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THE REFERENDUM PROCESS IN THE AGRICULTURAL ADJUSTMENT PROGRAMS OF THE UNITED STATES

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For well over a decade the Federal Government of the United States has been utilizing popular referendums among farmers as a basic element in the determination of national agricultural policy. The heart of the agricultural adjustment program was made dependent upon the favorable public opinion of the Nation's agrarian interests, as ascertained through periodic voting. These referendums provide an interesting and dramatic study in public administration and agricultural democracy. This program also poses some far-reaching questions which must be answered, especially for whenever we seem to be entering periods of price-depressing crop surpluses. With the experience of the last several years, we are in a position to analyze this use of the referendum process.¹

The Agricultural Adjustment Act of 1938 made provisions for marketing quotas to be effective whenever supplies of certain commodities exceeded normal. When the quantities needed for market requirements, reserves, and carry-overs were exceeded by amounts specified for cotton, wheat, corn, tobacco, and rice, a referendum of producers was to be held.² The referendum was to determine whether quotas should be fixed for the product in question, with penalties applied to sales in excess of each producer's quota. These quotas were to apply only in the event that at least two-thirds of the crop growers approved. An early study of the

¹ As farm owners, tenants, and sharecroppers—Negro and white—were eligible to vote in the AAA marketing quota referendums, the program provided broad experiences in class and race relationships of considerable interest and importance, especially for the South. The extent and significance of Negro-white participation in this program was studied by the writer during a year in the field on a grant from the Social Science Research Council. The findings were presented as his doctoral dissertation with the title, *Negro-White Participation in the A. A. A. Cotton and Tobacco Referenda in North and South Carolina*, accepted by the Department of Political Science of the University of Chicago in August 1947.

² U. S. Agricultural Adjustment Administration, *Rules and Regulations of Agricultural Adjustment Administration* (Washington, 1939), 79-83.

adjustment program delineated the considerable significance of this referendum process in the following statement: "An important device developed as a means of preserving the voluntary character of adjustment undertakings and of serving as a check on propaganda was the use of referenda of producers."³

Provisions for the referendums in the AAA program represented not only a new use of this instrument but also a definite departure from traditional federal legislative procedure. A brief consideration of the meaning, origin, and use of the device will serve to highlight the significance of its adoption in the legislative policy of the Agricultural Adjustment Act. Essentially a referendum is a vote, by the eligible voters of a given geographic area, on a legislative measure or policy which is submitted to them for their approval or rejection. Like so many other ideas, the concept of the referendum seems to have had its origin in the limited democracies of the ancient Greeks.⁴ This instrument has also been in use among the Swiss for many centuries. Beginning in ancient times, it is still utilized in the cantons of the Swiss republic.

The modern use of the referendum seems to have come along with the liberalization of political institutions and public dissatisfaction with some of the early fruits of representative government.⁵ Democratization of government did not bring all of the improvements in political life that were

³ Edwin G. Nourse, Joseph S. Davis, and John D. Black, *Three Years of the Agricultural Adjustment Administration* (Washington, 1937), 273.

⁴ "All ancient democracy was direct democracy. In the Greek city-states all legislation was initiated by the people and authorized by direct popular vote without the intervention of representatives." William B. Munro, "Initiative and Referendum," *Encyclopaedia of the Social Sciences*, 8: 51 (New York, 1934).

⁵ According to Herman Finer, *Theory and Practice of Modern Government* (rev. ed., New York, 1949), 560, an examination of the initiative and referendum shows "that their merits are built upon real or presumed deficiencies in modern parliamentary systems."

hoped for, and so the people resorted to further reform by providing additional popular checks. Development of the modern press and rise of aggressive interest groups have progressively reduced the representative nature of representative assemblies, an inevitable result of which has been the increasing demands for direct popular action.⁶

