

FIFTY-EIGHTH DAY

MORNING SESSION.

WEDNESDAY, April 17, 1912.

The Convention met pursuant to adjournment, was called to order by the president and opened with prayer by the Rev. H. H. D. Sterrett, of Columbus, Ohio.

The journal of yesterday was read and approved.

Mr. ANDERSON: I rise to a question of personal privilege and I would like to have the indulgence of the Convention for a few moments.

Mr. President and Gentlemen of the Convention: All have seen in the newspapers that I had received a great deal of criticism from a gentleman from Dayton by the name of McMahon. I understand he is one of the very best citizens of Dayton, a lawyer of wide experience and an excellent man, and I do not wish in anyway to be understood as saying an abusive or critical thing of the gentleman personally. It seems he appeared in the supreme court in the trial of the case of the Oakwood Street Railway Company vs. Charles E. Marker, and in the trial of that case he saw fit to make an attack upon me. I say personal, because I have the typewritten copy of just what he said. It may seem strange, almost startling, for me to make the statement that I have a stenographic report of what the gentleman said. He has stated in this that he had an idle day in Columbus — and the idle day was the day before he argued the case in the supreme court and the day was used to make some examination of the Ohio State Reports. He not only took part of that idle day in examining some of the Supreme Court Reports, but he consumed a considerable part of it in having all the newspapers notified to have their representatives present at the trial of the case in the supreme court on the following day. I would not dare make the statement if I had not verified it and did not know it to be true. I am making it in the presence of the newspaper reporters. The managers of the papers were notified to have their newspaper reporters present in the supreme court. Now there is a rule in the supreme court and I will read it. When you go in there to argue a case and stand behind the little desk provided for that purpose you will find the rules of the supreme court open this way and it is a rule staring you in the face. I will read it to you. It is Rule III: .

When a cause on the general docket is argued orally, the time allowed for each side shall not exceed one hour, unless, for special reasons to be adduced before the argument commences, the court shall extend the time, but this does not imply that counsel are expected to take an entire hour in presenting their side of every case. Many cases can be adequately presented in much less time, and the crowded condition of the docket makes it highly important that argument be confined to the shortest practical limit.

The part of the rule beginning "but that does not imply" down to the end of the rule is italicized. Consequently, you see the place where this performance was

held was a place where the rules of the supreme court italicized and emphasized that those who had business there must consume as short a time as possible because of the fact that the supreme court is behind months and months in their hearings and determination of cases.

That did not seem to influence the gentleman to any great extent, and I want to say that had this personal attack been made anywhere else I would have paid no attention to it. I am an officer of the courts of Ohio because I have been admitted to practice law. Really, it is my bread and butter, and had he properly quoted me of course I could not have made any reply and would not have attempted it.

I will read you the first one of his statements:

A member of the Constitutional Convention has recently stated in that body, as an argument for robbing this court of the bulk of its jurisdiction, that he had examined thirty-four cases reported by the supreme court, in which thirty-three were reversed in favor of corporations. He supplemented the remark with the statement that it was "no poor man's court."

In other words, Mr. McMahon told the supreme court that this Convention was robbing it, the supreme court, by reason of the passing of the Peck proposal. "Robbing" is the word. Then he stated to them, using my name later on, that I said I had examined thirty-three or thirty-four supreme court cases and in those supreme court cases thirty-three had been decided in favor of corporations and only one in favor of the individual. That was an asinine remark for any one to make. There are more cases of that kind decided for corporations in any one volume of the reports, and yet the gentleman stated to the supreme court, and based his whole argument on the fact, that I had said for a period of fifteen years thirty-four cases had been decided where the rights of the individual was on one side and the corporation on the other.

This is what I stated, and you will remember it if you paid any attention to it at the time, that I was desirous of finding out to what extent, if the Peck proposal had been the law in the last ten or fifteen years, it would have made a change in a certain class of cases where the individual was on one side and a corporation on the other side and where the circuit court had been reversed by the supreme court, where in the circuit court the individual had won and the corporation lost and the case had been reported. Now in that class of cases I stated that thirty-three cases where the individual had won in the circuit court and where the individual would have received his money if the Peck proposal had been law, had gone to the supreme court, had been reversed by the supreme court and had been reported. That is absolutely correct. I further stated—and I did not know it until a week ago, when I made the examination of the reports—that in the same period and within the same volumes of the reports the supreme court had reversed the circuit court once, and only once, when

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the corporation won below and an individual lost and the case was reported. And that is absolutely correct. In other words, that was the proportion of the reported cases, where the law is made and where that law can be used in future cases, where it can be used by the attorney in his office to determine whether or not an inquiring litigant has a case. Thirty-three cases were reported by the supreme court where they reversed the circuit court—where the individual had won below and lost above—and during that same time the supreme court made the law in one case for the individual. In other words, the ratio was thirty-two to one.

Now, so that the importance of reported cases may be understood, I want to take a little time and I am sorry to have to take this much time of the Convention, which is valuable, but I am deeply interested. It means considerable to me long after this Convention adjourns if I permit an attack of that kind to go unchallenged. I want to say I have more confidence in the supreme court than the gentleman who saw fit to make the attack, because I believe the supreme court, so long as the truth is told and so long as muckraking is not resorted to, would not in any way hold that against me in the future in trying cases before them. I have that much confidence in the six men who sit over there and constitute the highest court in Ohio. But it seems that this gentleman, having a very desperate case, and I will get to that in a minute, saw fit to try to curry favor with them to influence them by fulsome praise and by coming out unsolicited as a defender of the supreme court when it needed no defense. He hoped that this case, in which he was interested, might be decided in his favor. But to go back to the importance of reporting cases.

Assume for the sake of argument that my friend Donahey's boy runs down to one of the turn tables in the railroad's yard near Donahey's house. The boy is with other boys; he is of a playful nature and he gets upon the turntable; the other boys turn him and it swings and catches the boy's leg and crushes it and the boy loses his leg. The railroad company has known for a long time before that the children would congregate there and use that turntable. They had not expended a dime for the purpose of locking it. They took no precaution and exercised no care in protecting the children. Suppose Donahey was to come to me and tell me the facts. I would say "I will look up the law" and I would pick up "Thompson on Negligence—

Mr. TAGGART: I rise to a point of order.

The PRESIDENT: The gentleman will state his point.

Mr. TAGGART: The point is that one member of the Convention can not arrogate to himself all the time of the Convention in an endeavor to vindicate himself.

The PRESIDENT: The president will rule that the member is in order, but is speaking under the rule which limits addresses of this kind to fifteen minutes unless the Convention extends the time.

Mr. TAGGART: I would respectfully appeal from that decision.

Mr. ANDERSON: If that is the desire of one member of this body, I do not wish to be heard. If the gentleman will permit me, however, it means a great deal to me as a lawyer.

Mr. HENDERSON: I move that the gentleman's time be extended.

There were several seconds.

Mr. ANDERSON: Here is page after page of abuse, not only of myself, but of the Convention. But I am not trying to defend the Convention.

Mr. RILEY: Has that been published?

Mr. ANDERSON: All over the country there have been extracts made from it.

Mr. RILEY: But has that been published?

Mr. ANDERSON: No.

Mr. TAGGART: Was my appeal put?

The PRESIDENT: Was there a second to it?

Mr. MARRIOTT: I seconded it.

The PRESIDENT: The point of order is made. The president rules the member from Mahoning [Mr. ANDERSON] was in order and an appeal was taken. The question is, Shall the decision of the president be sustained? As many of you as are in favor of sustaining the decision of the president will say aye and the contrary no.

The decision of the president was sustained.

Mr. ANDERSON: I will read only from the part the newspapers have sent broadcast.

Mr. DWYER: I would like to ask the gentleman from Mahoning if that turntable case is not a very old case, decided years ago?

Mr. ANDERSON: No; it is in 77 Ohio State.

Mr. DWYER: You are going back into past history?

Mr. ANDERSON: I will not use that. All I wanted to say is that these United States reports before me are reports going back to 1874.

Mr. DWYER: Was not the torpedo case decided since then?

Mr. ANDERSON: Yes; I am familiar with that. The point I was making was the importance of reporting decisions. All of these cases laid down under the circumstances stated, where the little boy was injured by lack of care, that the boy's father or next friend or guardian could recover damages, yet in 77 O. S., page 243, it was held, although the policy, just as Judge Dwyer suggests, had been up to that time held in the torpedo case that the boy could not recover, that the railroad company owed him no duty. The point I make is that settles the law in Ohio in all the other cases where children are injured, and thus the importance of a case being reported.

Mr. DWYER: Now, will you pardon me? I would like to suggest that under the Ferguson law that made the legislature in this state a nuisance for years in passing special legislation and holding it general, that if the supreme court had not reversed itself and held those laws unconstitutional—

The PRESIDENT: The gentleman's time is up.

Mr. LAMPSON: I move that we extend his time.

On motion the time of the gentleman was extended.

Mr. ANDERSON: Judge Dwyer, my time is limited.

Mr. DWYER: I just wanted to ask if the supreme court had not entirely reversed itself in the Ferguson case?

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Mr. ANDERSON: Yes, and it ought to have done it long ago. That was on the question of class legislation with reference to cities.

Mr. PECK: Was not the trouble under that induced by the original rule, which was wrong?

Mr. ANDERSON: Yes; I did not care to go into that. The supreme court was responsible for the very situation and it had to remedy it at last.

The gentleman says in this report that he had gone over these reports in an "idle day." If he had taken time in that "idle day" to have spoken to any one of the gentlemen from Montgomery any one of them could have obtained a typewritten copy of my speech, and he could have found what I did say, and consequently his criticism could not have been made with reference to myself or the Convention. It stated this, and I have taken an extract from the typewritten copy. Mr. McMahon stated that I had made an attack on the floor of this Convention on the supreme court because I said it was controlled by outside influences and returned judgments because of influences on the outside. This is what I stated:

Mr. ROCKEL: Do you mean to say that the supreme court is influenced in some way?

Mr. ANDERSON: I certainly do not mean to say that they are affected in any way by any outside influence, but I do want to say, for if I did not answer you it might be said that I could not, that I have represented individuals for twenty years in all kinds of courts and in ninety per cent of such cases I have been on the side of the individual fighting a corporation. I do not deserve any credit for it; I got paid for it. My employment has necessarily caused a habit of thought and I admit that I am prejudiced. It could not be otherwise, and I could not divest myself of that habit of thought or that prejudice by being elected judge and going upon the bench. I would be inclined to see all of the circumstances in a favorable light to the plaintiff's interest, or in trying to be fair, knowing my prejudice, I would lean too far the other way. But I believe, notwithstanding my habit of thought and my prejudice, notwithstanding my over twenty years on the side of the individual, I could be as fair on the bench as any man who had twenty years or more training on the side of the corporation.

Mr. ROCKEL: Then we have put the wrong kind of men on the supreme bench?

Mr. ANDERSON: If you agree with me that I would be the wrong kind of a man to be placed on the bench, then you must agree with me that men of long corporation training, men who have specialized in favor of corporations, are also the wrong kind of men to place on the bench.

If that be an attack on the supreme court, I made it, but if it is true that men must respond to their environment, if they must become part of it, then it is not an attack upon the supreme court. The gentleman in the newspaper stated that the jurors are sympathetic to a degree that warps their judgment, and judges, in view of the assaults of socialists and labor unions, lose their nerve, and it is left to this tribunal to finally dispose of the case on its merits and according to law.

In other words, Mr. McMahon told the supreme court the jurors could not be trusted; that they were warped by sympathy and could not return a fair verdict; that a judgment in a common pleas court and the judges on the common pleas bench were not fair; that they were influenced by socialists and labor unions; that the judges on the circuit court bench were influenced by socialists, labor unions and the common rabble, and consequently the only place he could get justice was in the supreme court.

Now, a word upon the kind of case the gentleman was representing. Six years ago this May a man by the name of Marker was crippled for life while working for the street railway company in Dayton. He was told by a man named Disney to go in between the tracks and couple a car to the one he, Disney, was on. Marker got in there to make the coupling, and Disney, because he was drunk, ran the other car down and crashed into him and made him a cripple for life. Six years ago this coming May that accident happened. It was shown by six witnesses—I wish I could go into the record; I have read it carefully—it was shown by six witnesses that this man Disney had been in the employ of the railway company for a long while; that he had been a drunkard and was drinking around his work and frequently was so drunk that he couldn't perform it; that this drunken condition was known to the president of the road long before the accident happened; that the president permitted that drunken man to work there and by reason of the condition of that drunken man Marker was injured for life.

Mr. MARRIOTT: Was the case you are referring to decided?

Mr. ANDERSON: No; it was just submitted the other day.

Mr. MARRIOTT: What can be your idea in referring to the facts? Are you anticipating the supreme court will affirm the lower court?

Mr. ANDERSON: No; I have no interest in the outcome of the case at all. I make this point: I have read from that which Mr. McMahon said before the supreme court where he stated that the judges below—there were several of them—could not be trusted with the trial of the case, and further that the common pleas judge who had decided against the corporation lost his nerve because of socialists and labor unions; that the circuit court which had decided against the gentleman could not be trusted because they had lost their nerve owing to the rabble, and he said they had lost their nerve because they decided the street railway company was to blame for retaining in its employ this man who had been repeatedly drunk around his work and whose drunkenness and insobriety were known to the president long before Marker was injured for life. That is the point I am trying to make.

In conclusion, I want to say this, because I shall not have an opportunity to go into this as I wish: If any attack is made upon any of you men I shall help you, if that attack be unjust, instead of trying to prevent a proper explanation being made. I thank you.

Mr. HALFHILL: I would ask the indulgence of the Convention on the same matter of privilege.

Mr. JOHNSON, of Williams: I would like to ask a question, Mr. President—

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The PRESIDENT: The gentleman from Allen [Mr. HALFHILL] has the floor.

Mr. HALFHILL: I have the floor.

The PRESIDENT: Does the gentleman make a point of order?

Mr. JOHNSON, of Williams: I would like to ask a question, with the gentleman's permission.

Mr. HALFHILL: I do not care to yield.

The PRESIDENT: The gentleman does not yield.

Mr. JOHNSON, of Williams: I would like to ask him a question before he begins.

The PRESIDENT: The gentleman from Allen has the floor and he can not be interrupted save on a point of order.

Mr. JOHNSON, of Williams: I do not want to make a point or order, but I believe this whole matter is out of order. Still I will not make the point.

Mr. HALFHILL: The only reason I ask the indulgence of the Convention upon this particular point is that in a report of a short debate upon an amendment to Proposal No. 184, which occurred during last week, I referred to the statement of the gentleman from Mahoning and I characterized it in language that was equally forcible, if less elegant than that of my friend Hon. John A. McMahan, as shown by the records of the Convention. I was not called to account for that at the time, and I expressly used the words that the argument of thirty-three cases that were cited here as decided in favor of corporations and one against, in a specific number of reports, without stating the further fact of all the hundreds of cases that were decided against corporations, reported and unreported, was a slander upon the supreme court of Ohio. Now if I state a thing like that in open debate in this Convention and am not called to account for it, or it is not in any way refuted, I should not stand here and listen to a charge against a man like John A. McMahan, who has no peer in the state of Ohio as a lawyer, and not say a word in his behalf.

Mr. PETTIT: Mr. President, it is apparent that the gentleman is not rising to a question of personal privilege.

Mr. HALFHILL: I insist it is a question of privilege and I intend to read into this record what I said.

The PRESIDENT: Does the gentleman make a point of order?

Mr. PETTIT: Yes. It appears from the gentleman's statement that he is not appearing here and addressing us now in his own behalf, but on behalf of Mr. McMahan.

Mr. HALFHILL: The reflection in the address this morning is a reflection on me, and that is why I rise to a question of personal privilege. If in discussing this subject I must discuss Mr. McMahan incidentally, I see no objection to it. Now, I want to read—

Mr. PETTIT: I insist on my point of order. . .

The PRESIDENT: The president will rule that the gentleman is in order, but is speaking under the rule that limits his address to five minutes.

Mr. HALFHILL: I want to read a portion of Mr. McMahan's address that is applicable to my own statement made to this Convention after the preliminary statement that was read by Mr. Anderson. He said:

Before proceeding to figures let me state a few preliminary facts, necessary to their proper understanding.

Our reports of cases decided in this court contain two classes. One class embraces cases that are fully reported. These are cases that are, as a rule, reversed, and the court gives its reasons for overruling the lower court. The other class embraces decisions in which the court, as a rule, gives no opinion. These cases are generally cases in which the supreme court affirms the lower court without report giving its reasons.

The fully reported cases are generally under the practice of the court, cases in which the lower courts are overruled. In order to arrive at the work of this court, however, one should consider all the cases decided by it, not merely those reported in full.

That is just the language that I used.

And it is in the failure to put the two classes of cases together that Mr. Anderson has insidiously (I wish I could say innocently) spread abroad a base slander upon the members of this court.

Mr. ANDERSON: The gentleman says that is just the language he used. Have you read a report of what you said?

Mr. HALFHILL: I have, practically.

Mr. ANDERSON: You have not stated it. I have it before me. You didn't make that statement. I say it flatfooted. You did not do it.

Mr. HALFHILL: I say that practically I did.

Bearing in mind the above explanation let us look into the last three volumes of the reports of this court. They are volumes 82, 83 and 84, beginning with the January term of 1910.

In volume 82 there are thirteen fully reported cases in which corporations, big and little, were interested. In three of those the corporation lost. In one corporations were on both sides. In the others a corporation won.

But when you examine the decided but unreported cases in which corporations, big or little, figured, you find that the corporations won forty-four, but lost forty-eight.

In volume 83 we find eleven fully reported cases in which corporations were interested. The corporation won eight but lost three.

But when you turn to the decided but not fully reported cases, you find that the corporation won twenty-nine but lost fifty-two.

In volume 84 we find thirteen cases fully reported in which corporations were interested. The corporation won in seven, lost in three, and in the eleventh both parties were corporations.

When you turn to the decided but not fully reported cases we find that the corporation won in twenty-six but lost in thirty-nine.

Mr. ANDERSON: Will you permit me to read just what you said?

Mr. HALFHILL: I will read it if I can find it.

Mr. ANDERSON: It is not there, not anything like it. It is entirely plain and you are deliberately stating something that is not true.

Mr. HALFHILL: Now I will prove it.

Mr. ANDERSON: I mean just what I say.

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Mr. HALFHILL: I say I will read it if I am given time to do it.

Mr. ANDERSON: Don't you want to do right—won't you read it now?

Mr. HALFHILL: Certainly.

Mr. ANDERSON: Then read it and show what it was.

The time of the gentleman here expired.

Mr. LAMPSON: I move that the gentleman's time be extended fifteen minutes.

Mr. ANDERSON: I second that motion.

The motion was carried.

Mr. HALFHILL: This is not the matter at all. This is not what I referred to in my remarks a while ago.

Mr. ANDERSON: Will you not do me the justice to read this?

Mr. HALFHILL: That is not what I refer to at all.

Mr. ANDERSON: Could there be any mistake?

Mr. PECK: I think this whole matter is out of order. I do not believe in any of this proceeding. I propose to offer a rule that hereafter no member shall be allowed to rise to a question of privilege on anything said outside, and if he proposed to raise a row about anything said in the Convention it must be done the same day. This thing of bringing personal controversies in here and occupying our time is too much of a waste of time and is an outrage upon the rest of us.

