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THE
INITIATIVE and REFERENDUM
IN MAINE

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THE INITIATIVE and REFERENDUM
IN MAINE

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BRUNSWICK, MAINE

1951

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INTRODUCTORY NOTE

The Bureau for Research in Municipal Government, established in 1914 under the encouraging sponsorship of the Honorable William J. Curtis of the Bowdoin class of 1875, has, over thirty-seven years, periodically contributed studies dedicated to better understanding of current governmental problems in the State of Maine.

As the retiring Director of the Bureau, I take this opportunity, with unusual pleasure, to express my appreciation of this scholarly contribution to the series by my colleague, Professor Lawrence Pelletier. His subject is timely because a critical unprejudiced evaluation of the actual working of the initiative and referendum in the State is long over-due.

Not only the legislator, the research scholar, and the student, but also the average voter may read with civic profit the concise, thoroughly analyzed data presented with the calculated moderation of a native son of the State of Maine.

ORREN C. HORMELL

*Director of the Bureau of Municipal
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January 1, 1952

The Initiative and Referendum in Maine

The nineteenth century was marked by a decline in popular trust in representative assemblies, which had too frequently become the tools of minorities, and by a growing confidence in the ability of the people to reach sound decisions on the major questions confronting state governments. Thus at the beginning of the twentieth century, states were experimenting with the initiative and referendum with the hope that these devices would remedy some of the worst of the legislative abuses and that they would restore to the people a greater and more effective voice in policy decisions. A positive instrument, the initiative, permits the electorate to draft and enact a statute without legislative consent. The referendum is a negative implement which enables the voters to veto measures already approved by the legislature.

Maine now has had over forty years of experience with direct legislation, and it is appropriate that we should analyze the way in which these devices of popular government have been utilized. Have they been widely employed? Have they threatened the integrity of the legislature and of representative government? Have popular measures been ill-conceived and poorly drawn? Has desirable legislation been defeated? Has direct legislation contributed to the political education of the people? Have minority groups abused the initiative and referendum to frustrate the will of the majority? Have the fears expressed in 1912 that "already there are indications that the law will be more frequently used in the future, and that it will be increasingly difficult to secure results through the legislature alone" been borne out by the record? The following discussion attempts to answer some of these questions concerning the use of the initiative and referendum in Maine.

Early history.

Maine now enjoys a reputation for political conservatism, which, in the light of recent presidential elections, appears to be well de-

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1. J. William Black, "Maine's Experience with the Initiative and Referendum," *The Annals* 43, p. 178. This article includes an excellent discussion of the early history of the initiative and referendum in Maine.

served, but at the turn of the century the state was deeply influenced by progressive tides and early adopted such devices of popular government as the initiative and referendum and the direct primary. It is of interest that, with the enactment of the constitutional amendment providing for direct legislation in 1908, Maine became the first eastern state to adopt a state-wide initiative and referendum.² That this willingness to experiment with new forms of government has not completely disappeared is apparent when we recall the widespread utilization of the manager plan by municipalities in the state.

The campaign for the initiative and referendum.

Effective agitation supporting popular legislation dated from approximately the turn of the century. The initiative and referendum were endorsed by a plank in the Democratic platform as early as 1902, and the matter was introduced in the legislature in 1903. No action was taken, however, other than to refer the measure to the attention of the next legislative session.³ Both gubernatorial candidates discussed the issue in the election of 1904, and the following year a memorial requesting positive action was presented to the legislature. A resolve providing for the initiative and referendum was defeated, however, in its final legislative stages by the House of Representatives.⁴ By 1906 popular interest and support had been sufficiently aroused so that both parties endorsed direct legislation by favorable planks in their platforms and both candidates for governor declared themselves to be in favor of the proposal. There was, nevertheless, still considerable opposition in the legislative session of 1907, with the Speaker of the House, the President of the Senate, and the members of the Judiciary Committee, to whom the proposal was referred, continuing the fight

2. *Ibid.*, p. 161.

3. *Ibid.*, p. 164.

4. *Maine Legislative Record*, 1905, pp. 829-835, 855. It was argued by Representative Merrill of Skowhegan that the initiative was not a new idea in Maine government because in municipal affairs there existed a provision that the legal voters may ask that the selectmen insert an article in the warrant. He also supported the measure on the grounds that the referendum would give the people the authority to check their agents, and that it would reduce the power of pressure groups before the legislature. The measure failed, however, to secure the necessary two-thirds vote.

against the initiative and referendum.⁵ Popular pressure, however, was well organized and a resolve amending the constitution to provide for direct legislation was enacted in 1907.⁶ After a vigorous campaign, the measure was approved by a popular vote of 53,785 to 24,543, with every county in the state voting in the affirmative. Direct legislation, therefore, became a part of the Maine Constitution in 1909, and Maine became the sixth state in the Union to provide for a state-wide initiative and referendum.⁷

Forces supporting and opposing the initiative and referendum.

Apparently the initiative and referendum were potent political issues, for both major parties went on record as supporting the principle of direct legislation. The Socialist and Prohibition parties also endorsed the proposal.⁸ The latter group acted after some initial hesitation since the dry forces feared that the initiative, especially if extended to constitutional measures, might be utilized to refer the prohibition issue to the voters. Although the Republican and Democratic parties were in agreement as to the principle of direct legislation, they split when it came to the specific measure which they preferred to see enacted. The former desired to have the initiative apply only to statutory measures, but the Democrats supported a broader application to include constitutional amendments—probably because they hoped by this device to secure a re-submission to the voters of the prohibition issue.⁹ The Democrats were not adamant, however, and eventually accepted the Republican measure.

Important interest groups, particularly labor and agriculture, also played a significant role in supporting the initiative and referendum. In 1904, the State Federation of Labor, through its legislative committee, endorsed the proposal. More important, however, was the State Grange, which also urged direct legislation. Finally the Maine Civic League approved the initiative and referendum.¹⁰

5. J. William Black, *op. cit.*, p. 165.

6. *Maine Legislative Record*, 1907, pp. 638-648, 736, 740.