Although the referendum is often referred to as one of the "democratic innovations" of the "New Democracy" in the United States after 1900, it is, in reality, one of our oldest native political institutions. It was introduced and came into periodic use prior to the adoption of the earliest American State constitutions and has been required in the constitutional amendment process by almost all of the States since that time. However, as a mechanism of popular government in the process of ordinary lawmaking, the referendum is a relatively recent development in the United States. After being used occasionally in some of the States during the latter part of the nineteenth century, the referendum came into wide popularity after 1900. It was one of the methods resorted to during the period of great turmoil in local government in the United States, which resulted from a recrudescence of popular sentiment against scandal and official corruption. The most basic popular objective during this "muckraking" era was to get rid of corruption and grafting politicians and to "restore local government to the people."⁷ As stated in a monograph on the subject, "The adoption of the initiative and the referendum by almost half of the American states may be attributed to the Progressive movement. Few social movements have more profoundly affected the politics and legislation of the United States than this movement."⁸

Forming a three-pointed attack on political corruption, the referendum, the initiative, and the recall of public officials were utilized in the early part of the twentieth century by those crusaders who believed that the cure for the evils of de-

mocracy was more democracy.⁹ While these devices did not succeed in completely eradicating all of the evils at which they were directed, they did tend to bring local government closer to the people. On the local level at least the referendum appears to have definitely solidified within the political mores. As stated by one political scientist, "There can be no doubt that the referendum is now permanently established among the political institutions of the states. There is little question of abandoning it. The only questions concerning which there are still serious differences of opinion relate to the form in which, and the conditions under which, it shall be used."¹⁰

One of the major uses of the referendum process has been as a means of directly ascertaining the opinion of the people in certain localities on such matters as the sale of intoxicants, bond issues, etc. Out of this has developed the widespread practice of permitting local home rule concerning liquor. In addition, city councils often have submitted to the public some other controversial matters upon which they, themselves, had not been able to agree. It is interesting that while the local option laws have received the approval of the Supreme Court of the United States, the use of the referendum on a State-wide basis usually has been condemned as an invalid delegation of legislative power. Size of the political area which the referendum was made to cover thus has been an important consideration in its use in the United States.

As the discussion indicates, the referendum has been utilized in the United States primarily in State and local government.¹¹ Until the initiation of compulsory crop-control policies in 1934, there had been no provision for it on the national level. The nearest approximation to it has been the ratification of the Federal Constitution and its subsequent amendments; and their ratification was by State legislatures or conventions. According to

⁹ V. O. Key, Jr., *Politics, Parties, and Pressure Groups* (New York, 1942), 224-225.

¹⁰ Arthur N. Holcombe, *State Government in the United States* (ed. 3, New York, 1931), 551.

¹¹ This point is emphasized by Munro in his article on "Initiative and Referendum," 50, when he stated that the referendum is "an arrangement whereby any measure which has been passed by a city council or state legislature may under certain circumstances be withheld from going into force until the voters have had an opportunity to render their decision upon it."

⁶ See Carl J. Friedrich, *Constitutional Government and Democracy* (Boston, 1941), 536.

⁷ Harold Underwood Faulkner, *The Quest for Social Justice, 1898-1914* (New York, 1931), 83-86. See also Louis M. Hacker and Benjamin B. Kendrick, *The United States Since 1865* (New York, 1932), 417-427.

⁸ V. O. Key, Jr., and Winston W. Crouch, *The Initiative and the Referendum in California* (Berkeley, 1939), 423.

judicial theory, these were acts of "the people." Precisely speaking, however, the United States has a republican form of government, in which elected representatives function in the name of the people. The pure democracy (for the minority enjoying the status of full citizenship) of the Greek city-states would undoubtedly pose insuperable practical difficulties in twentieth-century America—or any other large nation. In this connection it might be pointed out that the largest area for which the referendum (and also the initiative) has been used is Germany. Immediately following the first World War, direct legislation enjoyed wide popularity in Europe. During this period the referendum was written into the democratic post-war constitutions of a number of the continental countries. Germany adopted the device for the country as a whole.¹²

As suggested, no national legislation or governmental policy in the United States was determined by a referendum prior to its use in the agricultural adjustment program. At times, some political observers have referred to a forthcoming biennial election as constituting a referendum. In a limited sense such an interpretation may have some meaning for the layman; strictly speaking, however, this is incorrect. The biennial elections involve the selection of public officials; these officials represent groups of policies. The referendum, on the contrary, solicits public opinion on a single policy. Sometimes, indeed, it may be used to determine the views of the people on only one particular issue relating to that policy. Again, political elections occur regularly at specified times, while referendums take place intermittently, as the need arises.