The PRESIDENT: Does the member make a point of order?

Mr. PECK: Yes; I make it now.

The PRESIDENT: The point of order seems to be the same point that has heretofore been made, that it is not a question of privilege. The president has ruled that it was, but would be glad to hear an appeal from the decision so the Convention could decide the matter.

Mr. PECK: I certainly think you are wrong.

The PRESIDENT: Does the member appeal from the decision of the chair?

Mr. PECK: I certainly do.

Mr. HALFHILL: My time has been extended.

Mr. DOTY: As a general proposition we are all in sympathy with what Judge Peck says. The statement of the member from Allen [Mr. HALFHILL] has been challenged right here now, and I for one do not propose to vote to prevent the member from Allen from either correcting the statement he has made or answering the charge made against him.

Mr. PECK: I don't think there was any charge made against him. He volunteered in defense of Mr. McMahon.

Mr. WINN: I rise to a point of order.

The PRESIDENT: There is a question before the Convention.

Mr. LAMPSON: I moved that the gentleman from Allen be given fifteen minutes of the time and it was accorded him.

Mr. DOTY: I have the floor to talk to the appeal.

The PRESIDENT: The member has the floor.

Mr. DOTY: I want to call attention to the exact situation we are in. As I heard the matter—I may be mistaken—the member from Allen [Mr. HALFHILL] made a statement and the member from Mahoning challenged the truthfulness of that statement.

Mr. WINN: When was the last statement made?

Mr. DOTY: Just a moment ago.

Mr. WINN: Is that a question of privilege?

Mr. DOTY: The thing is in such shape that I do not want to withhold from the member of Allen the opportunity to answer that charge.

Mr. WINN: I understood the member from Mahoning [Mr. ANDERSON] rose to a question of personal privilege and undertook to defend himself against an attack made upon him by some person some other place than in the Convention. Then the member from Allen [Mr. HALFHILL] rose to a question of personal privilege and his claim of personal privilege is one to defend the supreme court. Is that right?

Mr. DOTY: I want to answer the member.

Mr. PETTIT: That is all it is.

Mr. DOTY: The whole matter has gotten along further than that. The member from Hamilton [Mr. PECK] has made a statement that the whole thing should not have been allowed, but it was allowed and the member from Allen [Mr. HALFHILL] has gotten to a place where his present statement is challenged here and now. I do not know which is right, but I believe the member from Mahoning [Mr. ANDERSON] thinks the member from Allen [Mr. HALFHILL] should have a right to answer that challenge.

Mr. WINN: But do you understand the member from Allen has the floor upon the claim of the right to do so as a matter of personal privilege?

Mr. DOTY: That is true, of course.

Mr. WINN: And the challenge of that personal privilege is made by appeal?

Mr. DOTY: The member has not stated it exactly right. We are up against this situation right here and now, no matter what else can be said. He did have the floor and it was on a question of personal privilege. There is no question about that, and now his statement is challenged, and we are going to listen to his vindication. I don't think we ought to cut him off.

Mr. LAMPSON: The gentleman has been given by a vote of the Convention fifteen minutes in which to state his question of privilege and the only ruling the chair can make is to confine him to a statement of privilege.

The PRESIDENT: The point of order has been made that the member proceeding under this rule is out of order.

Mr. LAMPSON: The chair can confine him within the rule, but he has his fifteen minutes. The president has ruled that the member is in order, but an appeal has been taken from that decision.

The PRESIDENT: Yes, and the question is now only whether the decision shall be sustained.

A vote being taken and a division being demanded seventy-two rose in the affirmative.

The PRESIDENT: The chair is sustained. The member from Allen has the floor.

Mr. STOKES: The members of this Convention are here to transact business. I, therefore, move that this matter be made a special order for Friday afternoon at two o'clock.

The PRESIDENT: The member from Allen has the floor.

Mr. HALFHILL: Gentlemen, this is the matter I had in mind which I asserted upon the floor of this Convention and which I thought was a matter that demanded

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of me some statement here this morning. I said I had practically stated what the Hon. John A. McMahon had stated in the supreme court and for which he is taken to task. I did so state and I now refer to page 4335 of the transcript of the official reporter, in which the gentleman from Mahoning, who had just left the floor, asked me some questions on a matter then pending, and in answer to those questions I said:

And the question that has gone through the courts of Pennsylvania or any other state of the Union cuts no figure in the discussion and is quite beside the point. This is the sovereign state of Ohio and you are making fundamental laws for it, and I point to a condition which seems to me ought to be apparent to any man who is not biased or prejudiced to the extent of desiring that the supreme court of the state of Ohio should be shackled by a rule that should not be inflicted upon any court. What this proposal ought to do is to fix the rule that a majority of the courts shall control, and I say unless you do it, you will live to see the day when this hysteria, this attack upon the courts, made here, will be a thing to rise up and plague you. It is the courts of Ohio and courts of the country that we owe the liberties of the country. They protect the liberties of the country and the rights of the individual. And these cases that have been cited here, some thirty in number, to show that individual rights have been transgressed by the supreme court of Ohio are a slander upon the courts of the state of Ohio unless you take into account the hundreds of other cases where the rights of the individual have been fully and fairly protected by holding statutes unconstitutional, and I can cite a number of them right here in these reports.

Now upon that point I claim that the assault made here upon McMahon is an assault upon me as a member of the Convention and it should have been answered in debate if I was not right, and inasmuch as I am correct in that I made that statement in debate I believe it is within my rights and privileges to make the remarks I have made. I thank the Convention.

Mr. ANDERSON: Will the gentleman read the full explanation of the question which occurred in debate when you asked the question? Will you not do me that justice? Will you read this? [Handing the member from Allen some papers.]

Mr. HALFHILL: Certainly.

Mr. ANDERSON: I was not speaking about that at all.

Mr. HALFHILL: This is entirely another portion of debate.

Mr. ANDERSON: Will you read it?

Mr. HALFHILL: I will not. It is entirely another portion of debate.

Mr. KING: I move that we proceed with the regular order.

Mr. PIERCE: I move a reconsideration of the vote on Proposal No. 62.

Mr. DOTY: I second the motion.

Mr. WOODS: Gentlemen of the Convention: I want to call your attention to the statutes of Ohio on this proposition as they are, right now. First, I want to make

the point that I made yesterday that this is purely a statutory matter. There is not a thing in the constitution about the matter. It is all taken care of by statute. Now if you put a provision in the constitution that capital punishment shall be abolished, where are you going to leave our present criminal statutes? For instance, take section 12400 of the General Code, which provides:

Whoever, purposely, and either of deliberate and premeditated malice, or by means of poison, or in perpetrating or attempting to perpetrate rape, arson, robbery or burglary, kills another is guilty of murder in the first degree and shall be punished by death unless the jury trying the accused recommend mercy, in which case the punishment shall be imprisonment in the penitentiary during life.

Are you repealing part of that section and leaving the rest of it in existence? This is a matter you want to think about. We want to leave the statutes of this state in such shape that we can prosecute men who commit murder. Every attorney here knows that whenever we try a man for murder it is a technical crime and you have to prove every element of your case to the exclusion of a reasonable doubt. Now you are going to have a mix-up in every trial and a statute conflicting with the provisions of the constitution. I say to you, and I am willing to submit it to the fairness of any lawyer in the body, if you abolish capital punishment it should be done by statute and not by the constitution. You will make an awful mistake when you do it in the constitution.

Mr. LAMPSON: Suppose this were submitted to the people and the people vote on it the first of September next and adopt it. What would be the condition of criminals charged with murder in the first degree between the first of September and the time the legislature would meet?

Mr. WOODS: I don't know what the condition would be, but the first man convicted for murder in the first degree would raise the point and probably would get off by it.

Mr. THOMAS: Can that not be taken care of in the schedule?

Mr. WOODS: I don't know. You are dealing with something different. Every lawyer knows it only takes a little doubt in a murder case to bring about an acquittal by the jury. Now I want to call your attention to the present condition of the statutes in Ohio. Just remember what we have to prove in this state in order to convict a man of murder:

1. That the person assaulted is dead.
2. That the person alleged was the person killed.
3. That the accused struck or assaulted the deceased at the time and place alleged.
4. That the striking was with the instrument alleged in the indictment, or with any other instrument capable of producing death in a similar manner.
5. That death was caused by the blows inflicted by the accused.
6. That the accused did the act purposely and of deliberate and premeditated malice.
7. Venue.

And everyone of those you have to prove beyond a reasonable doubt. I submit to you, gentlemen, that the

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statutes of this state simply go to the utter limit, the clear limit. You can not electrocute me for committing murder in the state of Ohio under existing law unless I deliberately plan it all out beforehand to murder somebody. I have got murder in my heart, and I have had it there for some time. It has all been planned. The word "deliberate" is used in the statute and I submit to you, gentlemen, that the Constitutional Convention of Ohio in 1912, ought not to deliberately put something in the constitution that is a statutory matter in order to save the lives of men who will deliberately plan to take the life of another.

Mr. FACKLER: I think the proposal should be changed in a slight form. If we adopt it as it is and what we do is ratified, all criminals charged with first degree murder could not be punished until the legislature fixed the punishment for the crime. If this proposal is reconsidered I have an amendment to submit which I think will remove that objection, and will make the punishment for first degree murder the same as that provided now when a recommendation for mercy is given.

Mr. WINN: I want to call your attention to section 1 of the schedule of the constitution of 1851, and I think it is manifest to every person that something similar to this must be enacted by this Convention. That section reads as follows:

All laws of this state, in force on the first day of September one thousand eight hundred and fifty-one, not inconsistent with this constitution shall continue in force, until amended, or repealed.

Therefore you can see that before we conclude our work here we must of necessity pass something to keep in force the laws now in force; otherwise most of the proposals already agreed upon would create great confusion. I think the objection of the member from Medina [Mr. Woods] should not have any weight here because eventually in taking care of all the other proposals we will of necessity take care of this one by providing that the laws shall continue until the legislature shall alter them.

Mr. TALLMAN: I am opposed to tying the hands of the legislature as long as this constitution shall stand. I think legislatures that meet after the adoption of the work of this Convention—at least some one of them—will have a chance, whenever there is a great public demand, to do away with capital punishment. That public demand has never yet in my judgment arisen, and in my judgment it is extremely foolish for us to assume that this Convention can legislate, because it is nothing but a matter of legislation which the legislature could pass. The legislature could pass a bill similar to this proposal at any of its sessions within the next thirty, forty or fifty years. They would have it in their own hands. What you propose to do is to tie their hands so that no matter what the circumstances or condition may be in the future they can not act. Now what condition way arise? Even when we have capital punishment mobs often take the law into their own hands. How much more readily will they do it in aggravated cases where there can not be capital punishment inflicted by law? I say mob rule will increase one-half.

Then again why should the state burden itself with the care of a man who deliberately and premeditatedly takes the life of his fellow man. Why should a taxpayer keep him in durance vile and be at the expense of his board, at the expense of taking care of him in some way, in order to protect society? That time has not arrived yet and I don't think it ever will arrive.

Mr. MARRIOTT: Would not your argument apply as well to a man who commits burglary? Why should we take care of and board and feed and confine a man who commits burglary?

Mr. TALLMAN: A man doesn't have to commit burglary with premeditation. Here is what I object to: It being so thoroughly a matter of legislation, why do we arrogate to ourselves that this one hundred and nineteen members know more of the circumstances and conditions of society, and what society will need for the next thirty or forty years, than any legislature that will convene in all that time? Why should we tie the hands of the legislature during all that period? Have we all that superior wisdom?

Mr. KRAMER: Is not that whole section there purely legislative? Is not this legislative: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and inhuman punishment inflicted, nor shall life be taken as a punishment for crime," etc. Is not that part we are attempting to add directly in harmony with all the rest of the section?

Mr. TALLMAN: It is in a measure legislation, but it establishes the principle that for the minor crimes bail can always be given and that right can not be cut off by the legislature. It is elementary in its nature, and for that reason is not legislative although it is found in legislation, and it takes care of the rights of innocent men who were kept out of prison before trial.

Mr. BROWN, of Highland: I used to feel, taking a broad view of the matter, that it was more humane to abolish punishment, until recently, when I began to study the matter. Since then I have changed my mind. In view of the statute requiring such an overwhelming proof of guilt that it is practically impossible to convict an innocent man of murder in the first degree, I believe we are perfectly safe so far as conscience is concerned, and I think there are many criminals in this state and in many states who would make it a business to submit to impulse to murder inherent in their characters if they knew there was no punishment for it beyond imprisonment for life. I believe we ought to have some way of adequately repressing unrestrained impulse to murder.

Mr. WINN: Do you think a provision of a statute or of a constitution inflicting a death penalty would have deterred that negro from committing that crime?

Mr. BROWN, of Highland: I think the negro under our constitution would indulge his proclivities—

Mr. WINN: What is your notion about what stimulated him?

Mr. BROWN of Highland: His natural depravity, the very thing we are trying to guard against and rid ourselves of, the untrammelled use of the impulse of natural depravity to commit murder.

Mr. HARRIS, of Hamilton: "Vengeance is mine" saith the Lord. I trust that this Convention will make the proposal of the member from Butler [Mr. PIERCE] part of the fundamental law so that it may be a clarion

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cry to our sister states, who have not adopted similar measures, and to the civilized world that the Fourth Constitutional Convention of Ohio is not only progressive in matters political, but is also progressive along the lines of broad humanity and that greater civilization which is touching us. To hold man responsible on account of his environment, or by reason of heredity or by reason of some creative power for which he was in no way responsible and can not control, though the individual man may be a brute, is not humane, and it is time that society refuses longer to be brutal. All of the statutes of the world will not prevent a man whose brain is beyond his control from committing crime, nor will they deter any of the other individuals sufficiently weak from committing crime. A civilized state ought to say that on account of the individual's mental weakness, and on account of the creative power to which he did not contribute and which he can not control, it will refuse longer to act as the carnivora by taking human life. Let us discard the brutality of judicial murder and show that we are really and truly created in the image of God.

Mr. READ: I would like to say in corroboration of the gentleman from Hamilton [Mr. HARRIS] and in opposition to the gentlemen from Medina [Mr. WOODS], Belmont [Mr. TALLMAN], and Highland [Mr. BROWN], who regard this as not being a constitutional matter, that it is a fundamental principle. The statute law deals with details and we will arrange for these afterwards, but here we are laying down the fundamental principle that belongs to the constitution. It is just as fundamental as the other part of the clause about bail and punishment, etc., which are found in the old constitution.

It is my judgment that no one proposal the Convention can pass will be more commendatory of its wisdom or greater proof of its progressiveness than the passage of this proposal to abolish capital punishment.

It is repugnant to the moral sense, debasing to the nature of man, to stain his hands with the life-blood of his fellowman. The sacredness of human life and the safeguards which should be thrown around it to protect it from the murderer require the most careful and stringent provisions. It is well that the wisdom of the ages should be invoked to help blot out this iniquity.

It is not true that capital punishment deters from the commission of crime. The sight of a dozen scaffolds or a hundred electrocuting chairs will not prevent a man from committing murder. That has been the experience and is the statement of those who have charge of prisoners and who know much more than we do about this matter.

It is an important question—What shall we do with the depraved wretch who, in anger, with malice, or from fear, cruelly kills his victim? Shall we in turn kill him and descend to his depth of infamy? Or shall we consign him to the gloom and monotony of prison life that he may drag out a miserable existence, held by the chains his own misdeeds have forged, where, conscience-stricken, forsaken and doomed to hard labor, he may work out the effects of his wrongdoing until his forfeit is paid? Is it not better that he should thus pay the penalty of his crime than the state, in cool and deliberate repetition of his crime, should murder him?

For the state of Ohio to discard a practice that imposes a demoralizing function on the executors of its law would be to remove a great stumbling block from the legal pathway to a broader justice and more advanced civilization.

We read in the archives of the past that the earliest forms of punishment were prompted by the idea of vengeance, but as broader and wiser views of life and the causes leading to law violations became better understood, the idea of retaliation and retribution began to make way for the theories of prevention and reformation. Now it is well established in the minds of philanthropic, thoughtful men that the chief aim of all punishment should be reformation, not revenge.

The advocates of capital punishment sometimes quote to us from Holy Writ that "Whoso sheddeth man's blood by man shall his blood be shed." It should be borne in mind that this was merely a primitive and local regulation, a sort of license granted the friends of the dead victim to slay the slayer. It was superseded later, repealed, as it were, 850 years later, by a fundamental law, a command by Jehovah. It was given out on Mt. Sinai, in one short, distinct, decisive, imperative sentence, to Israel and to all the world. There was no exception made. It was sounded in thunder tones, midst fire and smoke to all the people and to all generations of men. To the individual, to the prosecutor, to the judge and jury, the highest tribunal of the land, the Lord said "Thou shalt not kill."

Will you, dare you, in defiance of divine decree thwart the purpose of the Almighty and arrest the development and redemption of a human soul? It is well that the magnitude of the responsibilities you ask the state to assume in taking a human life should give you pause.

Mr. PECK: I move the previous question.

The motion was carried.

The PRESIDENT: The question is, Shall the vote by which this proposal failed to pass be reconsidered?

Mr. WOODS: I move to lay that motion on the table.

Mr. DOTY: The previous question has been ordered.

The VICE PRESIDENT: The point is not well taken. The motion to lay on the table was lost.

The VICE PRESIDENT: The question now is, Shall the motion by which the proposal failed to pass be reconsidered?

The yeas and nays were regularly demanded; taken, and resulted—yeas 68, nays 39, as follows:

Those who voted in the affirmative are:

Anderson,	Fackler,	Kramer,
Antrim,	Farnsworth,	Kunkel,
Baum,	Farrell,	Lambert,
Beatty, Morrow,	FitzSimons,	Leete,
Beatty, Wood,	Fluke,	Leslie,
Beyer,	Fox,	Malin,
Bowdle,	Hahn,	Marriott,
Brown, Lucas,	Halenkamp,	Miller, Crawford,
Brown, Pike,	Halfhill,	Miller, Ottawa,
Campbell,	Harris, Hamilton,	Moore,
Cassidy,	Harter, Huron,	Nye,
Cody,	Harter, Stark,	Peck,
Crosser	Hoffman,	Pettit,
Davio,	Holtz,	Pierce,
Doty,	Hoskins,	Read,
Dunn,	Hursh,	Redington,
Dwyer,	Keller,	Smith, Geauga,
Earnhart,	Kilpatrick,	Solether,
Eby,	Knight,	Stamm,

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Stevens, Stilwell, Taggart, Tannehill,	Tetlow, Thomas, Ulmer, Webbrecht,	Winn, Wise Mr. President.
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Those who voted in the negative are:

Brattain, Brown, Highland, Collett, Colton, Cordes, Crites, Cunningham, DeFrees Donahay, Elson, Evans, Harbarger, Henderson,	Johnson, Madison, Johnson, Williams, Jones, Kehoe, King, Lambson, Lonestreth, Ludey, Mauck, McClelland, Miller, Fairfield, Norris, Partington,	Riley, Rockel, Roehm, Rorick, Shaw, Smith, Hamilton, Stalter, Stewart, Tallman, Wagner, Walker, Watson, Woods.
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The motion was carried.