7. Massachusetts Constitutional Convention of 1917, *The Initiative and Referendum*, Bulletin No. 6, p. 10.

8. J. William Black, *op. cit.*, pp. 164-165.

9. *Maine Legislative Record*, 1907, p. 639.

10. *Maine Legislative Record*, 1905, p. 830.

In 1905, as the campaign for direct legislation reached its peak, a State Referendum League was formed. This group was to be "interparty in membership and non-partisan in methods."¹¹ The League was successful in enlisting the active support of the State Grange and in getting endorsement of direct legislation into the platforms of both the Republican and Democratic parties. It also entered the political campaign and attempted to secure commitments on the initiative and referendum from those seeking legislative seats. Where candidates were unsympathetic to direct legislation or failed to indicate any stand the League opposed their election.

As one might anticipate, the most active opposition to direct legislation came from the corporation lobby and from the professional politicians, particularly several prominent members of the legislature. In general, it was argued that the initiative and referendum would destroy representative government and that the people would be led to excesses. In particular, vested interests, political as well as economic, feared that direct legislation would destroy the delicate balance upon which their control was based and that the people would utilize these devices to take economic as well as political power into their own hands. But in reading the newspapers of the period, one is impressed by the fact that the issue did not arouse as much discussion as its importance warranted.

The initiative.

According to the Constitution, the "electors may propose to the legislature for its consideration any bill, resolve or resolution, including bills to amend or repeal emergency legislation, but not an amendment to the state constitution."¹² The petition proposing such legislation must be signed by at least ten per cent of the vote cast in the last gubernatorial election.¹³ It may be addressed to the legislature or to either house and must be filed with the Secretary of State or presented to either branch of the legislature within

11. J. William Black, *op. cit.*, p. 164.

12. Section 18 of Article IV, Part Third, of the Maine Constitution deals with the initiative.

13. Until 1951, the petition was required to have 12,000 signatures, but in 1952, under the ten per cent requirement, 24,000 signatures will be required.

forty-five days after the legislature has convened in regular session.¹⁴ There is not, however, any time limit on the circulation of the initiative petition. If the initiated proposal is not enacted, it must be presented to the voters, but the legislature may submit a competing measure for consideration by the people.¹⁵ When there are competing bills and no measure receives a majority, the one receiving the highest vote, providing that it is at least one third of the votes cast, shall be submitted to the people at another election. If the governor vetoes an act initiated by the people and enacted without change by the legislature and if the veto is sustained by the legislature, the measure shall be referred to the people at the next general election.

Upon written request by any voter the Secretary of State must have prepared at the expense of the state a sufficient supply of the petitions, or the voter may prepare the petitions at his own expense. The petition must set forth the full text of the measure and may be signed only by qualified voters. It must be verified by a petitioner who can verify only one petition and who must swear that the signatures are original and authentic. The town or city clerk must also certify that the signers of the petition are registered to vote and are qualified to vote in gubernatorial elections.¹⁶ It is customary for the petitions to include more than the legally required number of signatures because some of them may not be valid. There is no requirement as to the geographical distribution of the voters signing, and most petitions, therefore, contain a heavy proportion of signatures from the larger urban areas.

The power to initiate legislation in Maine is less broad than in other states where its use has been extensive. First, unlike some ✓

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14. Prior to 1950 the petition had to be submitted at least 30 days before the end of the session. This change increases the difficulty of initiating measures to compete with legislative proposals, but it makes the final date for filing initiated petitions roughly comparable to the deadline for introducing bills in the legislature.
 15. The Tabb Bill was ruled by the Supreme Court to be a competing measure to the Barlow Bill and thus was placed on the ballot in 1948. *Farris v. Goss*, 143 Me. 227 (1948). It is interesting that the primary law enacted by the legislature in 1911 was never submitted to the voters as a substitute measure but died when the people approved the initiated primary law.
 16. Constitution of the State of Maine, Article IV, section 20. See also 114 Me. 557 (1915), 116 Me. 557 (1917), 126 Me. 620 (1927) for judicial interpretation of technical questions relating to the petition.

states, the legislature has full power to repeal or amend initiated legislation, which makes the device much less attractive to groups contemplating its use. Second, there is no provision for the direct initiative whereby measures may go directly to the people without consideration by the legislature and thus capitalize upon the momentum of the petition campaign. Third, there is no power to initiate constitutional amendments.

The referendum.

Acts or joint resolutions, except those pertaining to the business of the legislature, those appropriating money to pay salaries fixed by law, or those enacted by the legislature as emergency measures, do not take effect until ninety days after the legislature has recessed.¹⁷ If, within this period, a petition signed by electors equaling in number at least ten per cent of the total vote cast for governor in the last election is filed with the Secretary of State, the act, or any part thereof, can be referred to the people.¹⁸ Such measures do not become effective until thirty days after the governor announces that they have been approved by the people at a general or special election, but the governor must make such a proclamation within ten days after the vote has been canvassed and determined, and he has no power to veto measures approved by the people.¹⁹ The legislature may also enact legislation "expressly conditioned upon the people's ratification by a referendum."²⁰ The technical requirements governing the referendum petition are practically the same as those relating to the initiative, and there is, therefore, no necessity to repeat them here.

The use of direct legislation.

If the constitutional amendments are included, ninety-three measures have been voted on by the people in thirty-five elections, an average of 2.7 questions per election. The twelve proposals submitted in the special election of 1951 were the greatest number ever referred to the people at one time, and only four general elections,

17. *Constitution of the State of Maine*, Article IV, section 16.

18. *Ibid.*, section 17. Originally 10,000 signatures were required, but in 1948 this number was increased to ten percent of the vote for governor at the last gubernatorial election.

19. *Ibid.*, section 19.

20. *Idem.*

those of 1918, 1924, 1930, and 1942, have not had some measure on the ballot. It is interesting that relatively few issues have been repeated after they have once been voted on.

Constitutional amendments.

Submission of constitutional amendments to the electorate is not included in the provisions relating to the initiative and referendum, but since 1820 the procedure for amending the constitution has been by a legislative resolve which must also be approved by a "majority of the inhabitants voting on the question."²¹ Constitutional amendments are included, therefore, in this discussion so that all proposals submitted to the people can be analyzed.