The Beginning of Farmer Referendums: The Bankhead Cotton Control Act of 1934. The first referendum among the Nation's farmers was held in 1935, having been provided for in the Bankhead Cotton Control Act of 1934. Knowledge of the origin and purposes behind this law affords helpful insight into the relationship of the farm population to compulsory crop-control legislation. The method used to secure acreage reduction in the Agricultural Adjustment Act of 1933 was essentially voluntary.

¹² However, *ibid.*, 52, states that a number of innovations were added to the referendum in Europe and that "The complications resulting from these variations have militated against the practical utility of the initiative and the referendum. In actual practice they have been employed to a very slight extent in these countries, even less than in the United States."

Contracts agreeing to cut acreage were voluntarily entered into by producers in the sense that no legal compulsion was brought to bear on them. Positive inducements, however, such as the promise of benefit payments, etc., and an intensive publicity or "educational" campaign helped greatly to secure acceptance of the program.¹³ The result was that the government was able to secure the cooperation of farmers representing a large majority of the acreage in the crops to which the program applied.¹⁴ Yet, a number of people who were most interested in insuring the success of the experiment "were not in all cases convinced that so-called 'voluntary methods' of production control would prove adequate."¹⁵ This uncertainty grew out of the fear that "increased production by non-signers might defeat the purpose of the program."¹⁶ It was not long before groups of producers themselves began to demand measures which would force the less cooperative farmers into line. Primarily as a result of these demands from farmers, Congress, on April 21, 1934, passed the Bankhead bill for cotton and, on June 28, the Kerr-Smith Tobacco Control Act.¹⁷ Thus, as stated by one writer on the subject, "this program, like many others that have been laid at the door of 'the bureaucrats' came as much from farmers and their organizations as from anyone else."¹⁸

It is significant, therefore, that the compulsory features of the government's farm program grew, in large measure, out of the farmers' own requests. Obviously this could be expected to influence the reception given the referendums and other AAA policies. However, it should also be noted that those who made their voices heard in getting Congress to initiate compulsory control were not primarily from the masses of rank-and-file farmers.

¹³ In addition, conditions in agriculture had become so bad that, as many farmers said to the writer, "We were willing to try anything; things couldn't be much worse." Personal interview in Wilson County, N. C., January 1946.

¹⁴ U. S. Agricultural Adjustment Administration, *Agricultural Adjustment, 1933 to 1935* (Washington, 1936), and *Participation Under A.A.A. Programs, 1933-35* (Report G-91, Oct. 1938), 1-36.

¹⁵ Nourse, Davis, and Black, *Three Years of the Agricultural Adjustment Administration*, 38-39.

¹⁶ Miriam S. Farley, *Agricultural Adjustment Under the New Deal* (New York, 1936), 13.

¹⁷ *U. S. Statutes at Large*, 48: 598, 1275.

¹⁸ Charles M. Hardin, "The Tobacco Program: Exception or Portent?" *Journal of Farm Economics*, 28: 923 (Nov. 1946).

They were predominantly landlords and tended to be the larger, Farm Bureau-represented farmers—the group which traditionally has seemed to wield the most influence in shaping the government's agricultural policy. On the other hand, the small farmers—the tenants and croppers—were given equal voting privileges in the referendums, and their strength would be necessary to carry the program since a two-thirds majority was required for it to go into effect.

