constitutionality of statutes, and he closes with this sentence: "If judges, then, were to be deprived of the prerogative of passing upon the Constitutionality of laws, there would no longer be any valid argument favoring even their popular election, much less their recall." But if courts are not to pass upon the Constitutionality of laws, by whom is the individual to be protected from unconstitutional laws?

The Constitutions of the various States were adopted for the purpose of placing restrictions upon legislative bodies created by the Constitutions, and if these legislative bodies violate those restrictions by enacting laws contrary to the Constitutions, it must necessarily be the duty of the courts to say that they are contrary to the provisions of the Constitutions and that being contrary thereto are null and void. These restrictions were placed upon the legislative bodies by the people in adopting their Constitutions by reason of the experience of the English speaking people for ages before our present Constitutions were adopted, which experience taught them that unrestrained legislative bodies often abuse their power.

The following are common provisions of the Constitutions of most of the States of the United States:

> That the free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed. . . . No person shall be required to attend or support any ministry or place of worship, religious sect, or denomination against his consent.
>
> That all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.
>
> That no law shall be passed impairing the freedom of speech.
>
> That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges, franchises or immunities, shall be passed by the General Assembly.
>
> That private property shall not be taken or damaged for public or private use without just compensation.
>
> That in criminal prosecutions the accused shall have the right to appear and defend in person and by counsel: to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.
>
> That no person shall be deprived of life, liberty or property without due process of law.

Many others might be cited, all of which are common to the Constitutions of most of the States of the United States and all of which provisions are restrictions upon legislative bodies.

If a legislative body in one of the States should pass a law requiring all people to worship according to the rules and regulations of some particular sect or denomination and make it a penal offense for a person to worship otherwise, would you deprive the courts of power to pass upon the Constitutionality of such a law and compel them to enforce it against the individual?

If a legislature should enact a law prohibiting everyone from voting at an election, except such as obtained the consent of some military or civil officer, would you deprive the courts of the power of holding such a law unconstitutional and of protecting

the citizen in the free exercise of the right of suffrage?

If a legislature should enact a law prohibiting all publications or speeches favoring the adoption of the Initiative, Referendum, or Recall, would you deprive the courts of the right to hold such a law unconstitutional?

Go through the Constitutions of the various States and you will find all through them provisions restraining legislative bodies in the enactment of laws. Therefore, to abolish the right of the courts to pass upon the constitutionality of laws would be in effect to abolish the Constitutions themselves.

Under our form of government and under our written Constitutions it must always be the duty of the courts to pass upon the Constitutionality of laws enacted by legislative bodies, because they must at all times recognize the Constitution of the State as the highest law in the State. When an agency created by the Constitution and deriving its powers from the Constitution abuses that power and acts contrary to the prohibitions and restrictions therein laid down, then the courts must hold such acts void and enforce the Constitution as the highest law.

We must always remember that Constitutions are the fundamental laws of the State, adopted by the people themselves acting directly in their sovereign capacity; and that laws enacted by a legislative body are merely the acts of the agents of the people temporarily appointed to carry on the government in accordance with the directions and restrictions laid down in the Constitution and not contrary thereto.

If beneficial laws have been held unconstitutional by courts, it is not necessarily the fault of the courts, but may be the fault of the Constitutions in prohibiting such legislation; and it is possible that in a few instances the courts have misinterpreted the Constitutions and have held some laws unconstitutional which should not have been so held. In either case a remedy is at hand. If the so-called beneficial law is restricted by the Constitution, then the judges should most certainly not be recalled for holding it so; neither should their decision be referred; but the Constitution should be amended by the people in their sovereign capacity so as to remove the restriction against such beneficial legislation. Even if the courts have misinterpreted Constitutions, then it would be far better to amend the Constitution so as to make its meaning clear, than to recall the judge who rendered the decision.

We must always remember that the Constitutions are the legislative acts of the whole people; that is, all the people have a right to vote upon them, and as the majority of the people did vote for them they have become binding upon all the people; and when the courts enforce the Constitutions, they are carrying out the will of the people as theretofore expressed in such Constitutions. It may be that some Constitutions are difficult to amend, and it may be that some Constitutions contain restrictions upon legislation which they should not contain; nevertheless the Constitutions are the expressed will of the people, and we must presume that they understood and knew what they were doing when they adopted them. To say that they did not is to say that they are incapable of self-government. It must always be remembered that as the people adopted the Constitutions, so do the people have the right to alter, change, revise or amend their Constitutions. So it is no argument in favor of the Recall of judges because they hold laws enacted by legislative bodies unconstitutional, but rather in favor of the recall of the legislators who enacted such laws, or for the adoption of an easier method of submitting Constitutional amendments.

I have confined myself in this letter simply to State Constitutions because that is apparently the scope of Mr. Swan's article. As far as the general principles are concerned the same would be true of the United States Constitution. But by reason of its different manner of adoption, and the rules of construction governing it, it would have to be considered separately.

JOHN H. FRY.

NEWS NARRATIVE

The figures in brackets at the ends of paragraphs refer to volumes and pages of The Public for earlier information on the same subject.

Week ending Tuesday, March 19, 1912.

British Coal Miners' Strike.

After a three-hours' joint conference on the 12th, representatives of both sides in the British coal-mining strike adjourned for the day without having reached an agreement. The Prime Minister presided. It appeared from the dispatches that the difficulty then in the way was the refusal of the owners of Scotch and Welsh coal deposits to join the owners of the English deposits in fixing a minimum wage. The conference of the 13th was equally fruitless except that its adjournment for the day was expressly for the purpose of considering "certain proposals made by the Prime Minister." Subsequent sessions appear, however, to have produced no result; and dispatches of the 15th announced failure and termination of the joint conference, supplemented with an official statement by the Prime Minister, who said: "The Government has done all in its power to obtain a settlement of the controversy by an agreement, and it has come to the conclusion, with great regret, that this is impossible and that other measures must therefore be taken." The same dispatches reported, though unofficially, that "the Government's minimum-wage bill will be read in the House of Commons Tuesday, hurried through the various stages, and probably become a law by the end of the week." Such a bill appeared from subsequent dispatches to have been drawn by Lloyd George and to have been approved on the 16th by the Cabinet. It was introduced in Parliament by the Prime Minister on the 19th. He explained that the measure was only a temporary one, whose specific purpose was to settle the present difficulty. It will be effective only three years