The VICE PRESIDENT: The question now is on the adoption of the proposal.

Mr. FACKLER: I offer an amendment.

The amendment was read as follows:

After line 13 add the following: "Until otherwise provided by law, persons convicted of crimes heretofore punishable by death, shall be punished by imprisonment in the penitentiary during life."

Mr. McCLELLAND: I hesitate to enter upon the discussion of legal matter for fear that a farmer and ex-minister might make the same mistake in discussing law that the lawyers do when they attempt to discuss a biblical question. After listening to the discussion of the Bible by lawyers I was reminded of what Robert Burns said:

"Some books are lies
Frae end to end
And some great lies
Were never penned
E'en meenisters, they hae been kened
In holy rapture
A rousing whid at times to vend
And nail't wi Scripture."

That was humorous about the ministers because they don't so often make mistakes, but if Burns had been here yesterday and listened to the lawyers attempting scriptural quotations he might have put that same idea of his in poetical phrase and said:

E'en lawyers, they hae been kened
In legal rapture
A rousing whid at times to vend
And nail't wi Scripture.

But that would have been too near the bald facts to be humorous. It is a little surprising when the legal fraternity come to use scriptural arguments to see the perfect confidence which they assume that they understand the Scripture beyond dispute.

I shall not enter into any scriptural argument. There is not time for it in ten minutes, and where it was used for nearly half an hour, as it was yesterday, you could not expect to answer it in five or ten minutes, but the statements were made with such abandon, with such exaggeration, and with such freedom from accuracy as to be of little value it seems to me. But further than that, it was argued we are compelled to take this step and adopt this proposal in order that we may be progres-

sive as told us yesterday. Now there are five states that have made this progressive step, and I think it was stated that all of the five adopted it over fifty years ago. The other forty-three states of the Union do not believe in it and have not adopted it, because they have not seen that it worked advantageously or was a wise provision in those states where it has been adopted. It seems to me it is rather hasty for us to assume that we are in the line of progress when those who have done it did it more than a generation ago, and the results there, even according to the quotations from letters of governors, gave, not judgment in regard to the provision of the constitution there, but their personal opinions only, and that without any chance for observance or comparison.

The question is not merely whether it is well to abolish capital punishment. I am not sure, were this a legislature and I had the honor to sit in the body and a bill was before the legislature to abolish capital punishment, that I should not vote for it. It appeals to me as to every kindly man in its behalf. There is a strong sentiment in its favor, but that is one thing and it is another thing to tie up the legislature for all time to come by a constitutional prohibition.

The legislature next winter can pass a law which will abolish capital punishment, and then if the state finds in the near future that it is not working well, that it is not producing good results, that mob law increases instead of diminishing, they may find it desirable to repeal the law, but if we put it in the constitution it can not be repealed.

Mr. EVANS: There are not as many people hung as ought to be. The number ought to be increased instead of diminished. I have visited in Pulaski and Carroll counties, Virginia, and I am acquainted with those people, and I am familiar with several characters which were in the terrible tragedy at Hillsville. I knew Judge Massie very well and knew him to be an upright, honest man, and everything that could be desired of a citizen. He was shot down in cold blood, and I believe that in a case of that kind to let a man off with his life would be abominable. The state of Ohio has been in existence one hundred and ten years, and we have had a fixed policy as to crime, that we leave the detection and punishment of it to the legislature. We have done that since 1802, and I am proud of the state of Ohio because there is no crime defined in the constitution. I am opposed to limiting or qualifying the police power of this state in this organic instrument we are about to make. The matter of defining and punishing crime ought to be left entirely to the legislature. I think it was all well enough to change from hanging to electrocution, but I am in favor of the retention of capital punishment. I say, don't let us mar the record of this Convention by putting anything in the constitution that infringes the exercise of the police power by the legislature. We should not limit the police power in the slightest degree. Let us keep up our proud, honorable history as a state in that respect. There was a great deal of mawkish sentiment manifested in this Convention about the question of woman's suffrage, and there was much more manifested on the question of capital punishment. I believe if a man commits crime he should be punished. I fully agree with the sentiment which would so manage society and its affairs as to prevent the commission of crime, but this Convention has frowned down on that method. I want to

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do away with this vote selling and vote buying. I thought it would help to do it if we had made an educational qualification for suffrage.

I considered that would be progression in the right direction, but you turned that down, and for the next hundred years we will have to deal with these people who sell and buy votes, and will have to be governed by political bosses who deal with us at their pleasure.

Now don't let us make another mistake. We made a mistake there and condemned ourselves to the rule of bosses and to buying and selling votes in perpetuity. Now let us in this particular follow the policy of the state for a hundred and ten years and not change it.

Mr. PECK: I again move the previous question.

DELEGATES: No.

Mr. PECK: If you want some more talk then I will withdraw it.

The PRESIDENT: The previous question has been regularly demanded, and we will take a vote on it.

The motion was lost.

Mr. DOTY: The mistakes of the Convention as viewed from Scioto county are somewhat like the mistakes of Moses—some of them never happen. The mistake to which the member from Scioto [Mr. EVANS] adverts and about which he is very much concerned, is not a mistake unless others of us agree as to restricted suffrage. If the member from Scioto has any idea or feeling that the votes of people can be purchased because they have not a school education, that is another matter. But I don't understand that anywhere in the state of Ohio the people convicted of vote selling have been particularly ignorant. Sometimes they were not.

But to come to this question: I have observed in the short time that I have been on earth that there is an element in the enforcement of law which seems to have been overlooked, and I don't think it is a question of religion or the interpretation of the Bible or the tremendous showing of what the lawyers have done for humanity. I think it is a question of whether the laws are certainly executed.

The member from Shelby [Mr. PARTINGTON] gave some statistics yesterday that are to my mind a very strong argument in favor of the abolition of capital punishment. He did not use the statistics to that end, but so far as I could judge they did not fit in with the able argument he made in support of his contention.

Mr. WOODS: Do you not think there is a whole lot of other criminal statutes that ought to be repealed?

Mr. DOTY: Yes.

Mr. WOODS: Then start in and take them all out.

Mr. DOTY: Start in and if it is right I will vote to take them out and if it is wrong I won't. The member from Shelby [Mr. PARTINGTON] pointed out that one murderer out of three in England was executed for his crime, whereas in this country not to exceed one to one hundred or one to eighty or one to fifty-seven, or some big number. Does not that show to your mind that there is something the matter with the punishment, or with the certainty of punishment, or whatever it may be?

Mr. STALTER: I want to ask you if the penalty for all murders were execution, and if the illustration as given is the difference between first and second degree

murder? Have you given in your figures both first and second degree murders?

Mr. DOTY: Who used them?

Mr. STALTER: The illustration you gave from the gentleman of Shelby.

Mr. DOTY: I do not understand what he referred to or just how you are going to divide his statistics, but I undertake to say that the punishment for crime is more certain in England than here, and I say to you it is the certainty of punishment that deters rather than the severity. That is just as true in Michigan and China and Ohio as it is in England. Certainty of punishment is what we should endeavor to secure. A very wise man has said that if you make the laws too sanguinary the juries will fail to convict. Many a time a jury fails to convict in a capital punishment case because they think the laws are too sanguinary. They don't want to hang a man.

Mr. WOODS: How about the recommendation for mercy?

Mr. DOTY: The recommendation for mercy is coupled with the execution of the law. That is something that shouldn't be allowed. The jury should not be allowed to say whether a man should be punished in one way or another. The jury should simply say "guilty" or "not guilty." The result of the whole thing is that we have nine thousand murders and only one out of fifty-seven of the murderers is executed, and we see juries, prosecuting attorneys and judges getting away from the sanguinary part. Don't forget that next Friday night there will be a man electrocuted in this city, and we are citizens of the state of Ohio.

Mr. JONES: It seems to me we are making a great mistake in reference to this matter for two reasons.

In the first place, it is purely a legislative matter. As I have heretofore said on other questions, there are some legislative matters proper to be dealt with in the constitution, but this is not one of them. Those matters about which there is no substantial differences of opinion among the people, fundamental rules and principles, even if of a legislative character, can be properly incorporated in the constitution. Those provisions intended simply to regulate the exercise of some power can also be properly included, but here you have a question of pure penalty for a specific crime and there is just as little reason for this bit of legislation as there is for legislation in the constitution in respect to any other specific crime.

Another thing, if this is to be a rule proper to embody in the fundamental law, it is likely to remain for fifty years, and we are tying up the people of the state no matter what the demand in the future may be so that they can not do what they want to do with regard to a penalty for a specific crime. It has been suggested here that the death penalty does not prevent crime. No penalty prevents crime, but does anybody or will anybody contend that the death penalty does not restrain the tendency to commit crime? Does not life imprisonment tend to restrain the tendency to commit crime? And if life imprisonment will tend to restrain the tendency to commit crime, if a man's life is more precious to him than his liberty, how can you say that the possibility of his being deprived of life will not restrain? If the matter is left in the hands of the legislature it will be

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what gentlemen constantly referred to in the discussion on the initiative and referendum, as the "shotgun behind the door." You don't have to use it unless you want, to, and you need not use it in any specific case unless the judgment of twelve men, who have had an opportunity to consider all the circumstances, after full deliberation and under a charge from the court, with all these safeguards that can be thrown around the exercise of judgment by any body of men, say the death penalty should be inflicted.

Can anybody say that under such circumstances it is liable to be an instrument of vengeance, that it is liable to be used wantonly or improperly? We all know that the great trouble with the administration of the criminal law in this country is to get enough convictions, to get a jury of a man's fellow citizens to find him guilty as often as they should. The great tendency is to run in the other direction, and the uncertainty of the execution and enforcement of law is the very thing, as referred to by the gentleman from Cuyahoga, that causes the great prevalence of crime in this country. It does not follow that because you have the power to inflict the death penalty that there is going to be any less certainty with regard to the administration of the law. Juries can go right along recommending mercy and life imprisonment will be inflicted instead of the death penalty. We have had too much mob law in this country. Some of you may remember a few years ago when thirteen lives were taken by the military in this state in defending a negro. What was the crime there? A woman had been outraged and the cry was that there was no adequate punishment. A man deliberately went to the house of a lone woman and assaulted her, and the righteous indignation of that community rose against him. That is typical of every community. They feel that under such circumstances the law provides no adequate punishment for the crime and they want to take the law into their own hands.

Mr. EARNHART: Mr. President and Gentlemen of the Convention: This matter has been discussed from all phases except one, and in the few minutes I have I want to travel in that direction. The whole matter resolves itself into one question.

The delegate from Warren [Mr. EARNHART] here yielded the floor to Mr. Elson who moved that the Convention recess until 1:30 o'clock p. m.

The motion was carried and the Convention recessed until the time indicated.

AFTERNOON SESSION.

The Convention was called to order by the president and the gentleman from Warren [Mr. EARNHART] was recognized.

Mr. TALLMAN: I ask the member from Warren to yield. I want to ask unanimous consent to introduce a resolution.

Mr. EARNHART: I yield.

The PRESIDENT: The member from Belmont asks unanimous consent to introduce a resolution. Is there objection? The gentleman from Belmont moves that the consideration of the pending proposal be postponed three minutes.

The motion was carried.

The PRESIDENT: The secretary will read the resolution.

The resolution was read as follows:

Resolution No. 105:

WHEREAS, The laws of Ohio provide that whoever in the night season maliciously and forcibly breaks and enters an inhabited dwelling house with intent to commit a felony shall be imprisoned in the penitentiary during life; and

WHEREAS, It appears to be the sense of the majority of this Convention that murder in the first degree should only be punished by imprisonment for life; therefore

Be it resolved by this Convention, That there is no substantial difference between the crime of burglarizing an inhabited dwelling during the night season and murder in the first degree.

The PRESIDENT: The resolution goes over under the rule.

Mr. SMITH, of Hamilton: I move that we resume consideration of the proposal which was pending when the resolution was offered.

The motion was carried and the delegate from Warren [Mr. EARNHART] was recognized.

Mr. EARNHART: The purpose of action on this matter should be wholly to diminish the commission of murder as much as possible. Taking that view of the matter, my own opinion is that when a man is executed it to some extent diminishes the value that ought to be set upon human life. We well remember that when we had public executions thousands or at least hundreds of people would congregate to see a criminal executed. That to my mind had a disastrous effect upon the morals of the community. I am satisfied in my own mind that this matter, as does every other example, carries great weight, and in order to diminish the number of murders we want to make it a matter of educational development and sentiment that will rise above that. Gentlemen to substantiate argument from this floor have seen fit to go back and quote from Scripture that when one man kills another his life ought to pay the penalty. I take it that there is more virtue in the present age and that we ought to confine ourselves to the present generation. I think in the matter of industrial activity, scientific research and the better conditions of morality we rise greatly above the ages to which the gentlemen have referred in order to substantiate arguments they have produced in favor of capital punishment. It seems to me the lesson is too plain. We remember when a few men were killed in the first skirmish of the Civil War what a thrill of horror it sent through every citizen of the nation, but after a while, when the big battles came on, unless there were twenty or thirty thousand men killed it was not thought to be much of a battle; the people became used to it; they expected it. You remember a day or two ago when the wires flashed the news and the newspapers published the account of the great steamship disaster how it thrilled the people? We had lost some of the feeling we had during the Civil War because we had partially recovered from it. Right along that line I want to say that when you abolish capital punishment and teach the people the importance of human life you will restrain men who would other-

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wise have it in their hearts to snuff out human life. I fully believe in the years gone by we have been setting an example that not only did not deter but that worked to the contrary. The dime novel gives instances in the "Wild West" when over a game of cards one man pulls out a pistol and kills another, and it educates the people to the opinion that human life does not amount to much anyway; so my whole argument is based upon the fact that when we rise above that ourselves we will lessen the evil results. Human tendencies are against it. We can see now that it is almost impossible to get a jury to convict a man for murder in the first degree without recommending mercy. We see it in the hearts of men, and properly so, and the assertion has been made upon the floor that it is purely a legislative matter. Whether that is so or not I do not care. I want this Convention to say to the people of the state of Ohio that we will rise above former conditions, and by this measure we will show not only to the people of the state of Ohio but to the people of other states as well, whose eyes are upon us now, that we are going to rise above present conditions. We are going to enlarge human conditions by placing in our laws a provision against capital punishment. I do not think I underrate the intelligence of the Convention to such a degree that it will not when the final vote comes, be on the side of humanity and right.

Mr. HAHN: Mr. President and Members of the Convention: I am in favor of the abolition of capital punishment. I believe in the sanctity of human life and I believe that every one of us, every citizen individually and the state collectively, should teach and preach the sanctity of human life. But as long as the state is the first murderer, as long as the state kills, what is the example set to us? There cannot be an idea that sanctity of human life is taught to our people when we ourselves kill. I believe my life under all circumstances is the most sacred and most inviolate possession that I have, and where is the man, where is the society, where is the state that has a right to divest me of it—to take from me my most sacred and most inviolable right? What is the state? The state is merely an agreement or contract which we enter into that the whole community shall be ruled according to a constitution. We have a right to concede to the state that it may take away under circumstances our substance, but we have no right to contract that it may take away our own life. If we say we have a right to take away our own lives it is pronounced the most immoral practice imaginable, and if we say we are in favor of the state taking away our lives, we are in favor of suicide. If I have not a right to take my own life no one else has, and I have no right to contract that anyone else shall. No principle of morality justifies me in taking my own life. It is a fundamental principle of society that I shall protect my life first of all, and consequently I have no right to give a right to the state which I do not possess, and the state has absolutely, according to all principles of morality and justice—no matter what the laws may be—no right to take the life of any individual.

We have heard about the Bible sanctifying the taking away of human life. My friends, the Bible has been misused whenever a great question was before the world. The Bible is the book of books, the greatest book in human literature. It is an inexhaustible source of re-

ligious sentiment, teaching and morality, but at the same time wherever there was a great issue one party always wants to take the Holy Book in its hands and defend its course by it, and so does the other party. The Bible is the grandest book imaginable, but in an age like this, where we have to develop civic morality and legal principles, the idea of revelation must not prevail. We must look at the Bible from the standpoint of evolution, from the standpoint of the historical development of the religious and moral genius that spoke to mankind. All of these laws at one time were excellent, but at the present many of the laws of the Bible are disregarded. Why do we stick to just this one law? You will find in that same Bible that man shall not shed blood. How many are there now that keep that commandment, and why do we want the other? My friends, it is inconsistency in our nature. On the one side we are for humanity and for righteousness and we shrink from doing wrong to anybody. We say love thy fellow man as thyself. On the other side we are in favor of the principle of revenge, for capital punishment is nothing else but revenge—fierce, brutal revenge. There is no justice, there is no morality, there is no humanity in it.

They consider the crime. Yes, gentlemen, there is heinous enormity in the crime of killing a person, but we must not always look merely at the enormity of the crime. We must sometimes consider the criminal himself. Who is the criminal? Why was not there a single word spoken here of kindness and humanity and sympathy for the criminal? Are all criminals depraved? Oh, no, my friends; there are criminals who are not themselves to blame that they are criminals. Is it our fault when we inherit consumption or cancer or insanity or shortsightedness or deafness or blindness? No more is it the fault of a great many criminals that they have criminal proclivities and that they were born with criminal eccentricities.

The time of the gentleman here expired.

Mr. REDINGTON: I am not in favor of capital punishment, but I am in favor of punishing severely any person who commits the crime of murder in the first degree. I am one of those who believe that we can devise ways and means whereby such a man can be punished sufficiently without taking his life. I think with solitary confinement or some other means we can provide something that will strike more terror to the heart of the average criminal than the fact that he takes only the chance of being electrocuted. We are seeking to prevent crime, and you will find you have not prevented crime although you have had upon the statute books for many years this particular mode of capital punishment.

I do not believe you have a right to take a man's life. Whether we can prove it or not we all believe that man is immortal, that he has a soul. If we were called to prove that, the wisest man could not prove it. He cannot prove the transmission of souls. He has to rely upon the revelation of the Good Book to prove that fact, and we all believe it, and if a man does have a soul what right have you to cut off his future without chance of reform? Are you so stingy that you cannot provide some home for this man in order that he may have some time to prepare himself for eternity?

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I find members are basing some of their arguments on the Scripture. Scripture oftentimes is misused. I do not believe my Creator, who is all powerful and all wise, and a God of love, ever authorized that statement of "an eye for an eye and a tooth for a tooth." I do not believe that my Creator ever authorized a story that He hardened Pharaoh's heart from time to time and caused pestilence and misery and the death of thousands and then by chicanery inveigled the Egyptians out into the bed of the Red Sea and drowned them like rats. I do not believe my Creator ever sent the wild bears from the woods to eat the children up because they called a prophet "old baldy." I believe those stories are libels. I believe the Creator was as wise ten thousand years ago as today, and you couldn't get the average man to do today what Jehovah sanctioned ten thousand years ago, according to some of those stories. You can quote them, but the next thing is to prove that our great Creator ever sanctioned them. I believe if you have a villain in your community who is so far devoid of good morals and good citizenship that he deliberately commits a murder, it is your duty to devise some punishment whereby you can not only reform the man but can strike terror to the hearts of others who would do likewise; but that you have any right to snuff out that life or send him into eternity without preparation I deny. I believe that the age and the time has come when we should take an advanced step and say that we will not be a party to a judicial murder. Who in this audience would willingly be an executioner? Who would willingly strike the fatal blow to snap out a human life? If you don't want to do it, why authorize anybody else to do it? I say to you, no matter how low a man is nor how guilty let him have his life and suffer with it until nature takes it from him.