In the last forty-one years the people have voted on fifty-seven proposals to amend the constitution and have approved forty-three, or seventy-five per cent of the measures submitted.²² Thus constitutional amendments have a better record — in terms of the percentage approved — than initiated or referendum measures. Probably the success of constitutional amendments in securing popular approval can be attributed in part to the fact that many proposed amendments relate to matters of detail and arouse little controversy, and in part to the fact that the legislature acts as a screening body and submits only proposals which are widely supported.

Fifteen of the proposed amendments were related to bond issues, matters which should not be and fortunately in certain cases no longer are incorporated into the constitution. Ten amendments dealt with suffrage or elections, three with reapportionment, seven with some aspect of the state or municipal debt limit or borrowing power, two with prohibition, two with the militia, three with the initiative and referendum, three with a soldiers' bonus, two with the use of public funds, three with taxation or appropriations, and seven with governmental matters.

21. *The Constitution of the State of Maine*, Article X, section 4.

22. See Appendix B.

The use of the initiative

The initiative has been utilized with great restraint — only seven times in forty-one years — and the voters have approved initiated proposals in only two instances, the direct primary law (1911) and the act to prevent diversion of highway funds (1936).²³ Although the number of measures involved is too small to permit generalization, it is perhaps significant that seventy-one per cent of the initiated proposals have been defeated.

Although it is difficult to identify all of the groups resorting to the initiative, the device appears to have been invoked by varied interests. The direct primary law of 1911 was another product of the progressive influences which were also responsible for the initiative and referendum and corrupt practices legislation. The forty-eight hour week for women was supported by the Federation of Labor and opposed by the Associated Industries of Maine and the Maine State Grange. The rural vote was naturally strongly against this proposal, but it did not command a majority in several industrial cities. William T. Cobb, former Republican governor, was outstanding in the fight for repeal of the primary law, a proposal which received considerable support from the leadership of the Republican Party. The repeal measure was opposed, however, by Governor Ralph O. Brewster and former Governor Percival P. Baxter and by the labor unions. The proposals to tax electric power and intangibles were initiated by the Maine State Grange as a solution to the financial problems of the state, which were aggravated by the depression. The measures drew widespread opposition, and the Grange was apparently not united in its support of them. The successful proposal to prevent the diversion of highway funds was urged by the Maine Automobile Association, and was also sponsored by such groups as the Grange, oil interests, and rural letter carriers. While James Barlow, former city manager of Portland, led the campaign in 1948 to initiate a proposal to regulate union activities, it was widely assumed that he had financial and moral support from prominent industrial interests.

Maine's experience with the initiative is similar to that of Oklahoma and Michigan where only moderate usage of the device is reported. At the other extreme the voters of California and Colorado

23. See Appendix B.

have resorted frequently to the initiative, especially as applied to constitutional measures, and apparently in several instances have abused their power to initiate legislation.

The initiative was opposed on the grounds that it would encourage groups to seek special legislation and that it would be resorted to frequently. Experience does not substantiate these assertions and it is now evident that the earlier fears did not adequately recognize the conservatism of the people or the difficulty and expense of securing the required number of signatures. Only groups with a state-wide organization, such as the labor unions or the Grange, or those with ample financial resources, such as the Associated Industries of Maine, are in a position to resort to the initiative with any hope of success. These interests are, however, sufficiently powerful politically so that proposals sponsored by them are usually considered sympathetically by the legislature, and hence they will resort to the initiative procedure only in those rare instances where the legislature refuses to approve one of their measures which has real popular support. It is not impossible to initiate a proposal in instances where the legislature is adamant and refuses to act, but such action is so difficult and expensive that it will not be taken lightly.

The use of the referendum

A total of twenty-nine statutory measures have been submitted under the referendum procedure; of this number, sixteen, or fifty-five per cent, were approved.²⁴ In eight instances the referendum provision was attached voluntarily by the legislature;²⁵ in the remaining eighteen the referendum was invoked by petition. Three measures on the ballot in 1950 were proposed bond issues which are no longer constitutional amendments but which still must be referred to the people for approval. Historically speaking, experience with the referendum has been remarkably stable — seven proposals were voted on from 1910-1919, eight from 1920-1929, six from 1930-1939, and eight from 1940-1951. It is interesting, however, that no referendum petition has been successful since 1941.

24. See Appendix B.

25. The proposals with a referendum provision attached by the legislature were state aid (1916), the incorporation of Dexter Cooper (1925), export of surplus power (1929), the gas tax increase (1929), Deer Isle Bridge (1935), sales tax to finance education and welfare (1937), taxes for soldiers' bonus (1946), and the Fore River Bridge Act (1951).

We are most interested in those proposals where the referendum was invoked by petition. In terms of the subject matter involved, they are quite diverse. Four measures dealt with local matters — the division of the Town of York, the Portland Bridge, elections in Biddeford, and the Biddeford Police Commission; two with elections and suffrage; two with an increase in the gas tax; two with prohibition; two with state administration; and four with regulatory matters, such as public utilities and the fifty-four hour week; one with hunting and fishing licenses; one with taxes on railroads; and one with highway aid.

The interests invoking the referendum by petition appear to be varied; certainly no one group has utilized the protest referendum repeatedly to defy the legislature. It is, however, unfortunate that in four instances questions of only local import were submitted to the voters. Local groups should not be permitted to carry their grievances to a state wide referendum. Labor, agricultural, oil, dry, and utility interests, among others, have all attempted to resort to the referendum to prevent legislation which they found distasteful. It is perhaps an interesting sidelight that the K.K.K. claimed credit for the referendum petition which was placed on the administrative code bill in 1931.

The emergency clause

Statutes enacted by the legislature, with certain exceptions, do not become effective until ninety days after the recess of the session approving the measure, and during this period it is possible for the people to invoke a referendum on the proposal. However, emergency legislation, which is not subject to the referendum procedure, and which may become effective immediately, may be enacted "by a vote of two-thirds of all the members elected to each house," but the legislature must include in the preamble of the act the facts constituting the emergency.²⁶ Moreover, emergency acts "shall include only such measures as are immediately necessary for the preservation of the public peace, health, or safety" and shall not infringe on home rule for municipalities, grant franchises or licenses for a period longer than one year, or provide for the sale, purchase, or long term rental of real estate. The limitation relating to municipal government is a curious one, since there is no home rule in Maine.