The Bankhead Cotton Control Act set up a compulsory control system intended to limit cotton production to a specified quota. This was to be achieved by levying a tax on the ginning of cotton equal to 50 percent of the average price of the standard grade on the 10 principal spot markets, but not under 5 cents per pound. The small producers, however, were given tax exemption certificates covering their entire production—up to 5 acres in 1934 and up to 5 bales in 1935. Larger producers were given exemption certificates in proportion to their past performance, and certain additional special exemptions were also allowed. The total of all exemption certificates was not to exceed 10 million bales in 1934; the next year the Secretary of Agriculture set the total at 10½ million bales. The tax imposed a stiff penalty on all production in excess of the tax-exempt allotments made to the individual growers. This tended to limit total production, therefore, to approximately the amount specified. The result was, as had been intended, to force a larger number of farmers to sign contracts. Thus "Those who had not wished to sign up were practically forced by the new system to give up their freedom to maintain or expand cotton acreage on farms under their control and, under this condition, could ill afford to sacrifice benefit payments by refusing to sign."¹⁹

Compulsory Control Extended to Tobacco. Since tobacco farmers faced the same situation of danger from the nonsigning tobacco producers, Congress drew up a program to prevent growers who did not participate in the voluntary program from enjoying its financial benefits, and to expedite enforcement of the specified obligations. The Kerr-Smith Tobacco Control Act of June 28, 1934 embodied this legislation. Like the Bankhead bill, this act sought to achieve its objectives by use of a tax. All contract signers received tax-payment warrants equivalent to their production quotas

under the voluntary program. Additional warrants could be issued to growers who, for various reasons, were ineligible to take part in a reduction program; this permitted them to maintain but not to increase their production without having to pay the prescribed tax. After careful study of the administration of this act, three economists concluded that "While this measure created an additional incentive to producers to enter into contracts in order that they might secure benefit payments, this was not a major determinant of the size of the sign-up secured."²⁰ This writer's field data confirm their view.

The First Agricultural Referendums. The Bankhead and Kerr-Smith acts were mandatory for only one year. They were to be extended for a second year, however, if two-thirds of the producers of cotton or growers controlling three-fourths of the tobacco acreage should, by referendum, express a desire for their continuation. In August 1935 amendments were passed authorizing the extension of these bills, on similar conditions, for two additional years.²¹

Detailed rules and regulations were drawn up for use in carrying out the referendum on the Bankhead Act. General instructions, quite similar to those used in regular political elections, were issued to State allotment boards and to county and community committeemen on November 15, 1934.²² These regulations covered every aspect of the balloting process and set the general pattern for the subsequent AAA referendum program begun in 1938. As the procedure in the tobacco referendum was generally the same as for cotton, it will not be described here.

The County Committee of the Cotton Production Control Association (hereafter referred to as the County Committee) was given the responsibility of providing the facilities for holding the referendum in the local communities. The instructions of November 15, 1934 specified:

The County Committee shall designate the place or places for balloting in each local community, which

²⁰ *Ibid.*, 40.

²¹ In the fall of 1934 and 1935, referendums were held among Corn Belt farmers to determine whether they desired continuation of the corn-hog control program; two-thirds voted in the affirmative. Wheat growers voted in favor of the wheat program in May 1935. U. S. Agricultural Adjustment Administration, Corn-Hog Committeemen's Letter No. 5, Dec. 3, 1935.

²² U. S. Agricultural Adjustment Administration, Referendum on Bankhead Act, Form No. B.A. 31.

¹⁹ Nourse, Davis, and Black, *Three Years of the Agricultural Adjustment Administration*, 39.

shall be readily accessible to all eligible voters in such community and shall arrange by public notice for producers to know of the time and the place for casting ballots.

The County Committee shall designate three local producers (landowners, share croppers, and/or tenants) as the Community Referendum Committee to be in charge of the referendum at each voting place. At least one of these shall be a local community committeeman of the Cotton Production Control Association. [The committee was also ordered to provide a ballot box and list of eligible voters.]

When the polling was completed the County Committee was instructed to tabulate the reports from the local communities. After certifying the results they were to be filed with the local county agent. The State Allotment Board would then summarize all county reports and transmit the certified State totals to AAA headquarters in Washington. As a safeguard, all voted ballots, the register, and community summary "for each county shall be held on file under seal and in a safe place under lock and key under supervision of the County Agent, subject to instructions from the Secretary of Agriculture."