Mr. FARNSWORTH: There is a bluff on the Mautee river near my home that has an interesting history. History tells us that in early days there were two friendly tribes of Indians camped near the bluff. The braves would go out into the forest to hunt while the children played around the wigwams and the squaws performed the labor incident to the family. One day by some mischance a child fell over the bluff into the river and was killed. It so happened that the wife belonged to one of the tribes and the husband was a member of the other. When the husband returned at nightfall he was very much incensed at what he considered the neglect of his wife in not attending to the child, and, taking advantage of the Indian law, based no doubt on the Mosaic law, he in turn pushed her over the precipice to her death. Her friends in the other tribe, believing in reciprocity, took the first opportunity to kill him, and so the barbarism continued until the civil authorities had to take a hand. That was the Indian law of a death for a death. Shall we, in spite of our boast of higher civilization, lower ourselves to the barbaric level of killing one man because he has killed another?

There are other phases that have been overlooked. You have spoken of the effect on the man who is executed. Have any of you stopped to think of the jurors? Have any of you ever been one of the jurors who sent a man to death? If you have been, do you care to repeat the experience? Does not that feeling have a ten-

dency to keep the best and most civilized men from jury service?

I myself believe that in the near future we shall evolve some plan of reforming as well as punishing convicted criminals. I believe that punishment should be twofold, punitive and reformatory. Oftentimes it is not the criminal's fault entirely; often his ancestors have had something to do with it. Human nature is not wholly bad. There is a chance to reform every one. A man may change his course in a moment, but he must have time to reform. I believe it is a duty we owe to a community to give every convicted criminal abundant opportunity to reform, and I have ample faith that at some time in the near future we may devise something that will reform as well as punish.

Mr. BEATTY, of Wood: A great many years ago God handed out the law to Moses. He gave the Ten Commandments and among the ten was this: "Thou shalt not kill." That is all I have to say on this question.

Mr. ANTRIM: Last Friday when I returned home I took this proposal with me because I knew it was coming up this week and I wanted to vote intelligently on it. When I returned home I was not decided as to how I should vote, and so I took several hours on Saturday to look up some statistics and read one or more excellent articles on the subject, and I want to say that after I had finished my reading and my investigation and had given the subject some thought, I decided that the wise thing to do was to vote to abolish capital punishment.

We have heard one argument repeatedly on the floor of this Convention and that is if we retain capital punishment it will exercise a deterring influence on the criminally inclined. I do not believe it. Statistics show it is not true. Take the state of Maine. The statistics of Maine have been very carefully collected and we learn that during the twenty years preceding the time when they abolished capital punishment there were two hundred and fifty or two hundred and sixty homicides. During the twenty-three years following that period, when they didn't have capital punishment, the number of murders went down to a hundred and thirty-five and that, in spite of the fact that during the latter twenty-three years the population was much greater than during the first twenty years.

Another thought. In the years from 1880 to 1883 there were twenty-six murders committed in the state of Maine. That was when they had capital punishment. In 1883 capital punishment was abolished and the number went down from twenty-six to eighteen. That proves that capital punishment in that state did not exercise a deterring influence on the criminally inclined.

Another point: One of the saddest things about the whole matter is that the innocent must suffer with the guilty. We have heard a great deal said in the course of this debate that most murders are committed among the lower classes, but I think if we investigate the subject pretty carefully we shall find that a great many are committed among the highly educated and well-bred classes. The murder that occurred in Virginia last year, the homicide that took place in Massachusetts and the case of the dentist in England and others might be cited. It is these cases that are specially sad. If we electrocute or execute such men we can see the tremendous amount

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of suffering the families of the well-bred and intelligent that are left behind.

Mr. WATSON: A great deal has been said in the course of this argument in favor of the murderer and his family, in favor of his wife, but nothing has been said in favor of the wife and family and relatives of the man who is stricken down in cold blood, and deliberately so by the murderer. The gentleman from Warren [Mr. EARNHART] spoke about public lynchings. No one on the floor is advocating such a thing. We do not believe in those public lynchings and that should not have been lugged into this debate. We have heard recently of the numerous mine disasters in this country, where hundreds of lives have been snuffed out, and in the majority of of those cases it has been murder on the part of the corporation, which has become a law violator, and yet we hear no voice raised in protest against that murderer. A good many of the corporate interests of the country have become absolute murderers by the violation of laws designed to protect their employees and there is no talk against them. There is no outcry against them. When we look at the Cherry Valley disaster and sum that up it is absolute murder through violation of law. If Mr. Antrim's argument means anything then we should take away the jail sentence to lessen the number of house-breakings in this country. Oh, no; don't think for a moment that if you will lessen the penalty you are going to decrease crime. That is not the way to do it. As has been said, this provision is just "a shotgun behind the door" for the protection of society, and I hope it will remain there.

Mr. KNIGHT: I am decidedly in favor of the abolition of capital punishment and I hope it will carry for two reasons.

First: Taking up one objection, it has been stated that this is pure legislation and that it has no place in the constitution. Not so. It is no more legislation than the provision in the bill of rights which says trial by jury shall be preserved inviolate. That simply prevents the legislature from doing that one thing. The people have the right to say in the fundamental law that the death penalty shall not be inflicted for any crime committed in this state. It is simply barring the legislature from prescribing that penalty for any crime. It is no more legislation than the other matter to which I have referred.

In the second place, it is a principle in modern penology that the criminal law should undertake to deter from the commission of crime, and should undertake the reformation of the person convicted of crime as well as to punish for the offense already committed. It is a well-known fact, and a study of statistics will disclose it to be a fact, that the death penalty for any crime is not a deterrent in any greater degree, indeed not to as great a degree, than a lesser penalty strictly enforced. The deterrent feature of all criminal laws depends on the certainty of enforcement more than on the severity of the punishment.

One may quote Scripture to prove or disprove anything. If we had relied upon Scripture this country would still be blessed with slavery, for the fundamental argument in favor of slavery was biblical authority. If I understand anything about the Bible, and I am neither a lawyer nor a preacher, so perhaps I do, the net teach-

ing of the Bible is that humanity is progressing and that the spirit of Christianity is to assist in progress from barbarism to enlightenment, and I submit that in this year of our Lord it is a revolting proposition that one murder justifies another.

Now, as a matter of fact, every one knows that with the death penalty in this state, already referred to by the gentleman from Medina [Mr. WOODS] there is not an accused person brought before the court under indictment for a first degree murder but that the question has to be put, and is put, to each juror, "Have you conscientious scruples against the death penalty? Would your verdict be influenced at all by the fact that if the accused person is found guilty he would be subject to the death penalty?" In no other crime and with reference to no other penalty is that question asked of a juror. Whoever heard a juror asked "Is your conscience such that you cannot find a man guilty because he would be sent to the penitentiary if found guilty?" Since that sentiment exists, we are defeating one of the ends of criminal legislation by imposing a penalty where it is known in advance that some if not all of the jurors may be affected in their judgment upon the evidence presented by the fact that they have a hesitancy in finding a man guilty because the penalty is one that they think ought not to be imposed.

Mr. HALFHILL: Mr. President and Gentlemen: We have but one lamp to guide us and that is the lamp of experience. We have but one method to get light upon a question and that is from history; and both history and experience incline us to the belief that we are progressing in the social scale.

On this particular question we have gone back a good way to cite authority. You remember the old law quoted by the reverend gentleman from Holmes [Mr. WALKER]. But even that sanguinary declaration had to be modified later by the Levitical law which established cities of refuge; and even in pagan countries there existed in the temples the right of sanctuary, and a great deal was done even in pagan days to moderate the severity of the law which declared that "whoso sheddeth man's blood, by man his blood shall be shed." Think of it! Our ancestors in England, from whom we get this law, in the year 1300 began to slacken a little. They occasionally got a little stronger by burning heretics, etc., but the gradual tendency was toward civilization and greater clemency, until one hundred years ago there were only two hundred crimes for which they did actually hang a man. In Blackstone's time there were three hundred and sixty-five such offenses. There was a rule in the English parliament when it enacted a criminal statute not to affix any penalty, because as a matter of course and as a matter of common usage the penalty went along with it and that was to hang. They exacted the supreme penalty for every crime except stealing property of less value than one shilling. So we have made some progress. There is not a crime in England today that is punished capitally except treason, piracy with violence, blowing up dockyards or arsenals, and murder in the first degree.

Gentlemen, I believe if any man has ever been associated with a murder trial he knows that he was under a very grave responsibility. The responsibility is something frightful to contemplate, for judge, jury, attorneys

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and all concerned. Society can punish and that is all that society ought to do. This idea of vengeance, relic of the old *lex talionis*, does not exist today and should not be advocated in any Christian country. The idea of society is to punish and prevent, punish and reform, and it is just as safe for society to immure one guilty of murder in the penitentiary for life and take away the executive power of pardon unless newly-discovered evidence is produced sufficient to warrant granting him a new trial at the hands of the jury, as it is to hang him. Is not that all that is necessary? I feel deeply upon the question and always have been convinced, ever since I first investigated, that capital punishment was both unnecessary and wrong. Here is that awful fact: That you may make a mistake in hanging a man and you can never rectify it. When you make that kind of a mistake there is no way to undo it. Now, that is the legal and moral side, but there is a utilitarian side. It does not prevent crime. Juries are too loath to administer it. The sureness and the quickness of punishment is what prevents crime; and if you sum it all up together you can safely lay down the general proposition that it is not right for the state to take the life of any one of its citizens or to take away that which it cannot give back.

Mr. SMITH, of Hamilton: I dislike greatly to vote against the proposal introduced by my friend Mr. Pierce and I am willing if he desires, at the next session of the legislature, or if the initiative and referendum passes, through that source, to help him pass such a law as he is now seeking to have this Convention pass. When I told a member of this Convention that I felt obliged to vote against this proposal he said "Why, Smith, you are cruel." Well, I think it is cruelty for this Convention to submit to the people so many propositions of a legislative character. Every man in this Convention could, with a very little thought, get up some meritorious proposal and bring it in here and win our sympathy and support, but it would not be our duty to vote for it for that reason. We were sent here to do a definite work, and that work was to change the organic law of the state and not to pass laws. Why, if we start here and pass legislative provisions we will be here until next year and possibly draw another hundred thousand down. I am sure nobody wants to do that. Every additional proposal submitted to the people puts added burdens on the people. It is going to take some time for the people to study these proposals, and all I want is to appeal to you that where we can, let us draw the line; let us decide to vote against proposals purely legislative; let us resolve to cleave straight to the line of duty, and that is changing the organic law the way the people who sent us here wanted it changed.

Mr. DUNN: There are a few of us who have said very little in the Convention, but you will notice that we have been doing one thing—we have been voting. I confess that on this question it is a difficult matter for me to decide how I shall vote. I have not obtained all the information from the addresses of members of the Convention which I would have been glad to have received, but I shall vote on the side of mercy. It seems to me that when we have any great question before the Convention, we divide into two camps as enemies and argue our prejudices, instead of coming together and studying the question unitedly and trying to solve it in

favor of the whole people. This question of abolishing capital punishment is certainly an exceedingly important one. I want to vote right on it. I am very doubtful whether you can say the state commits murder when she puts into execution a law in favor of capital punishment. The state in some degree stands in the place of God. If she decides that the good of society demands the punishment of a criminal in this way, I doubt that you can say the state commits murder. That is not a valid argument to me. I want to know one thing: What is the effect of capital punishment upon those who are in danger of becoming murderers? I remember when a student that this principle was laid down—I do not give the words exactly: "All public descriptions of any crime have a tendency to produce repetitions of the crime." If that is true, if it is a psychological fact, I ask this question: Does capital punishment lead to other murders or does it not? In a short talk with our honored secretary, who has made a very careful study of the subject, I found that the figures are against capital punishment. So I shall vote against capital punishment.

Mr. STAMM: This question has been ventilated from the standpoint of the lawyers and the preachers and the professors and the laymen, but very little has been said from the standpoint of the criminologist. This discussion should be viewed from every angle and we should have some views from medical experts on this question. If you will allow me I will quote a few expressions of those myself:

Penal law was formerly based more on philosophical than psychological grounds until about 1850. Regnault, Herbart, Drobish, Waits and Wundt showed that the objects of psychiatric-forensic judgment are diseased conditions of the brain, which have to be studied by means of all technical and anthropological aids of modern science, and not from the every-day psychological standpoint of the layman or from the unreliable analysis of metaphysical criterion. A careful study of criminal conditions along the line of modern science makes us apt to consider sheer moral depravity as a diseased condition of the brain which may have an hereditary origin, or be the result of some latent neurosis, epilepsy, hysteria, which may essentially limit the exercise of what we are wont to call free will.

Morel, the great French alienist, wrote some seventy years ago (*Traite' des Maladies Mentales*, p. 544):

I do not doubt for an instant that laws which regulate the penalty among all civilized people will some day have to undergo some modifications and the honor will redound to the physicians who have learned to recognize the many changes which heredity impresses upon the organism?

Kraft Ebing, probably one of the greatest psychiatrists, has no doubt that the anthropological study of criminals will bear fruit and secure a firmer basis for the question of responsibility as well as the method and form of punishment. He says:

The time will come when our views in regard to certain criminals and the penalty in its ethical and judicial foundation, especially where penalty of death comes into question, will become untenable; where the criminal will be treated or con-

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sidered more like a dangerous unfortunate and where the death penalty will be viewed as monstrous and inconceivable as witch burning and torture of former ages are looked upon by us today with a sense of shame.

Everything in this world has its cause; if the causes are the same the effect will be the same. Statistics demonstrate that if the causes remain the same the number of crimes will be the same, so that we can approximately predict how many crimes will be committed next year, even to their detail; how many cases of theft, how many cases of rape, how many murders; nay, even how many of these are carried out by the revolver, knife or poison. This should make it clear enough that crime is a social disease which may limit itself to the individual, but has its social origin.

Germany has five murders to one million inhabitants; so has England; France has twelve, Spain forty-five, Italy seventy-six and the United States seventy-five.

Lombroso says:

I have always found in my own experience that outrageous murders not to be explained according to the ordinary psychology of criminals are accompanied by psychical epilepsy.

Ferri, in *Criminology*, says, p. 8:

As for craniology, especially in regard to the two distinct and characteristic types of criminals, murderers and thieves, an incontestable inferiority has been noted in the shape of the head by comparison with normal men. An examination of the brains of criminals, whilst it reveals in the man inferiority of form and histological type, gives also in a great majority of cases indications of diseases which were frequently undetected in their lifetime. Thus Mr. Dally, who for twenty years past has displayed exceptional acumen in problems of this kind, said that all the criminals who had been subjected to autopsy (after execution) gave evidence of cerebral injury.

Mr. BOWDLE: Mr. President: Just a word in addition to what I had to say yesterday. I am happy to notice that the ministerial unanimity has been broken on this subject in the highly wise and philosophical utterance of Mr. Dunn. I am delighted to see that he has placed his Ebenezer by the side of the Captain of our salvation, whose mission in this life was to bring love and substitute it for the carnivorous instincts of humanity. It is said that this is not a proper matter for the constitution. I submit that if the matter of taking a glass of beer and eating a ham sandwich is properly within the constitution, the taking of human life is well within the limits of the constitution. So I shall expect every "dry" in the Convention to take precisely that view of the question.

It is very stimulating to observe that the law of love is gradually infiltrating into the hearts and minds of men. The object of Christ's coming was to bring that law of love and substitute it for the temporary and often cruel code that Moses was the head of and which had served its purpose in a rapidly evolving human body. I picked up last night the constitutions of some of the South American republics. It is instructive to see in those Catholic countries, to which we send so many missionaries for

their conversion, their constitutions show how they are endeavoring to substitute the law of love for the law of ferocity and revenge.

In the constitution of Argentine I found this:

The penalty of death for political offenses, torture of all kinds, and the whipping-post are abolished. The national jails shall be healthy and clean; they shall be intended for the safe-keeping and not for the punishment of the prisoners, and any measure which, under color of precaution, may tend to subject the prisoners to more hardships than are required for their security, shall render the court authorizing it liable to answer for it.

I found in the constitution of the United States of Colombia this provision:

The legislature shall only prescribe death as a punishment for the cases which are defined as the gravest, the following crimes judiciously proven, to wit: Treason to one's country in a foreign war, parricide, assassination, arson, assault in a gang of malefactors, piracy, and certain military crimes defined by the military laws.

At no time shall the death penalty be inflicted except in the cases provided in this article.

Thus in the United States of Colombia the ordinary crime of murder is not punished with death.

I find likewise in the republic of Ecuador the same broad views and the same love shown by those people in whose conversion we, the people of the United States, are so interested. And so throughout the constitutions of South America you find this effort to substitute the divine law of love for the old revengeful law. In the recent contest between Argentina and Chili over the national boundary, which was settled without resort to arms, the good women of Buenos Ayres and Valparaiso got together and erected an heroic statue of the Christ fourteen thousand feet above the sea level, on the boundary line, a testimonial to the efficacy of the principles of the Captain of our salvation in the settlement of international disputes.

Mr. WALKER: In your investigations did you find that human life was any more highly regarded in South America than in this country?

Mr. BOWDLE: I do not know whether they have any higher regard for life than we have. I do not know that we have such a high regard for human life in our advanced christian civilization here, but I know they are making an effort to get away from the old-time law. I am happy to see a reference to the pamphlet gotten out by our very accomplished secretary, Mr. Galbreath, which shows that statistics demonstrate that the law of love should be substituted instead of the carnivorous law.

Mr. JOHNSON, of Madison: A few years ago when we planned a reform in our method of capital punishment and changed from hanging to electrocution, a certain Irishman said that they had changed the plan in Ohio; that they didn't hang them any more, but killed them by "elocution." A further step in this progressive movement is now being taken, namely, we are trying to decapitate by constitutional oratory. In order to prevent further decapitation, I move the previous question.

Abolition of Capital Punishment—Relative to Question of Personal Privilege.

The previous question was regularly demanded and a vote being taken the main question was ordered.

The PRESIDENT: The motion is carried and the question is on the adoption of the amendment of the delegate from Cuyahoga [Mr. FACKLER].

Mr. EVANS: I move to lay that on the table.

The PRESIDENT: The motion is out of order. The question is on the adoption of the amendment.

The amendment was adopted.

The PRESIDENT: The question is now on the passage of the proposal.

The yeas and nays were taken, and resulted—yeas 69, nays 35, as follows:

Those who voted in the affirmative are:

Anderson.	Fitzsimons,	Miller, Crawford,
Antrim,	Fluke,	Miller, Ottawa,
Baum,	Fox,	Moore,
Beatty, Morrow,	Hahn,	Nye,
Beatty, Wood,	Halenkamp,	Peck,
Beyer,	Halfhill,	Pierce,
Bowdle,	Harris, Hamilton,	Read,
Brown, Lucas,	Harter, Huron,	Redington,
Brown, Pike	Hoffman,	Smith, Geauga,
Campbell,	Holtz,	Solether,
Cassidy,	Hoskins,	Stamm,
Cody,	Hursh,	Stevens,
Cordes,	Keller,	Stilwell,
Crosser,	Kilpatrick,	Taggart,
Davio,	King,	Tannehill,
Doty,	Knight,	Tetlow,
Dunn,	Kramer,	Thomas,
Earnhart,	Kunkel,	Ulmer,
Eby,	Lambert,	Wagner,
Elson,	Leete,	Weybrecht,
Fackler,	Leslie,	Winn,
Farnsworth,	Malin,	Wise,
Farrell,	Marriott,	Mr. President.