26. *The Constitution of the State of Maine*, Article IV, section 16.

It is customary for legislative bodies in some states to negate the referendum provisions of their constitutions by enacting a large proportion of the controversial legislation as emergency measures. For example, the emergency clause is so common that "at this time, referendum by popular petition almost ceases to exist in Oklahoma, notwithstanding the fact that the state constitution clearly intends that the power shall remain in the people."²⁷ Emergency legislation is also increasingly utilized in California²⁸ and "from one-third to one-half of all the public acts passed by the Michigan legislature have been given immediate effect."²⁹ Such is not the case in Maine. Although the appropriation act is necessarily passed as an emergency measure, in the 1951 legislative session only four per cent of the public acts were approved with an emergency clause. It is interesting, however, that twenty per cent of the private and special acts were given immediate effect. Many of these measures created special school districts and there is probably a real constitutional question as to whether such acts can be regarded as of an emergency character.

The relatively limited utilization of the emergency clause by the Maine legislature can perhaps be explained by two factors. First, it is difficult in instances where the proposed acts are controversial to secure the required two-thirds vote. Second, many legislators are convinced that emergency legislation should be employed sparingly and that the people should not be denied the opportunity to make themselves heard.

It is inevitable that the question should be raised as to whether the courts or the legislature shall exercise the final determination as to the existence of an emergency. In 1919, although refusing to decide to what extent it could question legislative judgment as to the emergency nature of proposed statutes, the Supreme Court did hold that the act in question was not an emergency measure because the preamble contained "no statement of facts as required by the Constitution and no facts that are even suggestive of an emergency."³⁰ Two years earlier the court found an emergency act relating to the Lewiston Police Commission to be unconstitutional because it violated the express limitation that emergency measures should not

27. Oklahoma Constitutional Survey, *Oklahoma Constitutional Studies*, p. 121.

28. Winston W. Crouch, *The Initiative and Referendum in California*, p. 26.

29. James K. Pollock, *The Initiative and Referendum in Michigan*, p. 12.

30. *Payne v. Graham*. 118 Me. 251 (1919), p. 256.

infringe the home rule of municipalities.³¹ It is interesting that in this case the Supreme Court appeared to treat home rule as synonymous with local government.

Considerable interest was aroused by a recent case in which the emergency preamble attached by the legislature to the sales tax enacted in 1951 was attacked. Again the Supreme Court, while upholding the act in question, refused to deal definitively with the power of the legislature to recognize an emergency. It did state that³²

In examining the sufficiency of an emergency preamble the question of whether or not the Legislature has expressed . . . a *fact or facts* is a question of law. Whether or not such fact or facts *can constitute an emergency* within the meaning of the Constitution is likewise a question of law. These questions of law may be reviewed by this Court. On the other hand, whether or not a fact expressed as existing, does exist, is a question of fact and not of law. It is likewise a question of fact whether or not an expressed fact which can constitute an emergency, does constitute an emergency.

In this instance the legislature had stated certain facts — “the essential needs” of the state for more revenue — as constituting an emergency. As far as the Court was concerned these facts could constitute an emergency and the “constitutional requirement is satisfied by the expression in the preamble of an ultimate fact or facts which constitute an emergency without a recital of all of the separate facts evidencing the existence of such ultimate fact.”³³ Although the Supreme Court upheld the legislative determination of an emergency in this case, its language is vague enough so that the Court may still substitute its judgment for that of the legislature in subsequent controversies. Thus the Supreme Court in Maine has not followed the precedent established by a majority of the judicial decisions on this subject that the judgment of the legislature as to the existence of an emergency shall be accepted by the courts as final; nor has it followed the minority line of decisions in which the state courts make their own independent determination of whether or not an emergency exists.

31. *LeMaire v. Crockett*, 116 Me. 263 (1917).

32. *Morris et als. v. Goss*, 147 Me. 89 (1951), pp. 98-99.

33. *Ibid*, p. 102.

Voter participation.

The most valid criticism of the initiative and referendum is minority rule. A survey of the popular vote on direct legislation indicates all too clearly that a large proportion of the electorate is not sufficiently concerned or interested to vote on the measures referred to it;³⁴ nor unfortunately is interest proportionate to the importance of the issue. In the thirties a proposal relating to hunting and fishing licenses polled over a quarter of a million votes while fewer than 120,000 voted on the export of electric power and only a few more than that number on a sales tax measure to finance education and old age assistance.

It has been suggested that position of the proposal on the ballot and the number of issues referred will influence the number of votes cast. Some writers have thought they could detect ballot fatigue — a tendency for the vote to decline as one went down the ballot. This phenomenon does not appear to exist in Maine, probably because the number of proposals referred is generally small and the ballot is of the short variety. Nor, contrary to the experience in some states, have proposals referred by petition received a larger vote than those where the referendum was attached by the legislature. In fact, the major consideration influencing the size of the vote is whether the proposal is referred at a special or a general election. As Appendix C indicates, thirty-four out of thirty-six proposals submitted at general elections have polled over fifty per cent of the vote cast for governor, while only ten out of fifty-seven measures voted on at special elections have received over fifty per cent of the vote for governor in the last election.

Expenditures for initiative and referendum elections.

The law regulating expenditures for initiated and referendum measures explicitly states that it shall be unlawful to spend money on such proposals unless a report is filed with the Secretary of State "setting forth in detail the nature and amount of the expenditure made or the liability incurred."³⁵ These reports are to be filed monthly until thirty days prior to the election; then they are to be weekly. It is the duty of the Secretary of State to publish this information periodically, and a penalty of a \$1,000 fine or imprisonment

34. See Appendix C.

35. *Revised Statutes of Maine*, 1944, Chapter 7, section 6.

for not more than eleven months is provided for failure to file the required statement of expenditures.