There were specific directions to be followed in the event that any controversy developed over the voting:

In cases of dispute over the correctness of the report of the vote in a community, the County Committee shall make an investigation of the vote in such community not later than 12 midnight, Monday, December 17, 1934, and the findings of the County Committee shall be reported as its final findings. In each case where a ballot is found in a sealed envelop marked by the Community Referendum Committee "Challenged" and bearing the voter's name, the County Committee shall, without opening the envelop, determine whether or not such person is eligible to vote; and if the Committee determines he is eligible, such envelop shall be opened and the ballot counted in the county summary, Form No. B.A. 35; but if the Committee determines such person is not eligible to vote, such envelop shall remain sealed and shall be preserved with the ballots as provided in paragraph 9. In cases of other disputes over eligibility of those voting, the County Committee shall make an investigation, and the findings of the Committee therein shall be reported as its final findings.

In case of a dispute over the correctness of the report of the vote in a county, the County Committee shall send all ballots, register sheets, and community summary sheets for such county to the State Allotment Board by registered mail or deliver them in person. The Board shall then make an investigation of the

report for such county not later than 12 midnight, December 23, 1934, and the findings of the State Allotment Board shall be reported as its final findings.

An effort was made to insure a secret ballot by the provision that "No member of a County Committee shall disclose how any particular person voted in the referendum."

The community referendum committee, which was to be selected by the county cotton adjustment committee, was charged with the responsibility of actually conducting the referendum. The duties of this committee were to:

1. Conduct the referendum in a fair and unbiased manner.
2. Publicly notify local producers of the time and place for casting ballots at least 5 days in advance of the voting day.
3. Before issuance, fill in the county and the community name, number, or letter on each ballot in ink or indelible pencil.
4. Provide ballot boxes where ballots may be deposited by producers.
5. Provide quarters for balloting, where each producer can prepare and cast his ballot without interference and without anyone seeing how he votes (but it shall not be necessary to provide private booths).
6. Open polls at 9 a.m. on December 14, 1934.
7. Issue a ballot form to each producer who is eligible to vote and who requests a ballot form. A copy of the Secretary's message is to be firmly attached to the ballot as it is handed to each eligible voter, and should be detached by him before he places his ballot in the ballot box.
8. Record on Form No. B.A. 33 the name and address of the producer to whom a ballot form is issued.
9. Shall (in order that his eligibility may be finally determined by the County Committee) permit a ballot to be cast by any person who insists he has a right to vote after the Community Referendum Committee has expressed its opinion that he is not eligible to vote. In such case the ballot shall be placed in a sealed envelop bearing on the face of the envelop the name of the voter so challenged and the notation "Challenged" and thereupon such envelop shall be placed in the ballot box and the Community Referendum Committee shall list such challenged ballots at the foot of Form No. B.A. 33.
10. Explain to each producer making inquiry the procedure to follow in casting his ballot.
11. Stop issuing and receiving ballots at 5 p.m. on December 14, 1934.
12. Promptly after closing polls, tabulate results and record on Form No. B.A. 34.
13. Each committee member shall sign Forms Nos. B.A. 33 and B.A. 34, certifying to their accuracy.

14. Seal Forms Nos. B.A. 33 and B.A. 34 and all voted, as well as unused (unmarked), ballots in envelop(s) provided for the purpose. The chairman of the committee shall be responsible for the sealed envelop(s) and shall deliver same to the County Committee between the hours of 8:30 a.m. and 12 noon of December 15, 1934.

15. No member of a Community Referendum Committee shall disclose how any particular person voted in the referendum.

Composition of Local Committees. An important part of the work under the adjustment program has been carried on by these county and community committees. During the early years of the program when they were appointed by the county agricultural agent, the agents were instructed, according to one economist on the subject, "to select men of character and ability who were leaders in the county or community and in sympathy with the program." This investigator found further:

In Texas the agents were instructed to include a banker, a business man, and a farmer in the county committee. The county committees in ten Texas counties studied in detail consisted of eleven bankers, ten business men, and eleven farmers. The agents in other states also drew heavily upon business groups for committee members. In four counties of North and South Carolina for which data are available, 7 of the 13 county committeemen had important business interests other than farming, only one being a banker. In four counties studied in Louisiana, Arkansas, and Mississippi outside of the Delta (one on the edge of the Delta), 7 of the 12 county committeemen selected had business interests other than farming, only two being bankers. In the Mississippi Delta, large planters were usually selected as county committeemen. The business men chosen in other areas, however, commonly owned one or more farms in the county, held farm mortgages, or had some other direct interest in the income of particular farmers or of farmers in general. The farmers selected usually were operators of relatively large farms, and were practically all landowners.²³