Those who voted in the negative are:

Brattain,	Johnson, Madison,	Roehm,
Brown, Highland,	Johnson, Williams,	Rorick,
Collett,	Jones,	Shaw,
Colton,	Kehoe,	Smith, Hamilton,
Crites,	Lamson,	Stalter,
Cunningham,	Longstreth,	Stewart,
DeFrees,	Ludey,	Stokes,
Donahey,	McClelland,	Tallman,
Dwyer,	Miller, Fairfield,	Walker,
Evans,	Riley,	Watson,
Harbarger,	Partington,	Woods.
Harris, Ashtabula,	Rockel,	

The roll call was verified.

So the proposal passed as follows:

Proposal No. 62—Mr. Pierce. Relative to abolition of capital punishment.

Resolved, by the Constitutional Convention of the state of Ohio. That a proposal to amend the constitution shall be submitted to the electors to read as follows:

SECTION 1. At the time when the vote of the electors shall be taken for the adoption or rejection of any revision, alteration or amendments made to the constitution by this Convention, the following section, independently of the submission of any revision, alteration or other amendments, submitted to them, shall be separately submitted to the electors in the words following, to-wit:

ARTICLE I.

SECTION 9. All persons shall be bailable by sufficient sureties, except in cases of homicide, where proof is evident or the presumption great. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted; nor shall life be taken as a punishment for crime.

Until otherwise provided by law, persons convicted of crimes heretofore punishable by death, shall be punished by imprisonment in the penitentiary during life.

SECTION 2. At such election a separate ballot shall be provided for the voters in the following form:

TO ABOLISH CAPITAL PUNISHMENT.

	Abolition of capital punishment, YES.
	Abolition of capital punishment, NO.

SECTION 3. The voter shall indicate his choice by placing a cross mark within the blank space opposite the words, "Abolition of capital punishment, YES.", if he desires to vote in favor of the section above mentioned; and within the blank space opposite the words, "Abolition of capital punishment, NO.", if he desires to vote against the section above mentioned.

SECTION 4. If the votes in favor of the section above mentioned shall exceed the votes against the same, then said section shall take the place of section 9 of article I, of the constitution, regardless of whether any revision, alteration or other amendments submitted to the people, shall be adopted or rejected.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. PECK: Before we go on, I beg leave to offer a resolution.

The PRESIDENT: The gentleman from Hamilton asks unanimous consent to offer a resolution. If there is no objection the resolution will be offered.

The resolution was read as follows:
Resolution No. 106:

Resolved, That no member of this Convention shall be permitted under the guise of a question of personal privilege to reply to any criticism made in any other place than in this Convention in regular session; any reply made to criticism in debate shall be made the same calendar day on which such criticism is made or not at all.

The PRESIDENT: That goes over under the rule. The next business in order is Proposal No. 64 and the question is on the passage of the substitute.

Conservation of Natural Resources.

Mr. TETLOW: Believing that this Convention has reached a stage in its proceedings when we should have more action and less words, I have condensed into a few words my views on the question now under consideration.

The subject matter contained in this substitute proposal is of great import to this great commonwealth and will grow in magnitude with each passing year, and I feel that we living in this age owe to the coming generations the preservation of our natural resources, that fundamentally belong to them as well as to us. This proposal, if adopted, will give the lawmaking power of the state authority to provide for the conservation of all our natural resources, to adopt and regulate systems of mining that will tend toward the preservation of life, prevent the waste of minerals and provide for the measuring of coal. The principal mineral of this state and nation is coal, and being familiar with that industry I shall illustrate from that standpoint. The natural resources of this nation have been chiefly responsible for its wonderful progress, and coal has contributed most largely to its success. We see its power utilized in sending the ocean greyhound across the deep, we see it sending the throbbing locomotive speeding over rails it helped to make, we see its bright glow and feel its warmth within our homes, we see its power and energy in our industrial life, and, realizing its full value, we should conserve this power that means so much to future generations. The production of coal in the United States from 1814 to the close of 1910, including anthracite and bituminous coal, was 8,243,351,259 tons, and according to D. J. A. Holmes, director of the national bureau of mines, we have lost, never to be recovered, by our wasteful and destructive methods of mining approximately 5,000,000,000 tons of coal, and from my personal knowledge of mining conditions I know we lose about 40 per cent through our national methods of mining. Consequently I feel that Dr. Holmes in his estimate of loss is approximately correct. Since 1872 Ohio has produced approximately 600,000,000 tons of coal, and at the ratio of loss indicated our loss in this state will approximately be 240,000,000 tons. Ohio produced in 1910, 34,424,951 tons. In 1911 the Ohio tonnage was 30,342,039 tons. At the same ratio of loss in the last two years, Ohio lost over 25,000,000 tons that can never be recovered.

In European countries and under their system of mining over 90 per cent of the coal is mined and consequently less than 10 per cent is lost, which shows conclusively our weakness, and it also reflects discredit upon the system we employ.

What emphasizes the necessity for action is the amazing increase in our tonnage to meet the increasing demand and consumption, and to emphasize more fully I submit for comparison the tonnage production of two decades ago and the present production. Ohio in 1890 produced 11,494,506 tons and in 1910, 34,424,951 tons, showing an increase of about 300 per cent; in the United States, the production in 1890 was 157,770,963 tons and in 1910, 501,596,378 tons, or an increase of over 300 per cent, and when we consider that we are mining our most available and workable seams and add thereto the remarkable and ever increasing demand, should we not

think of the conservation of this mineral by preventing the great loss in our mining operations?

In speaking of the great loss of human life in our mining industry I do so with deep and mingled feelings; and many, many times have these words burned into my very soul that "man's inhumanity to man makes countless thousands mourn." Yes, my friends, I have spent my entire life in and around the mines, and I have seen hundreds of my fellow workmen go to needless and untimely graves, but with all that I haven't yet lost faith in mankind, and when the time comes that human life is placed above dollars justice will begin to reign.

It is a fact that all the ingenuity of man has been directed toward the cheapening of production, and in the mad race we have lost sight of a higher duty, the protection of human life.

I submit for your consideration a brief statement of the mortality in the mines. Taking the year 1910, which is a fair average for basis, we have the following indictment that cries out against our system of mining:

In Belgium the death rate per thousand persons employed was .95; in Prussia, 1.98; in Austria, 1.04; in France, 1.17; Great Britain, 1.43 and the United States 3.91. This shows our death rate four times greater than that of Belgium, whose mines are more dangerous, their shafts being deeper, involving greater problems in ventilation, timbering and equipment.

In 1910, 161 fatal accidents occurred in Ohio, 672 men were injured and the death rate per thousand employed was 3.3. In 1910, 3051 lives were lost in the mines of our country and since 1886, 36,586 lives have been lost. In European countries the mines are worked principally on what mining men term "long-wall advancing" or "long-wall retreating." By this system practically all the coal is taken out and the traveling and haulage roads are protected by artificial walls built of rock or slate, the old workings of the mine are quickly closed by the pressure and weight of the overlying strata and it leaves no space in the old abandoned workings for the accumulation of gas or coal dust.

In this country the principal method used in mining is known as the "room and pillar" system. About 60 per cent of the coal is mined by this process and about 40 per cent that is not recovered is used for pillars, which in the end is false protection, because in the old abandoned workings a condition is created that is dangerous. Proper ventilation is rendered impossible and the old and abandoned workings become a storage place for gas or coal dust, which are the elements that cause all of our mine explosions.

Some claim that it would cost a few more cents per ton to mine coal under the European system. I cannot accept this claim as correct, but even if it is the result to be obtained warrants the small extra cost.

In dealing briefly with mine explosions I desire to make in the beginning the unqualified statement that every one of the catastrophes due to explosions could be prevented. As I heretofore stated, there were two elements that furnished the basic cause of explosions, inflammable gas and coal dust. The inflammable gas encountered in mines, known as marsh gas or commonly called fire damp, creates its greatest destructive powers when the atmosphere becomes charged with about seven per cent of the gas. When the percentage of gas is be-

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low three per cent it will not ignite. Consequently if the sections of the mine are properly ventilated gas can be diluted and rendered harmless and driven from the mine. Coal dust is more dangerous and deadly than gas because it is more difficult to remove, but if the mines in the dry sections are sprinkled and the air currents charged with moisture by artificial means, or the dust is removed, the danger could be eliminated. The greatest handicap in proper ventilation and cleansing dust from the mine to protect life and property is our present "room and pillar" system. If we adopt European methods we will be able to more adequately protect life and conserve our mineral resources. I recognize that the one great crying need in the mining industry is national regulation to circumvent the stone-age cry of competition that arises when a single state attempts to rectify existing wrongs. My reason for wanting a constitutional provision giving authority to enact laws regulating the measuring and weighing of coal is to protect life and prevent fraud. For many years the miners have endeavored to have their employers pay them upon the basis of "mine run," or for all the coal they produce, but they have never succeeded, and they, in their weakness, have been denied justice by the strong. At present the miners of the state are paid only for coal that passes over a screen having an area of 72 superficial feet, with a mesh supposed to be an inch and a quarter between the bars, and the amount of nut coal and slack passing through the screen will average about 35 per cent.

One thing about these screens that is self-evident is that the coal passing over and through them wears the bars and increases the size of the mesh. Thereby injustice is done, for the wearing of the screen never favors the miners. From personal observation I have seen screens so worn that the miners were losing fully ten per cent of earnings that rightfully belong to them. You may ask why the miner would permit such a condition, but he usually suffers in silence for fear of discrimination. So with all his latent slumbering power he is oppressed through his own weakness.

In 1898 a law was passed in this state "to provide for the weighing of coal before screening" for the protection of miners, but it was declared unconstitutional by our supreme court, while the same kind of a law has been held constitutional in West Virginia, Kansas and Illinois. The Ohio court held that the law was an unwarranted invasion of the right of contract and that it placed a premium upon incompetency. I contend that our state has, under its legislative branch of government, the right to regulate the conduct of its citizens toward each other and the manner in which they shall use their property when the regulation of such is necessary for the public good.

If there were any basis for the action of the court in declaring that the law placed a premium upon incompetency at that time that claim cannot be raised now, because a complete evolution has taken place in the industry. At that time the great majority of our tonnage was produced by the hand-pick method, and there being no sale for fine or slack coal, the employers took exceptional care in selecting practical workmen, because the less fine coal produced the greater returns on their investment. The present conditions are directly opposite.

Of the 34,424,951 tons produced in our state in 1910, 30,083,468 tons was mined by machinery, so the machine now does the undercutting that required the practical miner in the past. The fine coal has become a valuable commodity, due to the patent stokers and modern methods of extracting the head units from fine coal, and the more fine coal produced the more goes through the screen and the greater become the returns of the employer. In the past the practical miner was in demand; now the inexperienced miner who produces the most fine coal is in demand.

Right here I desire to make a statement that in Illinois and West Virginia, where they have the mine-run system and where the miners are paid for all the coal they mine, they have increased their tonnage production to a greater extent than any other states in the Union in the last decade.

Mr. HOSKINS: I want to ask you a question right here purely for information.

Mr. TETLOW: All right.

Mr. HOSKINS: I want to know whether or not the wage-scale in the mining district is not based entirely upon the lump coal they mine, if the wage-scale is not higher in Ohio than in West Virginia, if the operators do not depend upon the fine coal really for their profit, and if Ohio can be asked to regulate or compel payment for all the coal mined until West Virginia is organized and brings up the wage-scale there?

Mr. TETLOW: I answer that by saying it makes no difference to the honest employer, because in the wage contract between the miners and operators they have a price fixed for screen coal, that which passes over a one-and-a-quarter-inch screen. They have a price for mine-run coal proportionately less according to the amount screened. For instance, if the miners were getting \$1 per ton for lump coal over an inch-and-a-quarter screen they would get sixty-six and two-thirds cents for run-of-mine coal. So it makes no difference to the operator whether the miners are on a mine-run basis or a screen-coal basis, if he is actually paying the miners for all the coal he mines, but in this state we have mines producing three thousand tons of coal in eight hours, and every ton of lump that passes over the screen wears it down and consequently the spaces become greater and the miner is always losing, and it is this injustice we cry out against. All we ask is that we shall be paid for that which is marketable coal, coal which can be sold in the market. There is no reasonable objection to the proposition, and it will not prevent the operator from screening the coal and making different grades to meet market requirements.

Mr. HOSKINS: Is there any provision in the present constitution under which these regulations can not all be made by statute?

Mr. TETLOW: Because the supreme court in this state decided in 1900 that it was an invasion of the right of contract and that it set a premium upon incompetency. But conditions have changed and I am satisfied if our court today had to rule upon the same question it would hold it constitutional because of these changed conditions. Practically all of our coal at that time was mined by the hand-pick method. There was not any sale for fine coal, only for the lump coal, and the fine coal was lost, but conditions have changed. Patent stokers have come

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into use. Fine coal is marketable; in fact, if you go into some of the state institutions of this state you will find they are using fine coal the miners do not get paid for.

Mr. HOSKINS: One other question about West Virginia: Is it possible in Ohio to increase the wage-scale, or the money paid to miners, so long as conditions exist as they are in West Virginia?

Mr. TETLOW: I do not think this is a proper place to discuss the question of wages, or whether the operator should pay in advance or not. Recently they have agreed to a contract giving a fraction over five per cent increase in Ohio to take effect as soon as it can be arranged, perhaps for the first of May.

The point is this—and I want you to understand it thoroughly—it does not make any difference to the honest employer if thirty-three per cent of your coal passes over the screen—it makes no difference whether you pay sixty-six cents per ton mine run or one dollar for lump, for they are relatively the same. What difference does it make to the honest employer who wants to pay for that which the miner produces, whether he pays sixty-six cents mine run or one dollar for lump, because, as I say, the only disadvantage is that the screen wears and the miners are always getting the worst of it? The miners have never been strong enough to get justice and that is why I think we should have a provision allowing us justice in this regard.

Mr. KRAMER: I never saw a coal mine. Do the miners get anything for that which goes through the sieve?

Mr. TETLOW: Not a cent.

Mr. KRAMER: Is that all coal?

Mr. TETLOW: Yes.

Mr. HARRIS, of Ashtabula: By way of preface to a question I am about to ask, I had understood that this proposal and the two proposals into which it was merged, provided for conservation, that is saving, to the end that the supply might be made to last longer, and I would be glad if you would explain to me—I am not at all expert on this line—but how will this tend to make the production last longer for the consumers of the country?

Mr. TETLOW: I tried to make it as plain as I could from a practical standpoint in the beginning. The only way to conserve mineral resources is by adopting certain methods of mining. Under our system, now in practice, we leave forty per cent of the coal under the ground that can never be recovered. Europe has systems of mining by which they mine practically all of their coal; in fact, some of the largest mining operators mine one hundred per cent of their coal while we mine less than sixty per cent. I claim that is the reason of our great loss. The waste of minerals ought to be regulated, and we should give the legislature power to regulate mining to bring that result about.

Mr. HARRIS, of Ashtabula: If I understood your answer to Mr. Hoskins it is that there must be something provided in the organic law that is not there now to enable that result to be brought about?

Mr. TETLOW: Exactly.

Mr. HARRIS, of Ashtabula: And I could not see where it was.

Mr. TETLOW: This proposal combines a number of things. We have in it the conservation of the forests and of the minerals and of the water power, and it also gives the legislature power to regulate the measurement of coal, and, speaking upon that particular part of the proposition, the weighing of the coal.

The great influx of inexperienced workmen into our mines has added greatly to our death rate. Take a mine generating gas; the air currents are rendering it harmless, but some inexperienced person leaves open a door which is used to direct the air current, the air is cut off from the section generating gas, an explosive mixture generates and the inevitable result follows. We have laws in this state that require each mine generating gas to be examined each morning by a fire-boss or inspector before the men enter the mine; he is required to make a written report on a blackboard outside the mine and to report thereon the condition of the mine, and if there is any danger in any section he is to so report. Then we permit men to enter the mine and work therein who cannot read or understand our language. Don't you think, my friends, the time has come for us to say, "I am my brother's keeper"?

In conclusion, I desire to say this proposal provides for the conservation of all our natural resources. As we look about us we see our timber almost exhausted. Should not we lay the foundation now to prevent the waste of our minerals? We should conserve our streams that future generations can harness their power and send electricity flowing into the needed channels. We, for the love of humanity, should protect the life and health of those who go into the bowels of the earth and give from the darkness of the mine so much light to the world.

Mr. STOKES: You speak about forty per cent here being left for pillars. What do they do in England?

Mr. TETLOW: They take the slate and rock that come out of the mines and with it build walls along the travel and haulage way; they remove all the coal; they do not use any timber, and consequently, when all the coal is taken from under the roof, the pressure gradually fills in the spaces made by the removal of the coal.

Mr. KRAMER: In the first part of the proposal you have laws "may be" passed in reference to forests, and then the latter part of the proposal says laws "shall be" passed. Was there any particular object in putting the "may be" in one place and the "shall be" in another?

Mr. TETLOW: None at all. It really doesn't make any difference. We can not force the legislature to pass the laws, but we can give them the power and the word "may" or "shall" does not make any difference whatever.

Mr. KRAMER: Is there any objection to making all of them "may" or all of them "shall," so the legislature could not think one was any more peremptory than the other?

Mr. TETLOW: No.

The delegate from Lawrence was here recognized.

Mr. LEETE: Mr. President and Gentlemen of the Convention: I wish to speak upon this question of conservation of natural resources of the state, because I believe that in this conservation we are all more or less interested, and the people that are to follow us in future generations are more interested than in almost any other

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question, and as my two friends have spoken upon the conservation of the forests and the mines respectively, I shall confine myself to the conservation of water power.

Conservation of water power! Some one would ask, What is it? It is the preserving, guarding, protecting and keeping in a safe or entire state everything necessary to the developing of said power. Some would ask, Is there any reason for us doing this? Why should we conserve water power? If you spend more than you make what is the inevitable result? Trouble and disaster, sure and quick.

Now, heat, light, force, energy and power are the essentials necessary to all people. Do you know that you are destroying the forests more than four times as rapidly as they are being reproduced, and that in cutting, logging and clearing you are so utterly reckless in the manner in which you do it that practically all the good timbers are taken and none but the worthless remain; that the young trees and underbrush are destroyed as well; that stumps, tops and litter are left in such piles and confusion that they invite forest fires which usually do complete the destruction the following year?

Mr. O. W. Price, vice president of the National Conservation Association, says in an excellent work of his:

Forests are to streams what the storage battery is to the electric wire—the source of useful power, and energy, and current in reserve.