Unfortunately, the Secretary of State makes no effort to enforce these provisions, and only a relatively few groups and individuals do report their expenditures. This information is retained for only a short period and is then destroyed. Thus it is impossible to secure any data as to the cost of referenda elections from official sources. The act regulating expenditures for the initiative and referendum should be enforced so that the people of the state can be informed both as to how much money is being expended on a specific issue and as to the interests financing the campaign.

Expenditures for direct legislation appear to be modest, but in the past such issues as prohibition or the export of surplus power have been well financed. The latter measure, on which the utilities spent \$199,816, was probably the most expensive referendum question in the history of the state.³⁶ The fact that the utility interests were defeated on this occasion indicates that the amount expended is not decisive, at least on some issues.

It is difficult to estimate the costs of a respectable state-wide campaign, but from \$10,000 to \$50,000 is required, depending on the nature of the issue and the organizations involved. Groups with a large membership well distributed over the state, confronted with a proposal which is not vital to their existence, may spend less than \$10,000, but a crucial question with strong support on each side may result in expenditures in excess of \$50,000, and this figure is probably a minimum one for a well organized state-wide campaign.

Municipal use of the initiative and referendum.

Our discussion to this point has been concerned with direct legislation as employed in state government, but the constitution also provides that "the city council of any city may establish the initiative and referendum for the electors of such city in regard to its municipal affairs, providing that the method of exercising such initiative and referendum shall not take effect until ratified by a vote of a majority of the electors of said city, voting thereon in a municipal election."³⁷ Although the legislature may require that

36. See Lincoln Smith, *Public Power Policy of Maine*, p. 106.

37. *The Constitution of the State of Maine*, Article IV, section 21.

municipalities shall utilize the initiative and referendum in a uniform manner, it has not done so.

How extensively direct legislation is utilized at the local level, it is difficult to state, but the indications are that municipal experience is even more limited than that of the state. There have been, however, two significant cases involving municipal use of direct legislation, and they both demonstrate the dangers of indiscriminate employment of these devices.

The first case involved an attempt to attach a referendum petition to an appropriation resolve enacted by the Bangor city council. Fortunately, the Supreme Court ruled that the resolve was not subject to a local referendum because it provided money for services, such as highways, welfare, and education, in which the state was vitally concerned. The Court also ventured the conclusion that "in fact, there are comparatively few governmental doings that are completely municipal."³⁸ Thus the area for municipal referendum petitions would appear to be extremely circumscribed.

The second case was concerned with an attempt to invoke the initiative. In 1950 the Police Benefit Association of Portland, after failing to win a satisfactory solution to their wage and hour proposals from the city council, sought to initiate a minimum wage and maximum hour ordinance. The Supreme Court decided, however, that since the city charter explicitly stated that salaries shall be "fixed by the city manager, subject to the approval of the city council," the initiated ordinance was in fact an amendment to the charter³⁹ and hence void. Since Maine city charters are special acts of the legislature, they cannot be altered by local ordinance. To prevent the recurrence of this question, Portland enacted an ordinance removing appropriations, tax levies, and the wages and hours of city employees from the initiative and referendum.

These two measures both illustrate the serious dangers inherent in direct legislation as it is utilized in municipal government — that it will be employed by interest groups to interfere in matters of administrative detail. Fortunately, in both instances the Supreme Court was able to forestall such use. Less encouraging, however, is the case of the amendment to the Bangor zoning ordinance which

38. *Burkett v. Youngs et. al.* 135 Me. 459 (1938), p. 467.

39. *Anderson et. al. v. Colley et. al.*, — Me. — (1950).

was defeated by a referendum in which the "no" vote was only 3.4 per cent of the registered voters.⁴⁰

Two final examples of a local referendum should be mentioned. As we have already noted, there is no home rule in Maine, and municipal charters are special acts of the state legislature. It is, however, customary — although not mandatory — for the legislature to incorporate a local referendum provision in the charter, and acts creating special districts are also usually submitted to the local electorate. A final example of a local referendum is found in the local option questions on the sale of liquor which are referred to the voters at every general election.

Conclusions.

There is still disagreement in Maine as to the impact of the initiative and referendum upon government, both state and local. Just as when these measures were adopted, many still maintain that they have had a harmful effect upon our representative assemblies and the statutes which they have spawned. In so far as critics of direct legislation conclude that legislatures have become too responsive to popular pressures, they represent the traditional aristocratic fear of the common man and his influence. Supporters of direct legislation, however, maintain that the initiative and referendum have been effective in limiting irresponsible action by the legislature. Reasonable men will probably never agree as to the impact of the initiative and referendum.

Certainly, one must recognize that the initiative and referendum cannot be evaluated solely in terms of the number and type of measures adopted or defeated, since the mere existence of these devices of direct legislation changes radically the ground rules for our legislative bodies. There can be no question that legislation has not been enacted by the legislature or, if approved, that it has been in a drastically altered form, because legislators have been conscious of the fact that powerful interests can resort to the initiative and referendum if their views are not recognized. It is generally agreed that the problem of broadening the tax base was aggravated by the threat of a protest referendum and by the determination of many legislators to refer the question voluntarily.

40. Edward F. Dow, "Portland Limits Initiative," *National Municipal Review* XL, p. 348.

One is impressed, however, with the moderate employment of the initiative and referendum in Maine. Why have groups invoked them so infrequently? The answer is not clear-cut, but the following factors are important in explaining our experience with direct legislation. First, interest groups are not as well organized or financed as in more urbanized states. It is of interest that there are no strong welfare or taxpayers' associations. Second, on the basis of past experience, significant pressure groups, such as the Associated Industries of Maine, the Grange, and the unions, can expect to get about as much from the legislature as from the people — and with less effort and expense. Third, the political climate of opinion in Maine is decidedly middle of the road and new ideas are probably more sympathetically received by the legislature than the people. Fourth, the Maine legislature is reasonably representative, and the urban-rural split is not yet reflected politically to the extent that urban groups attempt to appeal directly to the people.

Direct legislation works best when it is utilized with moderation. The experience in Maine and in other states is that these devices have not revolutionized government. They have not resulted in radical reforms in the machinery of government, nor have they been utilized by the people to attack the economic system. With certain exceptions they have not been abused, and in general the decisions reached by the electorate compare favorably with those of the legislature. On the whole, voters have demonstrated a surprising degree of selectivity in voting on referendum questions. The educational effect of referring policy questions to the people is also important, but it can be over-emphasized.⁴¹ There is, in fact, a limit to the types and numbers of questions upon which the voter can be called to reach a decision.