Community committeemen have usually been farmers and seldom had any business interests other than farming.²⁴ Their landholdings were generally smaller than those of the county committeemen. Tenants were eligible but seldom

served as committeemen, and sharecroppers practically never served. There has been a tendency for the same group of committeemen to retain their positions for long periods of time; this writer found in his study areas that committeemen held over from year to year, with very few exceptions. This situation has led to a feeling on the part of most tenants that the committee elections were meant to be primarily landlord functions.

A message from the Secretary of Agriculture, Henry A. Wallace, pointing up the importance of the referendum was attached to each ballot and was to be given to each voter. The Secretary's message asked the question, "Shall the Bankhead Act Be Continued Through 1935?" and framed this interrogation in such a way as to indicate its significance. Mr. Wallace alluded to "a small minority of noncooperators" and ended his statement with the "hope that cotton producers will examine carefully all the facts and reach a decision based upon considered judgment as to whether the Bankhead Act is needed to assure the attainment of the objectives of the cotton adjustment program."

Qualifications for voting in the referendum centered around cotton production. All persons who had produced cotton in 1934 or who had entered into a lease or sharecropping agreement to grow cotton in 1935 were eligible to vote. In the event that ownership and the present right to produce cotton on a farm was held jointly by two or more persons, "all of such persons shall be entitled to vote." Further, in case several persons, such as husband, wife and/or children, were participating in raising cotton, it was specified that voting would be limited to "the person or persons who signed or entered into the lease or sharecropping agreement and thereby acquired the legal or equitable right to produce cotton." The strong influence of traditional property rights on voting eligibility can be seen plainly here.

The cotton referendum was held on December 14, 1934, under the various regulations described above.

The AAA Referendums of 1938. With the experience provided by the referendums conducted in 1934 and 1935 under the Bankhead and Kerr-Smith acts (and the wheat and corn-hog measures), the AAA launched its regular program of voting among the Nation's farmers in 1938. The AAA marketing quota referendums for cotton and tobacco were begun in March of that year. The

²³ Henry I. Richards, *Cotton Under the Agricultural Adjustment Act* (Washington, 1934), 18-19.

²⁴ *Ibid.*, 19; Gladys Baker, *The County Agent* (Chicago, 1939), 74-76.

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cedure for conducting them has been rather uniform and will now be described briefly.²⁵

The Secretary of Agriculture was granted authority in Section 8 (1) to carry out the Agricultural Adjustment Act's declared policy "to provide for reduction in the acreage or reduction of the production for market or both, of any basic agricultural commodity." A favorable vote in referendums among producers was necessary to maintain control. One of the first steps in the holding of a referendum is the issuance of a statement by the Secretary determining the apportionment and adjustment of the national and State quotas for a given commodity for the following marketing year.²⁶

Following this, the AAA went into action, using the necessary preliminary announcements. quote from the instructions of November 1938:

In view of the fact that the Secretary of Agriculture has determined and proclaimed, pursuant to the provisions of Section 345 of the Agricultural Adjustment Act of 1938, that the total supply of cotton for the 1938-39 marketing year exceeds by more than 7 per cent the normal supply thereof for such marketing year, a referendum, by secret ballot, of farmers who are engaged in the production of cotton in 1938, will be held on December 10, 1938, pursuant to Section 347 of said Act and in accordance with the regulations herein set forth, to determine whether they favor or oppose cotton marketing quotas on the 1939 cotton crop. Such quotas will be in effect unless more than one-third of the farmers voting in the referendum oppose them.

Generally similar statements proclaiming national marketing quotas for certain other crops and announcing forthcoming referendums of producers have been issued from time to time since 1938.