When the rain falls on a forest, it spatters against the roof of leaves, and the heavy hard-pounding raindrops are broken up into a fine, soft mist. Any one who has stood under a tree during a shower doesn't need to be told that. When this mist reaches the ground under the trees, it falls on a soft bed of dead leaves. This bed has a wonderful power to soak up and hold water; and so the rain soaks slowly into the leaf litter, much as water does into a cloth, until it reaches the soil beneath. This is called the mineral soil, because it was made by the gradual wearing away of rocks of many kinds, which took more years than we count.

The water slowly works on down through this mineral soil, following cracks and channels already worn by the action of water for thousands of years; continually starting new channels of its own, joining with other rivulets, and so forming streams and even rivers underground. It is these underground waters, finding their way to the surface on the mountain sides, and in the valleys which make springs.

When the forests are gone, all this is changed. The sun beats down on the leaf litter, dries it up, and the wind scatters it, until only the dense, mineral soil is left, which bakes with the heat until it is sometimes nearly as hard as brick. When the rain falls on it, very little soaks in. The rest runs off down hill into the streams, carrying a part of the soil with it. We can see this going on in many places from the train. Over there is a bare hillside with great raw gashes and gullies worn in it by the countless little torrents of muddy water which have dashed down it after each hard rain ever since the forest was destroyed.

The author, continuing, in substance says that farther down the stream we see it filling its bed with debris, changing and cutting its banks to pieces, spreading over the rich land and turning good farm lands into unsightly sandbars and hideous patches of sun-baked mud. The stream has already taken and is taking its revenge for unwise use of the ax and fire.

Now gentlemen of the Convention, we believe all authorities agree that the exhaustion of the natural elements, such as the forests, oil, gas and coal, and which are now used to produce power, is in sight. Need I now ask, Have you not spent what you did not make, and have you not forever prevented your children and children's children from using these essentials? If that is so, what are our duties toward and what can we do to control and conserve the one remaining source of power in the state, namely, water?

Do you realize that we are now at a turning point in human progress and in the manufacture and transmission of power; that farseeing men and capital are now beginning to look forward and are securing suitable sites for the development of power, and that the state must move, and move quickly, if it wishes to protect and control the streams and water powers? Under this proposal the state can declare and maintain conservation districts and enforce scientific plans for the development and control of the waters therein. The practice heretofore has been to look for a great waterfall, build a large dam to secure a high and elevated head to develop large power, and use the same, usually for mill purposes, without any idea or care for stream control.

The effect in Ohio is usually an excess of water in the spring, damaging adjacent lands and properties, and with a scarcity in the fall.

Let us change all this and use common sense; store in suitable lakes, reservoirs and behind regulating dams, upon the high lands and upper courses of the streams of this state, the excess of the waters and rains falling during the winter and spring months, allowing, say, one three hundred and sixty-fifth part of this excess of these stored waters to pass on each day to the power sites below, and there utilize the power in the weight of the water as it falls by gravity in its onward course toward the sea. In this manner you can control the stream as to volume and constancy of supply, effectually stopping the filling up of its bed and of destructive overflows.

And further, from this constant volume you can develop an abundance of power for the uses of the people of the state without calling on the other natural resources of the state, and, further, this power will be everlasting, and as the cost of electrical transmission is not prohibitive in distances under one hundred and fifty miles, there will not be a single city or community in the state that can not be amply supplied with power from some conserved district within the state.

Some will ask, will it pay? In answer I will say capital is now seeking to acquire rights on a number of streams in the state, and have already secured some, and the people in the vicinity where such rights have already been secured will wake up some day to the fact that they are at the mercy of some corporation.

Mr. M. D. Burke, member of the American Society of Civil Engineers, in a pamphlet, says:

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Three direful evils not only threaten us, but are actually upon us, because of our failure to conserve and properly use the rainfall:

First. In its rapid and unobstructed descent from the uplands, slopes, and hills it carries with it, not only the soil, but it furrows the slopes with gullies, and produces slides of great extent, and is thus denuding and destroying millions of acres of valuable land.

Second. It carries such quantities of sediment into the larger streams that they become clogged, their channels are filled with bars, they erode their banks, destroying other lands, thus adding to the vast volume of sediment and they lose their usefulness as channels.

Third. In times of heavy, long-continued rainfall the larger rivers overflow their banks, and the property loss of the inhabitants of their valleys is very great, intense suffering, and even loss of life, resulting from these disastrous floods. In the smaller valleys the soil is frequently washed away from large areas of bottom lands, leaving barren wastes covered with sand and rock. Farmers spend much time and labor in building brakes and dykes in efforts to save from destruction their most valuable lands.

Four desirable benefits will accrue from a proper conservation of the rainfall:

First. By holding back the water you will retain with it the soil which it may have started from the hillsides or cultivated fields, and after this sediment shall have fallen to the bottoms of the pools only the clear water will escape, and the soil will be free for the taking and may be returned to the farms if wanted. The soil will thus be saved.

Second. By controlling the flow of the various tributaries the volume of water passing down the main channel will, like that of the controlled streams, be so nearly a constant flow that, after this work shall have been well advanced (it may be completed by generations yet unborn), the streams will not overflow their banks, and disastrous floods will be known only in history, and be read about as are the other hardships of the sturdy pioneers. Thus the losses and sufferings incident to disastrous floods will be eliminated.

Third. The water from the controlled streams will reach the navigable channels in nearly constant quantities, and will carry with it but little sediment. Hence it follows that the navigable channel will have a constant flow, which will be ample for navigation, and its channel, not being filed with debris, it will not be forced to erode its banks, but will deepen its channel, so that but little expense will be needed to maintain it in proper form for use by boats. Inland navigation will thus be secured.

Fourth. Impounding the water of the numerous tributaries upon the higher lands, places it in such position that it is available for power. Using it for that purpose does not detract from its value for any other purpose, nor eventually retard its arrival at the sea, or, by evaporation, to the clouds. By using it for power we will place in the hands

of the American people a force which will enable them to retain their present position in the van of progressive nations, and they can do anything which power will enable any people to do, without burning a stick of wood, a ton of coal, a foot of gas or a gallon of oil.

By passing this proposal you will not take one right or thing from any one, but you make it possible and mandatory for the state to protect the people and coming generations from "innocent stockholders" or capital seizing all the natural resources, thereby leaving the people to their mercy.

Mr. DWYER: I do not believe in Western Ohio there is one available water power. They are always trying to get water power, but there is very little water power.

Mr. LEETE: We want to control the excess water that falls in the spring and winter and keep it back and hold it in a reservoir so that one three hundred and sixty-fifth of it can be allowed to escape each day and keep the water volume constant in our streams.

Mr. DWYER: I had a report made to me as to the water power in Western Ohio and the best that could be figured was seven hundred horse power, and that certainly wouldn't amount to very much.

Mr. LEETE: You are wrongly informed.

Mr. TETLOW: I offer an amendment.

The amendment was read as follows:

In line 14 after the word "regulation" insert the following words: "of methods".

Mr. MILLER, of Crawford: There is no longer any doubt entertained as to the necessity for the conservation and preservation of our timber supply. The nation is wisely taking steps to preserve our forests and many of the states are doing efficient and effective work. Among those states Pennsylvania, New York, Indiana, Illinois, Minnesota, Michigan, Nebraska, California, Washington and in fact nearly all of the states are doing something toward the preservation of the timber supply. Ohio is doing practically nothing except in an advisory way. Our experiment station will advise with the owners of timber lots as to how to care for them, and if a demand is made they will send from the forestry department of the experiment station a man to examine the lot and advise as to its management. They will also furnish landowners of the state a limited number of a certain kind of trees, provided they are planted and cared for under their direction. Other than this, we are doing practically nothing, except what is being attempted by the Ohio Forestry Society, of which I have the honor of being a member and on the executive board. Prof. A. L. Lazenby, of the State University, is president of the society, and it is maintained entirely by contributions from its own members. The professor is now abroad studying forest conditions. I know something of the difficulty of persuading landowners to take any real interest in this subject.

About the first argument offered is that they are required to pay taxes on this land and they can not afford to let it lie idle, and hence they turn stock into the timber lands and the pasturing of the timber lands is very detrimental. Perhaps you may have noticed as you go over the state that in those plats that are pastured the tops of the trees begin to die off in a few years

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and eventually the entire lot is destroyed. What we want to do is to encourage the owners of timber land to devote it exclusively to the growing of timber; we must take into consideration that the preservation of the timber supply in a great measure aids precipitation. There is no question any more that the timber of a country, in a great measure, controls the precipitation and the flow of streams, and it seems to me that these two propositions fit nicely together, and that we should give this proposal very careful consideration. One of the most important economic questions, it seems to me, is the control of the stream-flow of this country. I would like to quote just briefly from a report of Raphael Zon, chief of silvics of the United States forestry service. In this very exhaustive report, made to the forestry department, he says on this proposition:

Of all the direct influence of the forest the influence upon the supply of water in streams and upon the regularity of their flow is the most important in human economy. * * * A national policy which, though considering the direct value of forests as a source of timber supply, fails to take full account also of their influence upon erosion, the flow of streams, and climate, may easily endanger the well-being of the whole people.

Mr. LAMPSON: Is it the intention of the proposal to materially change the laws relating to the control of the use of water in ordinary small streams that flow through farms and the country and that are used for ordinary purposes?

Mr. MILLER, of Crawford: No; I don't think so. It is only enlarging the use of them. The riparian rights would be entirely reserved to the owners of the land.

Mr. JONES: I ask this question because I have not had an opportunity of knowing anything about the proposal: What is the power with reference to the encouragement in the matter of planting and cultivating forests that is proposed to be conferred in addition to what the legislature now has?

Mr. MILLER, of Crawford: I do not know that there is any particular additional power granted except the freeing of those tracts from taxation.

Mr. JONES: That is what I was coming to. Does that language confer any power except what now exists?

Mr. MILLER, of Crawford: Not so far as I know.

Mr. JONES: Then all is included in the one proposition to exempt timber land from taxation?

Mr. MILLER, of Crawford: I presume it is.

Mr. JONES: If it is desirable, in order to conserve the natural resources, to exempt timber from taxation, why not exempt pasture land from taxation—land that is put in clover—for that is the greatest conservator that we have in agricultural matters? Why not exempt land put in grass and clover, especially land put in alfalfa, the greatest of all conservators?

Mr. MILLER, of Crawford: I think it can be clearly shown that the forests have a greater influence on climatic conditions than any other agricultural product.

Mr. JONES: But may I ask if it is the purpose of this to regulate climate or to conserve natural resources?

Mr. MILLER, of Crawford: We are seeking to encourage the other things by preserving forestry. One of

the most important features that we have knowledge of is the control of the climate.

Mr. JONES: Do you think it is more important to encourage the growing of timber than to encourage the growth and cultivation of those things that feed mankind?

Mr. MILLER, of Crawford: I might answer that by asking another question: What would be the result if all the timber were removed?

Mr. JONES: In the prairie country, where it all has been removed for a million years, we have the richest soil in America and the greatest producing soil.

Mr. MILLER, of Crawford: I think conclusive evidence shows that forests have a great influence upon the precipitation and upon the climate. In the growing of forests trees there is no immediate result to the owners, while in the growing of the other crops you have mentioned there are immediate results.

Mr. JONES: In what way is it proposed to conserve natural sources in reference to draining swamp lands? Do you mean that if a man happened to own swamp land the state would have some power to exercise a different control over that than with reference to other lands he owns?

Mr. MILLER, of Crawford: Not at all unless the individual owner is not able to reclaim that land himself.

Mr. ELSON: The idea is to exempt from taxation all the forest land of the ordinary farmer?

Mr. MILLER, of Crawford: All the forest land devoted exclusively to the growing of timber.

Mr. ELSON: What is there to prevent a coterie of millionaires buying up a whole county for a hunting preserve?

Mr. MILLER, of Crawford: I don't know that anything would prevent it. I would not object to it. In that case we would get just what we are seeking for.

Mr. ELSON: Suppose they would buy up a whole county?

Mr. MILLER, of Crawford: Better yet. If there is any argument in the fact that forests are a great means of conserving natural resources and providing precipitation, controlling our streams and their flow, that would be a great advantage.

Mr. ELSON: Would you favor a large part of the state thus being in the hands of a few wealthy individuals and exempt from taxation?

Mr. MILLER, of Crawford: Of course I would not favor conditions of that kind. Now I have not a written speech and the questions disarrange my thought just a little.

Mr. EBY: Can you deduce any scientific evidence that the amount of forests have anything to do with precipitation?

Mr. MILLER, of Crawford: If you will wait a moment I think I can demonstrate that to you. I have just stated that in the exhaustive report of Raphael Zon he speaks of the important influence of forests in the supply of water in streams. Further he says:

Of the 44,015,400 square miles of land surface of the earth 79 per cent drains directly toward the ocean and 21 per cent forms an inclosed inland area without ocean drainage. The 79 per cent may be called the peripheral area of the earth's sur-

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face, and the importance of the evaporation from it is, on the whole, very great.

Prof. Ed Bruckner computes the "continental vapor" evaporated from this peripheral area to be about 21,000 cubic miles (20,871.3 cubic miles). It plays, therefore, even a more important part in supplying moisture to the air than does the vapor directly evaporated from the ocean. Bruckner estimates that the peripheral regions of the continents are capable of supplying seven-ninths of their precipitation by evaporation from their own areas.

He then gives a lengthy table which I shall not quote from. He continues:

An analysis of these figures discloses the fact that one-fifth of the entire vapor on the earth's surface comes from the evaporation on land; that only 7 per cent, or 5,997.5 cubic miles, of all the water evaporated from the oceans enters into the precipitation over land, and that 78 per cent of all the precipitation that falls over the peripheral land area is furnished by this area itself.

This is after an exhaustive examination, not only in the United States, but in other countries as well. I am quoting just short paragraphs from this report, because it is too extensive to read at length:

If precipitation over land depended solely on the amount of water brought by the prevailing winds directly from the ocean, rainfall would, of course, be confined only to a narrow belt close to the sea. Not all the water that is precipitated, however, is lost from the air current. A large part of it is again evaporated from the land into the atmosphere. The moisture-laden air currents therefore soon lose the moisture which they obtain directly from the ocean, but in moving farther into the interior absorb the evaporation from the land. Hence, the farther from the ocean the greater is the proportion which evaporation from the land forms of the air moisture. In fact, at certain distances inland practically all the moisture of the air, or at least as great a part as that formed originally by the water evaporated direct from the ocean, must consist of that obtained by evaporation from the land.

While the removal of the forest might increase the evaporation from the ground itself, yet the more rapid run-off and the absence of transpiration by the trees would reduce the total amount of water evaporated into the atmosphere. The land, even if taken up for agriculture, could never return such large quantities of rain into the atmosphere as the forests did. The result would be that less moisture would be carried by the prevailing winds into the interior of the country, and therefore less precipitation would occur there.

Mr. JONES: Will the gentleman yield to a further question?

Mr. MILLER, of Crawford: Yes.

Mr. JONES: Do the records show that on account of the falling off of timber in Ohio in thirty-five years there has been any decrease in the amount of rainfall in this state?

Mr. MILLER, of Crawford: I am not prepared to say that there has been any.

Mr. JONES: Are you not aware that the records of the weather bureau show there has not been any change?

Mr. MILLER, of Crawford: I presume that is so, but you will admit that the run-off has been greater. There has not been near the percentage retained in the soil.

Mr. JONES: Is it of not more importance to have the land of Ohio fit for cultivation and so used as to produce the most of what the people of the country demand than to produce something that is not demanded?

Mr. MILLER, of Crawford: I think you are right about that, but it was shown yesterday by the author of the proposal that there were almost a million acres of waste and other lands in the state of Ohio that can not be used for agricultural purposes. It is those tracts of land we are endeavoring to provide for reforestation, and also for the state to purchase lands of that kind and reforest them. We would then get the benefits from them, whereas now none is derived from those waste and abandoned lands.

Mr. JONES: Is it not a fact that substantially all the lands in Ohio will produce grass, and would not efforts at conservation be better directed if directed along the line of getting those lands in grass rather than into forests in consideration of the fact that there are millions and millions of acres in this country that can not be used for any other purpose except forests?

Mr. MILLER, of Crawford: I think the gentleman knows there are many tracts of land in Ohio that do not even grow good grass that might be used for forestry purposes.

Mr. JONES: Could they not be made to grow grass?

Mr. MILLER, of Crawford: I would not say they could not be made to grow grass, but you must acknowledge the fact that the taking off of the forests, even if the land were sown in grass, the run-off from those hilly tracts would be very much greater than from the forests. You know that a rainfall will continue for hours after the ceasing of the actual rain because the leaves catch it and it falls gradually on the beds of the forest, and if the bed is in good condition it gathers that moisture and it is carried off through seepage and not in the rapid run-off which produces the excessive floods we have now over what we had a few years ago.

I didn't expect to use so much time, though as chairman of the committee I believe I have some additional time.

Now I want to speak briefly in reference to the increase of floods brought about largely by the clearing off of our forests. This is a report by William L. Hall and H. Maxwell to the United States department of agriculture:

Popular opinion for years has been that floods are increasing in frequency and duration in many rivers of the United States. Until within a year, however, there had been no careful examination of records to see whether or not this popular opinion is based upon fact.

About a year ago it was thought worth while to look into the records to see whether any

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changes were discernible. The results were surprising. It was found that in many of the streams which take their rise in the Appalachian Mountains there has been a steady increase in the number and duration of floods during the past twenty or thirty years.

The increases seem to be greater on those watersheds where the condition of the surface has been the most changed. They are greatest in such streams as the Ohio, Cumberland, Wateree and Santee, where the most forests have been destroyed, and least on the streams where forest conditions have been least changed.

On the Ohio River measurements are given for twenty-six years. During the first half of the period there were 46 floods; during the second half 59. The number of days of flood during the first half was 143; during the second half, 188.

Repeated European observations, extending over long periods of time, and shorter observations made in this country, conclusively show that evaporation from water or other wet surfaces on the floor of the forest is but one-third or one-fourth that from similar surfaces in the open.

It is evident that any factor which decreases the surface or superficial run-off and increases the seepage run-off is of the utmost importance in regulating the flow of streams.

It seems to me that this is conclusive evidence that the destruction of forests has considerable to do with the stream flow and it seems to me that this question is of so much importance that the state of Ohio ought to take its place in the forefront among the states attempting to conserve and encourage reforestation or afforestation of our timber land. There is one authority, Mr. W. D. Carroll, of the United States forestry service, who says he thinks the best results can only be accomplished if the nation and states join hands in this work.

Mr. BROWN, of Highland: There has been a demand for this for many years. I have heard it from being associated with farmers. I think, however, the persons who would be disposed to take advantage of the privileges if the land were made free of taxation, might turn this into a method of speculation which would go beyond the purpose of the thing proposed, and as a partial safeguard against a potential abuse of it I wish to offer the following amendment:

The amendment was read as follows:

In line 6 between the words "the" and "growing" insert "original."

Mr. BROWN, of Highland: That amendment is offered for fear of the persons who have land, as I have, for instance, in large pasture fields, covered with worthless growing shrubbery which never will make timber, and never will make much at all, and can be properly utilized after a while for something else, but will never grow what you might call timber.

Mr. HALFHILL: I desire to call the attention of the president to the special order set for the hour of four o'clock.

Mr. MILLER, of Crawford: Will that allow for the exemption from taxation of such tracts?