It is perhaps fitting that this discussion should end with a look at the future and a caveat. It is rumored that there will be an organized effort to initiate a repeal of the sales tax. If such an attempt is successful, the proposal must be submitted to the people. We should, however, proceed with caution. If those opposed to the sales tax are convinced that there is another and better solution to

41. In 1949 the legislature provided that the attorney-general should prepare and have published in each daily newspaper a description of the intent and content of each constitutional resolve or statewide referendum. *Laws of Maine, 1949*, Chapter 183 of the public laws. There is still, however, insufficient publicity on proposals referred to the people.

the financial problems of the state, and if the legislature refuses to consider it, they should certainly appeal to the public. But they should not approach the problem negatively because the defeat of the sales tax without a substitute measure will jeopardize the financial status of the state and raise questions as to proper utilization of the initiative and referendum. One is tempted to conclude that tax measures and appropriation bills should be exempted from direct legislation. A logical objection to this approach is that once we start to single out areas to which the initiative and referendum will not apply it is difficult to know where to draw the line, since a case can be made for excluding almost all important legislation from popular control. A constitutional amendment adopted in 1951 does limit direct legislation as applied to financial matters by providing that a measure, approved by the people, which entails expenditures "in excess of available and unappropriated state funds shall remain inoperative until forty-five days after the next convening of the legislature in regular session, unless the measure provides for raising new revenues adequate for its operation." It is too early to evaluate the impact of this limitation on the initiative and referendum.

On the whole, direct legislation has become a valuable safeguard against legislative irresponsibility and excesses; and, although utilized relatively infrequently, it is widely accepted as an essential and vital provision of the Constitution of the State of Maine. Certainly, any proposal to repeal the initiative and referendum would be decisively defeated as an unwarranted infringement on the rights of the electorate. These instruments are most effective, however, when used prudently and sparingly, and it is indeed fortunate that Maine has, to date, escaped the abuses of direct legislation which have been too evident in some states. Successful utilization of the initiative and referendum in the future will depend, therefore, on a continued moderation in their use — a moderation which refuses to employ them to deprive the legislature of its prerogatives, where responsibly asserted, or to dictate to administrative agencies in matters of administrative detail.

APPENDIX A
Measures Submitted to Voters
(1910-1951)

	Initiated measures		Constitutional amendments		Referenda on statutes	
	Proposed	Adopted	Proposed	Adopted	Proposed	Adopted
1910	0	0	0	0	3	0
1911*	1	1	3	2	0	0
1912	0	0	1	1	1	1
1913*	0	0	2	2	0	0
1914	0	0	0	0	1	1
1916	0	0	0	0	2	2
1917*	0	0	5	2	0	0
1919*	0	0	5	5	0	0
1920	0	0	3	2	1	1
1921*	0	0	3	1	0	0
1922	0	0	0	0	1	0
1923*	1	0	0	0	0	0
1925*	0	0	2	2	1	1
1925*	0	0	0	0	2	1
1926	0	0	1	0	0	0
1927*	1	0	0	0	0	0
1928	0	0	0	0	1	1
1929*	0	0	3	3	2	0
1931*	0	0	1	1	0	0
1931*	0	0	0	0	1	1
1932	0	0	0	0	1	0
1933*	2	0	2	0	0	0
1934	0	0	3	3	1	1
1935*	0	0	4	4	1	1
1936	1	1	0	0	1	1
1937*	0	0	0	0	1	0
1938	0	0	1	1	0	0
1939*	0	0	1	0	0	0
1940	0	0	0	0	2	2
1941*	0	0	0	0	1	0
1944	0	0	1	1	0	0
1946	0	0	1	0	1	0
1948	1	0	2	2	0	0
1950	0	0	5	5	0	0
1951*	0	0	8	6	4	2
Totals	7	2	57	43	29	16

*Special elections.

APPENDIX B

Votes on Initiated Statutes (1910-1951)

<i>Year of Election</i>	<i>Subject</i>	<i>Vote</i>	
		<i>Yes</i>	<i>No</i>
1911	Nomination of state and county officers by primaries (direct primary law)	65,810	21,774
1923	To establish a forty-eight hour week for women and minors	33,991	53,784
1927	To repeal the direct primary law	20,027	37,114
1933	To raise the tax on corporations distributing and supplying electric power	46,015	90,804
	To levy a low tax rate on intangible property	44,832	85,332
1936	To prevent diversion of the general highway fund	182,012	52,590
1948	To regulate collective bargaining		
	Tabb Bill (competing measure)	13,676	126,285
	Barlow Bill (direct initiative)	46,809	126,285

Votes on Referenda of Acts of Maine Legislature (1910-1951)

<i>Year of Election</i>	<i>Subject</i>	<i>Vote</i>	
		<i>Yes</i>	<i>No</i>
1910	Establishing a uniform standard for percentage of alcohol in intoxicating liquor	31,093	40,475
	To divide town of York and establish town of Gorges	19,692	34,722
	Relating to the reconstruction of Portland Bridge	21,250	29,851
1912	Providing for a uniform ballot box and preservation of ballots	72,816	33,884
1914	To create a Public Utility Commission and regulate and control public utilities	67,365	37,008
1916	State and county aid in the construction of highways	96,677	14,138
	To establish a fifty-four hour week for women and minors	95,591	40,252
1920	To grant women the right to vote for presidential electors	88,080	30,462