Eligibility for Voting in the Referendums. As to voting eligibility, the instructions governing the referendums were quite clear and explicit. It was provided that "All farmers who were engaged in the production of cotton in 1938" were eligible to vote in the cotton referendum and "all farmers who were engaged in the production of flue-cured

tobacco in 1938" were eligible to vote in the flue-cured tobacco referendum.²⁷ Eligibility to vote in one referendum did not entitle a farmer to take part in the other. He could vote in both only in the event he was engaged in the production of both cotton and flue-cured tobacco. In addition, any person who shared in the proceeds of the 1938 cotton crop as owner (other than a landlord of a standing-rent or fixed-rent tenant), tenant or sharecropper was considered as having been engaged in the production of cotton in 1938; the same was true for tobacco. To safeguard the franchise for those who had experienced a bad year in 1938, the instructions provided that:

Farmers who planted cotton or flue-cured tobacco in 1938, but produced no cotton or flue-cured tobacco on such acreage for any reason except willful neglect to farm the planted acreage, or who made arrangements to plant cotton or flue-cured tobacco in 1938 but were prevented from planting by flood, excessive rainfall, drought, or plant disease, shall be regarded as having been engaged in the production of cotton or flue-cured tobacco in 1938 and therefore as eligible to vote in the respective referendum.

The method of voting was democratic, each voter having the same weight. Plural voting was prohibited: "No farmer (whether an individual, partnership, corporation, association, or other legal entity) shall be entitled to more than one vote in either referendum, even though he may have been engaged in the production of cotton or flue-cured tobacco in two or more communities, counties, or States in 1938."

The family of a producer was not eligible to vote, it being stipulated that:

In the event several persons, such as husband, wife, and children, participated in the production of cotton or flue-cured tobacco in 1938 under a single rental or cropping agreement or lease, only the person or persons who signed or entered into the rental or cropping agreement or lease shall be eligible to vote.

²⁷ Marketing quotas were not applicable to cotton having a staple $1\frac{1}{2}$ inches or more in length. Thus a farmer raising this cotton was not eligible to vote unless he also raised cotton with a staple less than $1\frac{1}{2}$ inches in length.

Producers of the other types of tobacco (burley, dark, air-cured, etc.) vote in separate referenda. The bulk of tobacco farmers raise flue-cured tobacco. For a discussion of the six major types of tobacco, see Hardin in *Journal of Farm Economics*, 28: 925.

²⁵ This description is derived from the U. S. Agricultural Adjustment Administration, *Instructions for Holding Referenda on Cotton and Flue-Cured Tobacco Marketing Quotas*, 39-AAA-1-A, Nov. 1938, p. 1-7.

²⁶ For details on the formula used to determine the need for tobacco quotas, see Hardin in *Journal of Farm Economics*, 28: 924-925.

However, if two or more persons engaged in the production of cotton or flue-cured tobacco in 1938, not as members of a partnership but as tenants in common, or joint tenants or as owners of community property, each person was entitled to vote.

In the first few referendums, voting by mail, proxy, or agent was not permitted. However, "a duly authorized officer of a corporation, firm, association, or other legal entity, or a duly authorized member of partnership, may cast its vote." By 1941 voting by mail was permissible but only under rigidly regulated conditions.

An analysis of the requirements for eligibility to vote in the AAA referendums indicates that, essentially, the privilege to participate necessitated "having an interest" in the production of a given crop. Thus the basis for participation in these farm referendums differs considerably from that of the usual referendums. Ordinarily a referendum covers a particular geographic area, and all persons of similar voting qualifications in that area may vote. The AAA referendums, however, were largely functional in their coverage, being concerned only with the will of part of the farmer electorate. Only the producers of the specified commodities or those having a direct interest in such production had the privilege of voting; emphasis is thus placed on functional rather than geographic representation. This means that not only are the people of many entire States and regions where the products were not grown unqualified to vote but also a large number of people within the growing areas are ineligible because they do not produce those commodities. Congress thus felt that although the referendums related to national policy and involved to some extent the interests of the whole population, participation in the referendums should be limited to those having a direct interest in producing the commodities concerned. This departure from our traditional voting practices might conceivably be criticized by some.²⁸ Any such criti-

²⁸ In this connection, Nourse, Davis, and Black, *Three Years of the Agricultural Adjustment Administration*, 274, state: "It has sometimes been objected that these referenda were not in fact true polls of opinion in that they were limited to producers of the commodity which was involved. The obvious answer to this objection is that they were not designed as general referenda on the question whether or not adjustment efforts should be undertaken but as expressions of opinion by the interested parties as to whether they desired to continue or as to what methods should be employed."

cism, however, would have to be directed at Congress rather than the AAA, because it is not a matter of administrative discretion but of direct legislative policy. Functional interests usually enter the lawmaking process at some stage anyway. There are, however, important political aspects of the AAA referendum process which should be kept in mind.