Mr. BROWN, of Highland: Under this proposed amendment of mine it would permit persons who wished to grow timber originally planted by the person who owned the land and devoted it exclusively to timber—they would be privileged under the laws as made under this proposal; but suppose we don't say "original" and say "growing of forest trees." That might be held to cover such pasture lands as I have described. They might seek to escape from taxation upon large areas of land covered with shrubbery growth, and I think "original growing of forest trees" in there would safeguard somewhat. It would then read: "Laws may be passed to encourage the propagation, planting and cultivation of forestry and exempting from taxation, in whole or in part, wood lots or plantations devoted exclusively to forestry"—there is the end of the "exclusively"—"or to the original growing of forest trees." Now, the "growing of forest trees" does not come under the restrictive meaning of the word "exclusively," so I say "original growing of forest trees" would safeguard that so no one could take unfair advantage of it.

Mr. ULMER: I do not think it is necessary to have a very extended debate upon this proposal.

This is a matter of public economy. The protection of forests and the reforesting of land is something of great value to all the people in the state. The value is not alone confined to the owner of the forests, but it is a general good. As I understand the purpose of this proposal, it is to encourage reforesting and also to give the legislature power to buy land which is of little value for agricultural purposes for the purpose of reforesting. We certainly should give the legislature that power. In all European countries you find that the government takes extra care of forest land. Every government over there owns great tracts of forests, and these forests are valuable, not only in the form of timber, but as a protector of moisture to the land, and a protector and regulator of the flowing of water.

It is all out of place to raise these questions of detail. This is not a place to deal with all these minor questions of detail. We are passing on matters of general principle here. I think that we should give the legislature the power to pass such laws and let them work out the details. We can not work out the details of everything we do here. Let us adopt the principle and then it is up to the legislature to see that speculation can not slip in.

Now, as to the matter of mines, we all know that our riches in the earth are to a great extent wasted, not only to this present generation, but to the generations to come, and proper and economic handling of those matters would be a saving both to us and to them. We should not waste anything, but should save all that is possible for future generations. The regulation of mining is a matter in which the state should take a hand. The mining disasters we have had in this country are simply horrible to contemplate. Hardly a week passes that we do not see in the paper where ten or twenty or a hundred lives have been lost. Is it not the province of the state to protect the men who go down into the bowels of the earth from the speculator who has no sympathy and does not care for life because human life

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is the cheapest thing in the market today? Therefore, I say the part of this proposal dealing with mines is a just and proper regulation.

As to the water power, I think the streams belong to the whole people, and the state should have control over them. When any company or corporation in any part of the state produces power to sell to the people of the state the state should have it in its power to protect its people and to fix what the company should pay for this right in the first place, when it is buying its franchise, and at what price it shall sell the product of this water power.

What have they in the little country of Switzerland? After electricity, the great inventions came up. How long did it take that people to see the value of their natural resources? They have an immense amount of water power there, and the people, through the initiative, reserved all the water power rights to the government. Any corporation that wants to use some of the water power has to go to the government, and the government says what that company shall pay for the right and fixes the price at which the company can sell its product to the people. I think we should have the same thing.

In fact, from a careful perusal of this proposal, I can see nothing wrong whatever in the proposal. It is all good. There is not one word of wrong in it, and wherever anything develops from which a private corporation could try to take undue advantage the legislature can handle it. I hope the proposal will pass without any substantial change.

Mr. FOX: I want to ask Mr. Leete a question. I didn't understand something in his paper. In Mercer county we have the largest reservoir in the state, the largest artificial body of water in the world. There is a movement on foot now by some organization in the northwestern part of the state to get water from this reservoir by leading other reservoirs into this Mercer county reservoir, thereby bringing the water to a higher level. In that way, south of the reservoir, the water will back into the farms, and thus thousands of acres will be under water. Would this interfere with that in anyway at all?

Mr. LEETE: I am not familiar with the conditions there, but under the conditions of this proposal if any persons are injured in any way or form they will have to receive compensation for whatever damage is done. Whatever damage is done by reason of the development of water power that damage must be paid before the parties developing the water power may take it, in the same manner in which condemnation for railroad purposes is done. I do not really understand your conditions there. In fact, I understand there is a reservoir there and the development of power contemplates the raising of your reservoir so that there can be a constant flow of water there.

Mr. FOX: Yes; they want to lead other areas into that.

Mr. LEETE: We want the state to say where the conservation shall be, and what shall be the plan by which the excess water falling on the watershed shall be taken care of. That will all be studied out and worked to one scientific end.

Mr. FOX: I don't exactly understand it. I would like to be in favor of this proposal, but if it would per-

mit any such a thing as that—the flooding of those thousands of acres in my county—I shall certainly have to vote against it. The farmers received \$34,000 a few years ago for damages sustained, and they had to earn it twice before they got it. I think proper protection should be provided. A thousand additional acres would be under water.

Mr. BEYER: I would like to have a slight amendment made to this proposal, and I beg the indulgence of the Convention for a few minutes to explain why I want this amendment and exactly how I want it.

I heard some doubt expressed as to the importance of this question. There can be none. Any one who thinks it is not important is wrong. We spent three weeks on some questions, and if we make a mistake in settling them we have a chance to correct them and change them in a year or two, but there was a mistake made by our nation in destroying our woods which never can be made good, and I think it is now our duty to do the best we can to save what is left of the national forests. Of the forests that our forefathers found when they came to our eastern shores nothing is left but a few crippled trees. Travel along any railroad and look out of the windows of the car and see for yourselves.

It was suggested a few weeks ago on this floor that all development and industry in this country will have to be dug out of the soil by the farmers. That may be true to a certain extent, but the farmer himself and the good machinery on his farm will not get him good crops. Those depend on two things; the first is the soil and the second is the condition of the climate. If we remove all our forests the fertility of the soil will be gone in a short time. It will be washed off and it never can be replaced, and if our woods are cut down and the winds and the storms have a chance to sweep over the country, it will not be possible to do good farming any more. Why is it that our wheat fields all over Ohio are bare? Why is it we have to go over and sow them in oats and thousands and thousands of bushels of wheat are lost? Why is it we pay \$15 a bushel for clover seed? Some people say the farmers make money, but they don't with clover seed at \$15 a bushel. We don't sell clover seed; we have to buy it, and then, when we pay that awful price for it, it is doubtful if we will have a crop. Why is it that dams in the rivers can not hold the immense floods that we have every spring? Because the rain fall is not regulated any more by our woods, and it comes down and runs off all at once. There is nothing to hold it in the ground, and finally, after the water has gone, we have a dry spell. That is the reason cloverseed is up to such an enormous price. It is because we have cut down our woods and can't do anything else to remedy the evil but replant our woods by reforestation.

History is the best teacher of mankind, we say. Now let us go back to some other country. The Holy Land was the land of milk and honey, but if you go there today it is a desert. Why? They cut down all the cedar forests from their mountains.

Spain four hundred years ago was one of the richest nations on the earth under Charles V. What is it today? A few regiments of soldiers and a few vessels were sufficient to whip that nation. France for centuries conserved her forests, but the kings were finally destroyed, the Revolution came and everybody thought they could do

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as they pleased. They cut down all the forests and France has spent millions and millions of francs to replant them, but could not do it on the mountains. We haven't done much better. They say we are progressive and we are industrious. That is true in many respects, but we haven't been in this respect. Statistics will show that in England, Scotland, and Ireland they raise thirty-five bushels of wheat to an acre. We raise from nine to twelve, in spite of the virginity of our soil. Why is it? Because the moisture is not distributed any more. Gentlemen, we have an opportunity here. Let us do something to get our forests back and preserve what is left of them. Let us put the rest of our forests under management, and let us replant such tracts of land as are not much good for any other purpose. I have read the statistics of the state of Ohio and I see that there are ten counties that have from six thousand to fifteen thousand acres of land reported no good for any other purpose. Why can't we see that these tracts of land will be given to the county to make forest reservations? In forty years from now it will be grown up to such an extent that those counties will not have to pay a single cent of local tax. All the income necessary could be derived from the timber land. They have this in other countries and it will pay us, and pay us better than to clear the land, which itself won't grow much, and by the clearing of which our other land is deteriorated. I would like to have not only state forest reserves, but county and township and municipal forest reserves. I offer an amendment.

The amendment was read as follows:

After the word "purpose" in line 9 insert "by counties, townships and municipalities".

Mr. STOKES: I move the previous question on the pending amendments.

The PRESIDENT: The question is, Shall the debate be closed on the pending amendment? The effect is to bring to a vote the three pending amendments.

The main question was ordered.

A vote being further taken on the amendment offered by the delegate from Hancock [Mr. BEYER] the amendment was not agreed to.

The PRESIDENT: The question is on the amendment of the delegate from Highland.

Mr. BROWN, of Highland: May I have the consent of the Convention to make a few words of explanation?

DELEGATES: No.

The amendment was not agreed to.

The PRESIDENT: The question now is on the amendment of the delegate from Columbiana.

The amendment was agreed to.

Mr. KING: I offer an amendment.

The amendment was read as follows:

Strike out the following: "and exempting from taxation, in whole or in part, wood lots or plantations devoted exclusively to forestry or to the growing of forest trees."

Mr. KING: Several have objected to me to that clause in this proposal and I am convinced myself that it is conferring a very broad power upon the legislature and not in that part of the constitution which will be devoted to the subject of taxation. Therefore, I don't think it belongs in this proposal, and it ought not to be conferred at this time.

Mr. MILLER, of Fairfield: I just want to read in connection with this the state tax commission's report to Governor Harmon:

The commission suggests that the constitution might well be so amended as to place beyond doubt or question the power of the state to levy taxes on incomes, inheritances and the production of minerals; and also to permit the exemption of timbered tracts of land from taxation in order to encourage forestry.

I hope the amendment will be defeated and I move to table it.

The motion was carried.

Mr. STEVENS: I offer an amendment.

The amendment was read as follows:

Strike out all after line 3 and insert the following:

"The legislative authority shall have full power to provide for the conservation of all the natural resources of the state and to that end, may pass laws to encourage forestry, regulate the production of coal, oil and gas and preserve and control the water power of the streams."

Mr. STEVENS: If you will refer in your proposal book to Sub-Proposal No. 64 it will enable you more readily to see the purpose of this amendment. It seems to me up to this time in the discussion of the matter we have gotten the thing in a sadly complicated condition.

It was not in the best condition as to language at the start, but the discussion has rendered it more complicated than before. The amendment I propose seeks to do everything that anybody suggests toward the conservation of the natural resources of the state, and if I know anything about the English language I believe I have expressed it in shape to meet the purposes intended. I will read it: Strike out all after line 3 and insert "the legislative authority"—that is not only the general assembly, but the people at large under the initiative and referendum—"shall have full power to provide for the conservation of all the natural resources of the state"—could anything be more comprehensive than that?

Could anything reach the purpose better than that?—"and to that end may pass laws to encourage forestry, regulate the production of coal, oil and gas and preserve and control the water power of the streams."

Everybody knows the principal waste is in coal, oil and gas, and under this amendment all of that can be provided for by proper legislation as time goes on and necessity arises. This does all that the other does and it does it in good, plain English, and anybody can understand it, and when it comes to the legislature they will know exactly what it means. There is no room for misunderstanding if you pass my amendment. Let us get one amendment expressed in good, strong, expressive English so that somebody will know what it means.

Mr. DOTY: If your amendment were adopted and placed in the constitution could the legislature, if it wanted to, conserve forestry in this state by exempting from taxation certain tracts of land devoted to that purpose, if in their judgment they thought it was wise to do so—could they do it?

Mr. STEVENS: By passing a bill to do it they could.

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Mr. DOTY: But would they have that power under this amendment?

Mr. STEVENS: Yes; if you want to encourage anything or do anything is not the best way to encourage it to go out and set an example? That is the best way to do it.

Mr. DOTY: There may be some other way, but suppose the general assembly decides that the best way in their judgment to conserve forestry is to exempt forest land from taxation. How could they do it?

Mr. STEVENS: By passing a bill for that purpose.

Mr. DOTY: Don't you know another part of the constitution prohibits exemptions from taxation, except certain things, which doesn't include this?

Mr. STEVENS: The other part is no nearer to being adopted than this.

Mr. DOTY: It is the constitution today.

Mr. STEVENS: Then take care of that when it shows up.

Mr. DOTY: Do you think the people of Ohio will do as Captain Evans wants them to do—turn everything over to the legislature on taxation?

Mr. STEVENS: I think we will finish the job.

Mr. DOTY: You want to do half a job now and half some other time?

Mr. STEVENS: I don't want to cross a bridge until I get to it.

Mr. STILWELL: In your reference to conservation of water power you limit it to "streams." Why not include lakes?

Mr. STEVENS: I rather infer that you are not going to have very much water power unless there is a stream.

Mr. STILWELL: I don't think your answer is pertinent to the question.

Mr. STEVENS: I think it is. You have to have a stream before you have any water power.

Mr. STILWELL: But you have lakes as well as streams, and don't you know the state has no streams?

Mr. STEVENS: I don't say "state streams". I say "streams".

Mr. LAMPSON: Would not there have to be an exemption for that class of property specially named in order to take it from the prohibition of the uniform rule in the constitution?

Mr. STEVENS: Possibly, and if this Convention wants to do that they can do it by that means better than by putting it in here. That is the easiest way.

Mr. DWYER: The power to exempt from taxation is strictly construed and must be specific. There must be specific power to the legislature to relieve from taxation, otherwise the legislature can not do it, and therefore you must have it specifically granted to the legislature to exempt this property.

Mr. TETLOW: I want to analyze the situation just a moment. In the first place we have three proposals coming to this Convention that provide for conservation of our natural resources. One is by Mr. Miller, of Fairfield, exempting forest land from taxation; one from Mr. Leete in reference to water power and one by myself with reference to the minerals of the state. My proposal was amended in the Judiciary committee to cover all the natural resources of the state. The original number of my proposal is 230. Yesterday we had a special

committee to take the three proposals and concluded to deal with the question all at once, so that we could discuss the subject intelligently. If the amendment offered by the gentleman from Tuscararwas [Mr. STEVENS] is adopted everything aimed at in my proposal is defeated. The only thing you can do to conserve the mineral resources of the state, so far as applicable to coal, is taken away. We have lost since mining began two hundred and fifty million tons of coal by wasteful methods. If you want in the future to conserve those minerals and prevent that waste it can only be done by regulating the methods of mining. You can not save this coal by enacting laws for the production of coal. We do not want to limit production. If we can produce one hundred million tons annually, let us do it. Let us get all of the coal out of the ground, but let us not lose any. We don't want to limit production. What we want to do is to save all the coal in the ground to the people who live upon the top of it and not leave millions of tons underneath, lost forever. This proposal now before the Convention provides for regulating the method of mining, and that is the only way to conserve the minerals. The amendment also eliminates the question of regulating the weighing and measuring and marketing of the minerals, and that is one thing we want above all the others. I move that the amendment offered by the member from Tuscarawas [Mr. STEVENS] be laid on the table.

The motion was carried.

Mr. WOODS: I offer an amendment.

The amendment was read as follows:

In line 5 strike out "and exempting from taxation, in whole or in part."

Mr. WOODS: I want to vote for this proposal, but I do not want to vote in this way on matters of taxation. I do not think the farmer members of this body can afford to do it. If you are singletaxers vote for it. The principle is involved right in this proposition before you now. If you don't want to get that principle started in the constitution cut that out. I want to support the proposal, but I am opposed to this thing of everlastingly exempting property from taxation. We ought to be going the other way.

Mr. HARTER, of Huron: Do we need any encouragement to reforest land?

Mr. WOODS: I have never studied that.

Mr. HALFHILL: As I understand it that is the only thing that this is put in here for—to encourage it.

Mr. WOODS: If you take this out the general assembly can pass laws to encourage it.

Mr. HARRIS, of Ashtabula: Do you say they can do it now?

Mr. WOODS: It is a question in my mind whether they can not do it. I am strongly for conservation and I am willing to have the proposal strong.

Mr. HARRIS, of Ashtabula: Is any farmer going to take his broken land and set out young trees and reforest it unless some encouragement is given?

Mr. Lampson here took the chair as president pro tem.

Mr. WOODS: This doesn't provide for the farmer to do it. The state may buy up the land and do it. It may be done in many different ways under this proposal. I don't know how they intend to do it. I don't

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think we should say how it shall be done, but we simply should say it may be done.

Mr. HARRIS, of Ashtabula: My understanding is that it is to allow young timber to grow; partially exempting the land from taxation.

Mr. MILLER, of Crawford: Do I understand you to say that some farmers would be against exempting timber land from taxation?

Mr. WOODS: I said I didn't think the farmer members of this Convention in face of what they will have to meet in a few days can vote for this. I don't want to see you vote one way on this and then turn around and vote another way a little later on.

Mr. PECK: Is not this substantially the same proposition just made by Judge King and voted down?

Mr. WOODS: No; I only take part of Judge King's amendment.

Mr. PECK: But it is the substance?

Mr. WOODS: I was for his amendment.

Mr. PECK: And it was voted down promptly. Now I move that we lay this on the table.

The vote being taken the amendment of the delegate from Medina [Mr. WOODS] was laid on the table.

Mr. MARRIOTT: Now I move the previous question on the whole thing.

The previous question was regularly demanded and a vote being taken the main question was ordered.

The PRESIDENT PRO TEM: The question is on the passage of the proposal.

The yeas and nays were taken, and resulted—yeas 91, nays 12, as follows:

Those who voted in the affirmative are:

Anderson,	Halfhill,	Peck,
Antrim,	Harbarger,	Pettit,
Baum,	Harris, Ashtabula,	Pierce,
Beatty, Morrow,	Harris, Hamilton,	Read,
Beatty, Wood,	Harter, Huron,	Redington,
Beyer,	Henderson,	Riley,
Bowdle,	Hoffman,	Rockel,
Brown, Lucas,	Holtz,	Roehm,
Campbell,	Hoskins,	Rorick,
Cassidy,	Hursh,	Shaw,
Colton,	Johnson, Madison,	Smith, Geauga,
Cordes,	Kramer,	Smith, Hamilton,
Crosser,	Knight,	Solether,
Cunningham,	King,	Stalter,
Davio,	Kunkel,	Stamm,
Donahey,	Lambert,	Stevens,
Doty,	Lampson,	Stewart,
Dunn,	Leete,	Stilwell,
Dwyer,	Leslie,	Stokes,
Earnhart,	Longstreth,	Tarrant,
Eby,	Ludey,	Tallman,
Elson,	Malin,	Tannehill,
Evans,	Marriott,	Tetlow,
Fackler,	McClelland,	Thomas,
Farnsworth,	Miller, Crawford,	Ulmer,
Farrell,	Miller, Fairfield,	Wagner,
FitzSimons,	Miller, Ottawa,	Walker,
Fluke,	Moore,	Watson,
Fox,	Nye,	Winn,
Hahn,	Partington,	Wise.
Halenkamp,		

Those who voted in the negative are:

Brattain,	Collett,	Jones,
Brown, Highland,	Crites,	Kehoe,
Brown, Pike,	Harter, Stark,	Keller,
Cody,	Johnson, Williams,	Woods.