<i>Year of Election</i>	<i>Subject</i>	<i>Vote</i>	
		<i>Yes</i>	<i>No</i>
1922	To create a full time Highway Commission	56,822	60,258
1925	To incorporate Dexter Cooper (to develop Passamaquoddy)	53,547	7,220
	Standard time defined	34,414	28,454
	To establish grades of milk	19,607	38,056
1928	To levy an excise tax on railroads	119,762	52,350
1929	To permit export of surplus of hydro-electric power	54,070	64,044
	To increase the gas tax	35,130	79,930
1931	Administrative code	41,077	30,368
1932	To increase the gas tax	24,008	195,922
1934	Relative to the transportation of intoxicating liquor	141,259	82,877
1935	To create the Deer Isle-Sedgwick Bridge District	22,205	7,813
1936	Relative to resident hunting and fishing licenses	132,400	113,634
1937	To provide revenue for Old Age Assistance and a minimum educational program	41,482	80,449
1940	Elections in Biddeford regulated	70,412	70,226
	To provide for a Biddeford Police Commission	69,933	67,179
1941	To increase the gas tax	14,520	32,131
1946	To authorize a soldiers' bonus and provide revenue therefor	60,544	109,450
1951	Highway bond issue	36,661	16,839
	Bond issue for Bangor-Brewer Bridge	29,552	21,940
	Bond issue for Lewiston-Auburn Bridge	23,088	28,010
	To make Fore River Bridge a toll bridge	21,648	31,069

Votes on Constitutional Amendments
(1910-1951)

<i>Year of Election</i>	<i>Subject</i>	<i>Vote</i>	
		<i>Yes</i>	<i>No</i>
1911	To abrogate the 25th Amendment relating to the manufacturing and sale of intoxicating liquor	60,095	60,853
	To declare Augusta the seat of state government	59,678	41,294
	To increase the municipal debt limit of towns of over 40,000 population to 7½ per cent	39,242	38,712
1912	State bond issue for building and maintaining highways	80,619	21,454
1913	To classify property for purposes of taxation	18,060	8,157
	Relating to constitutional amendments	16,746	6,741
1917	Woman suffrage	20,604	38,838
	Removal of sheriffs provided for	29,584	25,416
	Permission for towns to create local polling places	22,588	24,593
	Relating to the military (state militia)	20,585	23,912
	Apportionment of representatives in merger of towns and cities	22,013	21,719
1919	Relating to the military (state militia)	15,826	11,020
	To permit voter to retain suffrage in town for 3 months after removal	22,024	6,751
	Bonds to build wharves and port facilities	22,637	6,777
	To increase the state debt limit	21,542	7,080
	To increase state bonds for highways and bridges	26,228	5,125
1920	Division of cities and towns into polling places	76,129	29,333
	Bonus for soldiers and sailors	105,712	32,820
	Income tax and tax on intangibles	53,975	64,787
1921	Absentee voting regulated	14,410	11,670
	Bonds for state aid highways	9,924	16,194
	Bonus for Spanish War soldiers	11,969	15,316

<i>Year of Election</i>	<i>Subject</i>	<i>Vote</i>	
		<i>Yes</i>	<i>No</i>
1925	Bond issue for Kennebec Bridge	54,107	8,228
	Bond issue for highways and bridges	49,821	10,332
1926	To prohibit the use of public funds for other than public institutions and public purposes	65,349	94,148
1929	To fill council vacancies	62,108	32,622
	Bond issue for Waldo-Hancock Bridge	58,107	43,919
	To increase state bonds for highways and bridges	58,666	64,553
1931	Number of senators apportioned	9,709	8,972
1933	Voting machines	57,230	65,553
	To raise state debt limit and exempt state loans for emergency relief from the municipal debt limit	47,678	81,023
1934	To repeal twenty-sixth amendment (pro- hibition)	161,893	85,363
	To increase state debt limit	117,046	91,515
	Bond issue for the construction and im- provement of state buildings	123,843	79,906
1935	Length of residence to qualify as voter	23,269	5,540
	To increase state bond issue to match federal aid for highways	19,074	9,915
	Voting machines authorized	17,855	10,996
	Bond issue for the Deer Isle-Sedgwick Bridge	21,383	8,375
1938	Six month residence to qualify as voter	125,996	79,342
1939	To increase state highway bonds	16,500	21,265
1944	No diversion of highway funds	139,805	33,172
1946	Bond issue and tax measure to pay soldiers' bonus	59,725	108,467
1948	Additional signatures for referendum pe- titions	68,237	65,698
	Traveling expenses of legislators	77,716	62,236

<i>Year of Election</i>	<i>Subject</i>	<i>Vote</i>	
		<i>Yes</i>	<i>No</i>
1950	To codify the constitution	106,433	44,688
	To change date of filing initiated legisla- tion	101,116	46,238
	State bonds issued with the consent of peo- ple (removed necessity of constitutional amendment for state bond issues)	112,035	44,124
	Bonds for Fore River Bridge	106,952	55,248
	Reapportionment formula	109,325	43,718
1951	To make State Treasurer eligible for a second term	27,073	22,320
	Direct initiative petition to be signed by at least 10 per cent of gubernatorial vote	23,600	21,986
	To increase municipal debt limit from 5 to 7½ per cent	21,478	26,232
	To make legislative measures inoperative unless revenue is provided	24,746	20,900
	To exempt obligations to Maine School Authority from municipal debt limit	23,887	20,594
	Absentee voting	39,006	10,187
	Bond issue for state office building	16,107	31,639
	To clarify state borrowing power	28,758	17,582

APPENDIX C

POPULAR VOTE ON MEASURES PRESENTED AT
GENERAL ELECTIONS

*Total vote and total vote as percentage of Vote Cast for Governor
(1910-1951)*

<i>Year</i>	<i>Total vote (for governor)</i>	<i>Vote on measures</i>	<i>Subject</i>	<i>Vote on measures as per cent of total vote for governor</i>
1910	141,561	71,568 (R)	Intoxicating liquor	51
		54,414 (R)	Division of Town of York	38
		51,101 (R)	Portland Bridge	36
1912	141,940	106,700 (R)	Uniform ballot box	75
		102,073 (CA)	State bond issue	72
1914	141,666	104,373 (R)	Public Utility Commission	74
1916	151,430	110,815 (R)	Aid for highways	73
		135,843 (R)	Fifty-four hour week	90
1920	205,440	118,542 (R)	Woman suffrage	58
		105,462 (CA)	Polling places	51
		138,532 (CA)	Soldiers' bonus	68
		118,762 (CA)	Tax on income & intangibles	58
1922	178,969	117,080 (R)	Highway Commission	66
1926	181,524	159,497 (CA)	Use of tax funds	88
1928	213,625	172,112 (R)	Excise tax on railroads	81
1932	241,095	219,930 (R)	Increase the gas tax	91
1934	290,649	247,256 (CA)	Repeal prohibition	85
		208,561 (CA)	Increase state debt limit	72
		203,749 (CA)	Bond issue for buildings	70
		224,136 (R)	Intoxicating liquor	77
1936	310,044	246,034 (R)	Hunting & fishing licenses	79
		234,602 (I)	Diversion of highway funds	76
1938	297,238	205,338 (CA)	Residence qualifications for voters	69