So the proposal passed as follows:

Proposal No. 64—Mr. Miller, of Fairfield. Relative to the conservation of our natural resources.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

Laws may be passed to encourage the propagation, planting and cultivation of forestry and exempting from taxation, in whole or in part, wood lots or plantations devoted exclusively to forestry or to the growing of forest trees; and also provide for reforestation and holding as forest reserves such lands or parts of lands as has been or may be forfeited to the state, and may authorize the acquiring of other lands for that purpose; also to provide for the conservation of all natural resources of the state, including all streams, lakes, submerged and swamp lands or other collections of water within the boundaries of the state, and for the formation of conservation districts; and shall provide for the regulation of all force, energy and power developed or to be developed from said water; and shall provide for the regulation of methods of mining, weighing, measuring and marketing of all minerals.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. DOTY: I now call up the committee's report on Proposal No. 291.

The PRESIDENT PRO TEM: The secretary will read the report.

Mr. DOTY: I don't want it read. It was reported and read yesterday.

The PRESIDENT PRO TEM: The secretary will read the proposal.

The proposal was read the second time.

Mr. HALFHILL: I file the report of a minority of this committee:

The report was read as follows:

A minority of the Initiative and Referendum committee, to which was referred Proposal No. 291, entitled "To submit an amendment to the constitution relative to the recall of public officers, submit as a minority report the following:

Section 1a of the proposal agreed to by the majority report describes the scope, purpose and intent of this proposal and is in the following words, viz:

"Every elective public officer of the state of Ohio, or of any of its political subdivisions, may be removed from office at any time, by the electors entitled to vote for a successor of such officer, through the procedure and in the manner herein provided for, which procedure shall be known as the recall, and is in addition to any other method of removal provided by law."

That for the purposes of this minority report it is not necessary to consider any of the subsequent sections of said proposal, for in its entirety it is obnoxious to the spirit of our institutions and is a supplemental blow aimed at the integrity of representative government.

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That the judges of our courts, being also elective public officers in this state and included within the scope of this proposal, the same is a gratuitous assault upon the honor and integrity of our judiciary, and no condition subsists or has ever existed in Ohio, that remotely justifies creating any such procedure, or making it a part of our fundamental law.

That the duties of every elective public officer of this state are defined by the law of the land, which law their oath of office compels them to obey and support, and if any transgress this obligation they should be tried by the law on charge duly made, before a proper tribunal, with orderly procedure under rules of evidence acknowledged and subsisting in all stable governments, and they should not be assailed from the hustings and tried at the polls by popular tumult or be compelled to face destruction of their honor through a verdict rendered by clamor, corruption, or partisan prejudice.

Therefore, if present methods of impeachment and trial for an unfaithful public official are deemed cumbersome or inefficient, we recommend such change in the organic law as will meet and remedy any condition fairly shown to exist, and we further earnestly recommend that the majority report be not adopted and that Proposal No. 291 be indefinitely postponed.

JAMES W. HALFHILL, CHAS. O. DUNLAP,
E. L. LAMPSON, NELSON W. EVANS.

Mr. HALFHILL: Gentlemen of the Convention: A minority of the Initiative and Referendum committee, in dealing with substitute Proposal No. 291, have filed a report here in which they recommend that the majority report be not adopted, and that this Proposal No. 291 be indefinitely postponed. The substance and scope and purpose of Proposal No. 291 as embodied in the report of the majority of the committee is properly set forth and can be better explained by a reading of section 1a than in any other way.

This section, agreed to by a majority of the committee, is in the following words:

SECTION 1a. Every elective public officer of the state of Ohio or of any of its political subdivisions, may be removed from office at any time, by the electors entitled to vote for a successor of such officer, through the procedure and in the manner herein provided for, which procedure shall be known as the recall, and is in addition to any other method of removal provided by law.

So I take it, that sufficiently explains what is embodied in this proposal and sufficiently explains the purpose of this minority of the committee in submitting to you the report recommending its indefinite postponement.

In other words, I do not see that it is necessary, upon such a report as we present here, for the minority to attempt to analyze or discuss the good or bad features of this particular report, inasmuch as we are objecting to it upon principle. I would admit, for the purpose of argument in discussing the body of the report in all

details, it has had removed from it some of the features of the recall as it appears in some of the western states where it has been adopted, meaning those features which are most objectionable, but the reason we have assigned in the minority report can be properly stated or paraphrased about as follows:

It is our belief that such a proposal as No. 291, if made a part of the constitution of Ohio, would in fact be a supplemental blow aimed at the integrity of representative government. And some of us who have discussed these other two heavenly twins of recent birth, the initiative and referendum, which accompany the recall, have so expressed ourselves heretofore to the Convention that you at least know in a measure the views of the member who now addresses you upon this particular question.

The proposal states that the judges of our courts, being also elective public officers, are included within the scope of this report, and that is attempted to be made a part of the constitution. I say that the proposal so states, which is not really a correct statement, but the proposal declares that all elective officers in the state of Ohio shall be subjected to the provisions of the recall as defined in the proposal, and inasmuch as all of our judges of all of our courts, from the supreme court down to the most petty court, are elective officers, then the provisions would extend to them.

The time of the gentleman here expired and on motion was extended ten minutes.

Mr. MARRIOTT: I don't think the gentleman is bound by the ten-minute rule.

The PRESIDENT PRO TEM: This is a question upon a minority report of the committee. We have not reached the second reading where fifteen and thirty minutes are allowed. This is to be treated as an ordinary amendment.

Mr. HALFHILL: We submit that judges, being all elective officers, a proposition to engraft the recall into the constitution is in fact a gratuitous assault upon the honor and integrity of the judiciary in Ohio, and that no condition exists or ever has existed that remotely justifies creating any such procedure or making it a part of our constitution. I have not heard at any time any assault made upon the courts of Ohio that has been backed by any real or genuine reason that would justify a changing of the ordinary and accepted way of impeaching public officers, or resorting to a method which is practically new and only a matter of experiment. And we further submit as a portion of the reasons for recommending the indefinite postponement of this proposal that the duties of every elective public officer in the state of Ohio are defined by the law of the land, which law their oath of office compels them to support, and if any transgress this obligation they should be tried by the law on charge duly made before a proper tribunal, with orderly procedure under the rules of evidence acknowledged and subsisting in all stable governments, and that they should not be assaulted from the hustings and tried at the polls by popular tumult, or be compelled to face destruction of their honor on a verdict influenced or rendered by clamor, corruption or partisan prejudice, and just the conditions I have enumerated would follow if a law were passed putting into operation the recall of judges.

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Now, gentlemen of the Convention, if it shall be found upon examination of our law, either the fundamental law of Ohio or the statute law of Ohio that there is not now an ample remedy whereby we can reach and cure any defects that ought to be reached and cured for the purpose of removing from office an unfaithful public servant, can we not remedy the method by impeachment, and can we not provide a way in which the public servant who is charged with having transgressed his oath of office can come into court or come into some tribunal, and be met face to face with his accusers, and have the evidence introduced and have the verdict rendered by an impartial tribunal rather than by a general vote at the polls? Who could state a proper indictment in two hundred words, and who could state a defense in two hundred words, upon a question that might affect the honor and integrity of a man to the extent of destroying his entire usefulness as a citizen? And we know that there are occasions in which public prejudice is great and public feeling runs high, in which even the office of judge, as great as it is and as respected as it is, might be dragged down, and the judge himself humiliated and his usefulness proscribed by a popular vote at the polls, influenced by prejudice and passion, whereas in truth and in fact, he was not guilty as charged.

The recall is claimed to be justified by the fact that any representative is but a general agent of all the people, and that being only a general agent of all the people that agency can be determined at any time by the people, and that we can by recall of the agent put an end to the agency. But I submit, if you are going to discuss it on that line, and all the writers in favor of the recall do so discuss it, that the parallel is not correct, and the representative is not the agent, and those rules of law should not apply because the agent always acts in the name of his principal and binds his principal, which is the people; and if you are going to insist upon legal terms in discussing this question, that the representative is a trustee, and a trustee always acts for and on his own account to the extent of being personally responsible, what is he responsible for? He is responsible for observing his oath, and his oath requires him to support the constitution and the law, and if he transgresses his oath he, personally, is responsible, and his beneficiary should have the right to take him into court before the proper tribunal and impeach him and remove him from office. Those are the conditions we think should obtain in a civilized community and in a great state like Ohio. We feel that you could easily remedy the defects in the law of impeachment if they are shown to exist, and even if it is necessary put the remedy into the fundamental law, but this particular method of removing public officers should not be engrafted upon the fundamental law of the state of Ohio.

Mr. DOTY: I wish to demand the yeas and nays on this when the vote is taken. I don't want it overlooked.

Mr. FACKLER: Gentlemen of the Convention: I think we ought to realize exactly the question that is raised by this minority report. The report does not undertake to criticize the majority report or the proposal, but it undertakes to say there should not be any means whatsoever provided by law in this state whereby the sovereign citizen may say to his servant, "You are misrepresenting rather than representing me, and I want

to stop your power to misrepresent." This is exactly the position in which this minority report places you. It does not go to the merits of the specific proposal before the Convention, but says it is not possible to draw any provision providing for popular removal of officers that will be satisfactory.

Now the gentleman who has just preceded me spoke about the recall of judges. That is going to the merits of our proposal, and if the Convention in adopting the recall proposition sees fit to embody the proposition with reference to the judges, it can do so, but in agreeing to the minority report you say no official—executive, legislative or judicial—shall be subjected to recall. Again we hear the cry that representative government is being assaulted. What is representative government? It is a government in which the man who for the time is exercising power is acting presumably in the interest of a majority of the people, and if a majority of the people are of the opinion that he is not so acting why should not they have a right to remove him? Is not that making it truly representative? We have seen very often men elected to a position and after they were elected they would right-about-face and no longer represent the men who elected them, but misrepresent them. How many cases of that kind have you had in legislative bodies? How many on the part of executives in this country? And when we say, "Just leave the power in the hands of the people all the time in order that the official may have as much regard for the citizen after the election as before," I do not see that there is anything very revolutionary about that.

But they say it is not right that the official "should be assailed from the hustings and tried at the polls in tumult." I will wager when the gentlemen were all conducting their campaigns before their counties they didn't say they were going out and appealing on the hustings in tumult. By what wonderful transformation is it that the intelligent electorates which sent these men to the Convention became after election day an insane mob, and continue insane, mark you, until a few years later, two or four or six years later, at the statutory period, they have another lucid interval and the electors of the state are again qualified to vote for the men who shall lead them? Men who believe in the recall believe in the sanity of the American people all the time, and that they are just as capable the day after the election to pass upon the qualifications of men who are to have the elective offices as they were on election day—nay, much better qualified, after the official has been tried and tested, to pass upon his qualifications and abilities than before they found him out.

We need not be afraid of this recall. No argument has been offered before you, and can not be, to show it has worked badly where it has been tried. It has not overturned representative government. It has made it more truly representative, and I ask you to vote down this minority report and place this question before the Convention on its merits and let us argue it out.

Mr. EVANS: Is it the expectation of the majority of this committee that from this time forward in the history of Ohio we shall only elect rascals to office that we have to recall?

Mr. FACKLER: No, but we do expect sometimes to elect rascals to office, and when we do elect rascals to

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office we want to let the people have a chance to take them out of office.

Mr. DWYER: The gentleman himself would come under this recall—

Mr. FACKLER: Yes; I am willing to place myself before the people to represent their will and be subject to recall when I don't.

Mr. PECK: I am very glad to be able for once to agree with the gentleman from Allen. He and I have disagreed many times and although I have great respect for the force and ingenuity with which he has presented his propositions, I have disagreed generally with them. I believe we voted together only once or twice, but I think we are going to vote together on this proposition.

I do not believe in the recall in Ohio. I am opposed to it and I hope the Convention will take the short way of putting an end to this business by adopting the minority report. I don't think the majority report should have been brought in here. I do not believe there is any necessity for the recall in Ohio. Our terms of office are so short that any practical application of the recall will keep the state, the counties, the localities, in a turmoil all the time, and if you want to disgust the people and make them disregardful of public life just give them elections all the time, morning, noon and night, breakfast, dinner and supper.

Mr. FACKLER: Has the gentleman read the proposition before the Convention to see that only at regular November elections officials can be recalled?

Mr. PECK: What good will it do? You elect a man and you have to wait a year before you recall him. In another year he would be out. I tell you there is no necessity for it. You have only two-year terms for most of the officers, and at the end of that time, if he has not done well, recall him. Most of them are anxious to be re-elected and the judicial term is short. This measure simply tends to keep the state in a turmoil for no good purpose.

Now look at it on general principles. Every man elected in our state and country has a certain number of opponents. They are his active critics. He goes into office subject to that sort of criticism and it won't take much for his opponents in many of the cases to bring about a cry for a recall. I don't want that sort of business. I don't believe it would be a good, a healthy or a proper policy. I do not want a government of factions that will be trying to drive this man out or put that one in. The people can proceed in an orderly and methodical way every two years to change their officers. They have done so and our experience with elective officers in the state of Ohio has been good. I have asserted in Cincinnati time and time again that the most courteous, polite and attentive officers were the men who were elected by the people. They have generally been efficient. There have been exceptions, but they were few, and the officers elected have done their duty and done it well, and their appointees have done their duty, and I see no reason why we should provide means for faction and opposition to create turmoil about every fellow elected to office and try to overturn the government. When the regular time for election comes around the people can take care of it. I am "forninst" the recall.

Mr. HARRIS, of Hamilton: I also plead guilty of being in accord with the gentleman from Allen on this

proposition, although I am frank enough to say that the recall embraced in this majority report is the most conservative recall proposition that I have ever read.

I am not dogmatic in my attitude of opposition to the recall of the administrative, legislative and executive officials, but I do not believe it sound public policy to make use of the recall in reference to either of them. I recognize that there may be some merit in the contention that as the executive, legislative and administrative officials, under our theory of government, are elected by the majority of the people, and supposedly to represent the preference of the majority on the particular political or other issue that may be before them at the time of the election, if the said officials fail to carry out the wishes of the majority which elected them, that same majority might have the right to recall them. Even this point of view, however, is based on the supposition that the same majority which elected them must recall, but not a part of that majority, added to the minority, which latter first opposed and voted against them. I trust you will grasp and appreciate the force of this proposition, because it ought to have a very important influence in determining the action of the present proponents of the recall.

An elected official whose duties are either administrative or executive is subject to being "ousted" from office under the theory of the advocates of the recall when the minority who voted against his original election, and therefore against the policies which he is supposed to represent, united with a sufficient number of the dissatisfied majority to create a new majority, which has the power to put the seal of condemnation upon this official who was elected but a short time before, and for a fixed term, to represent the political wishes of a majority, the greater part of whom are still in sympathy with the political views and actions of the official in question. It seems to me that this subverts the whole theory of our government. Is it unreasonable to suppose that the just-defeated political party, which is then the minority, will not always join with a discontented percentage of the majority to turn their minority into a majority? This would be the cleverest politics, if for no other purpose than to disrupt the majority party.

I have given you the view simply from the political standpoint. I am equally opposed to the proposition from sound public policy, because all of our public officials, executive, legislative and administrative, are elected for a comparatively short term. If there be dissatisfaction with their conduct the people have the opportunity within a very few years, generally not exceeding three, in most cases two years, to dismiss incapable or corrupt officials. In my judgment the injury that can be done by a public official during a short period of two or three years is slight, and the damage to the public interest not nearly so great as the inconvenience and demoralization of the public service by the recall, which, as before stated, can be accomplished by the original opposing minority plus a small percentage of the original majority. In my mind stability of government, whether of municipality, county or state, is essential for successful administration in the interests of all the people, as is stability in the management of business affairs. Especially do I consider the recall ill-advised and wholly unnecessary where we have the

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far greater and more democratic political instrument at our hands, namely, the initiative and referendum. In reference to the recall of the judiciary my opposition to this is as irrevocable as were the laws of the Medes and Persians. Elective judges, although owing their title to their office by reason of the majority or plurality vote of the electorate, are not elected to carry out the wishes or political ideals of the majority or plurality vote which gave them title to their office. They are elected solely to expound the law, and this expounding of the law has absolutely no connection whatsoever with the wishes or political ideals of either the majority or the minority. The judiciary take a most solemn oath and assume the greatest moral and legal obligation when they take their office to absolutely ignore the wishes or ideals of the majority or the minority. Every elector, in casting his ballot for a judge, does so with the tacit understanding on his part that, so far as the candidates for judgeship is capable of doing, he will decide every case that is presented to him solely on its merits; that he will expound the law as he understands it, and that he will not be governed by the wishes of majorities any more than he would be governed by the wishes of a single individual out of that same majority. Any other view would mean anarchy, socially and politically. Personally, I have always advocated a limited tenure for the judiciary, so that in the event of a corrupt judge (possibly the greatest evil that can afflict humankind) he can be got rid of by failure of re-election at the expiration of his term, for I recognize that impeachment is very unsatisfactory, and, where the judge is mentally corrupt, or at least where there is no evidence of what I would call physical corruption, it is practically impossible to get rid of him by impeachment proceedings.

Mr. DONAHEY: I move that the majority and minority reports be laid on the table.

Mr. FACKLER: And on that I call the yeas and nays.

The yeas and nays were taken, and resulted—yeas 49, nays 48, as follows:

Those who voted in the affirmative are:

Antrim,	Brattain,	Collett,
Baum,	Brown, Lucas,	Colton,
Beatty, Morrow,	Cambell,	Cordes,

Cunningham,	Johnson, Williams,	Miller, Fairfield,
Donahey,	Jones,	Miller, Ottawa,
Dwyer,	Kehoe,	Nye,
Eby,	King,	Partinoton,
Farnsworth,	Knight,	Peck,
Hahn,	Kramer,	Redington,
Harbarger,	Lampson,	Riley,
Harris, Ashtabula,	Leslie,	Rorick,
Harris Hamilton,	Longstreth,	Shaw,
Harter, Stark	Ludey,	Smith, Geauga,
Henderson,	Malin,	Stalter.
Hoffman,	Marriott,	Stevens,
Holtz,	McClelland,	Tallman.
Johnson, Madison,		

Those who voted in the negative are:

Anderson,	FitzSimons,	Stamm,
Beatty, Wood,	Fluke,	Stewart,
Beyer,	Fox,	Stilwell,
Brown, Highland,	Halenkamp,	Stokes,
Brown, Pike,	Halfhill,	Taggart,
Cassidy,	Harter, Huron,	Tannehill,
Crites,	Hursh,	Tetlow,
Crosser,	Kilpatrick,	Thomas,
Davio,	Lambert,	Ulmer,
Dotv,	Moore,	Wagner,
Dunn,	Pettit,	Walker,
Earnhart,	Pierce,	Watson,
Elson,	Read,	Winn,
Evans,	Rockel,	Wise,
Fackler,	Roehm,	Woods,
Farrell,	Solether,	Mr. President.

The motion was carried.

Mr. HALFHILL: [During roll call]. I vote no so that the proposal can be explained. I do not want any matter, even if I am against it, to be disposed of in this way.

The PRESIDENT: The vote stands yeas 48 and nays 48.

Leave of absence was granted to Mr. Peters for today.

Leave of absence was granted to Mr. Rorick for the remainder of the week.

Mr. DOTY: I move that we recess until 10 o'clock in the morning.

The motion was carried and the Convention recessed until tomorrow morning at 10 o'clock.