<i>Year</i>	<i>Total vote (for governor)</i>	<i>Vote on measures</i>	<i>Subject</i>	<i>Vote on measures as per cent of total vote for governor</i>
1940	255,047	140,638 (R)	Elections in Biddeford	55
		137,112 (R)	Biddeford Police Commission	54
1944	287,632	172,977 (CA)	No diversion of highway funds	60
1946	199,951	169,994 (R)	Soldiers' bonus	85
		168,192 (CA)	Bonds for soldiers' bonus	84
1948	222,500	133,935 (CA)	Referendum petitions	60
		139,952 (CA)	Traveling expenses for legislators	63
		186,770 (I)	Labor relations	84
1950	241,177	151,121 (CA)	Codify the Constitution	63
		147,354 (CA)	Filing of initiated legislation	61
		156,159 (CA)	Referendum on bond issue	65
		162,200 (CA)	Fore River Bridge bonds	67
		153,043 (CA)	Reapportionment	64

R - Referendum I - Initiative CA - Constitutional Amendment

THE INITIATIVE AND REFERENDUM IN MAINE

POPULAR VOTE ON MEASURES PRESENTED AT
SPECIAL ELECTIONS

*Total vote and total vote as percentage of vote cast for governor in
preceding general election
(1910-1951)*

Years	Total vote (for governor)	Vote on measure	Subject	Vote on measure as per cent of total vote for governor
1911	141,561	120,948	(CA) Repeal prohibition	85
		100,972	(CA) Make Augusta the capitol	71
		77,954	(CA) Municipal debt limit	55
		87,584	(I) Direct primary law	62
1913	141,940	26,217	(CA) Classification of property for tax purposes	19
		23,487	(CA) Constitutional amendents	17
1917	151,430	59,422	(CA) Woman suffrage	39
		55,000	(CA) Removal of sheriffs	36
		47,181	(CA) Local polling places	31
		44,497	(CA) Relating to the military	29
		43,732	(CA) Apportionment	29
1919	123,119	26,846	(CA) Relating to the military	22
		28,775	(CA) Suffrage-residence requirement	23
		29,414	(CA) Bond issue	24
		28,622	(CA) State debt limit	23
		31,353	(CA) Highway & bridge bonds	25
1921	205,440	26,080	(CA) Absentee voting	13
		26,118	(CA) Highway bonds	13
		27,285	(CA) Spanish War bonus	13
1923	178,969	87,775	(I) Forty-eight hour week	49
1925	253,907	62,335	(CA) Kennebec bridge bonds	25
		60,153	(CA) Highway & bridge bonds	24
		60,767	(R) Passamaquoddy	24
		62,868	(R) Standard time	25
		57,663	(R) Grades of milk	23
1927	181,524	57,141	(I) Repeal of primary law	31

<i>Year</i>	<i>Total vote (for governor)</i>	<i>Vote on measures</i>	<i>Subject</i>	<i>Vote on measures as per cent of total vote for governor</i>
1929	213,625	118,114 (R)	Export of electric power	55
		115,060 (R)	Increase the gas tax	54
		94,730 (CA)	Council vacancies	44
		102,026 (CA)	Kennebec Bridge bonds	48
		101,918 (CA)	Highway & bridge bonds	48
1931	149,482	18,681 (CA)	Number of senators	12
		71,445 (R)	Administrative code	48
1933	241,095	121,783 (CA)	Voting machines	51
		128,701 (CA)	Municipal debt limit	53
		136,819 (I)	Tax on power companies	57
		130,164 (I)	Tax on intangibles	54
1935	290,649	28,809 (CA)	Suffrage	10
		28,989 (CA)	Highway bond issue	10
		28,851 (CA)	Voting machines	10
		29,758 (CA)	Bridge bond issue	10
		30,018 (R)	Bridge District	10
1937	310,044	121,931 (R)	Sales tax	39
1939	297,238	37,765 (CA)	Highway bonds	13
1941	255,047	46,651 (R)	Increase gas tax	18
1951	241,177	53,500 (R)	Highway bonds	22
		51,492 (R)	Bangor-Brewer Bridge bonds	21
		51,098 (R)	Lewiston-Auburn Bridge bonds	21
		52,717 (R)	Tolls on Fore River Bridge	22
		49,393 (CA)	State Treasurer	20
		45,586 (CA)	Initiative petitions	19
		47,710 (CA)	Municipal debt limit	20
		45,646 (CA)	Financing legislative measures	19
		44,481 (CA)	Maine School Authority loans	18
		49,193 (CA)	Absentee voting	20
		47,746 (CA)	Bond issue for building	20
		46,340 (CA)	State borrowing power	19

PARTICIPATION IN GENERAL ELECTIONS

Vote on Initiative and Referendum Measures as a per cent of total vote for governor

<i>Per cent</i>	<i>Number of initiated measures</i>	<i>Number of referenda</i>	<i>Number of constitutional amendments</i>
90 or over	..	2	..
80-89	1	2	3
70-79	1	5	3
60-69	..	1	10
50-59	..	4	2
40-49	..	..	..
30-39	..	2	..

PARTICIPATION IN SPECIAL ELECTIONS

Vote on Initiative and Referendum Measures as a per cent of total vote for governor in last general election

<i>Per cent</i>	<i>Number of initiated measures</i>	<i>Number of referenda</i>	<i>Number of constitutional amendments</i>
80-90	..	..	1
70-79	..	..	1
60-69	1	..	..
50-59	2	2	3
40-49	1	1	3
30-39	1	1	3
20-29	..	7	13
10-19	..	2	15