Instructions to County Committees. The county agricultural conservation committee, charged with the responsibility "for the proper holding of the referenda in the county," was given detailed instructions to follow. The first task of the committee being to look after the time, place, and notice of the referendum, it was ordered in the instructions of November 1938 to:

Designate one readily accessible place for balloting in each community and give public notice of the time and place for balloting by posting the applicable notice form at one or more places open to the public within each community at least five days in advance of the date of the referenda.

The AAA was concerned that the farmers be adequately informed about the referendum. To that end the county committee was directed to:

Make use (without advertising expense) of all available agencies of public information, including newspapers and radio, to give cotton and flue-cured tobacco farmers in the county full and accurate public notice of the day and hours of voting, the location of polling places, and the rules governing eligibility to vote. Such notice should be given as soon as practicable after the plans for holding the referenda in the county have been made, but must be given at least five days in advance of the date of the referenda.

The County Committee was also ordered to designate a referendum committee of three farmers in each AAA community, whose duty was to supervise the actual balloting by (a) issuing ballot forms, (b) recording votes, (c) tabulating ballots, and (d) certifying results of the referendum in the community.

Secrecy of Ballot Emphasized. In the first referendum it was recommended but not required that the balloting be secret. Subsequently it was felt desirable to make the secret ballot mandatory. The instructions sent on the eve of the second referendum, December 1938, ordered the county

They explain further that "the larger question of national agricultural policy was answered by Congress" in the passage of the Agricultural Adjustment Act.

committee to "see that appropriate measures be taken to insure that each referendum is conducted by secret ballot."²⁹ These instructions were also passed on to the community referendum committees. The regulations issued October 31, 1941 were even more explicit on the matter of secrecy. Section 7 (a) provided:

The voting in the referendum shall be by secret ballot. Each voter shall, at the time he is handed the form on which to cast his ballot, be instructed to mark his ballot form so as to indicate clearly how he votes and in such manner that no one else shall see how he votes and then to fold his ballot and place it in the ballot box without allowing anyone else to see how he voted. A suitable place where each voter may mark and cast his ballot in secret and without coercion, duress, or interference of any sort whatever shall be provided in each polling place. Every unchallenged ballot shall be placed in the ballot box by the person who voted it. The fact that a voter fails to fold a ballot placed in the ballot box shall not invalidate it. It shall be the duty of each community referendum committee to see that no device of any sort whatever is used whereby any voter's ballot may be identified (except as provided in these regulations in the case of a challenged ballot or a ballot cast by mail).³⁰

As in the case of the original referendum under the Bankhead Act, regulations covering subsequent referendums made adequate provisions for investigating and settling controversies which might arise.

The AAA referendum program made considerable use of "economic democratic machinery," as the local organizations were often called.³¹ The first duty of the community referendum committee was to arrange "for conducting the referenda by secret ballot." Next it had the task of assisting the county committee in seeing that "adequate public notice of the time and place" of the voting was given. Secrecy was again emphasized by Section C-3 of the instructions to community referendum committees which required them to "provide a place where each eligible farmer can prepare and cast a ballot in secret and without interference."

²⁹ Nevertheless, the writer's field interviews revealed that referendum voting was often quite informal, many farmers showing no interest in keeping their vote secret.

³⁰ U. S. Agricultural Adjustment Administration, *Regulations Governing the Holding of Referenda on Marketing Quotas*, MZ-650, Oct. 31, 1941, p. 4.

³¹ Henry A. Wallace, *Planning Ahead under the AAA* (U. S. Department of Agriculture, Press Release 8951, Sept. 1934), 2.

Section C-6 reiterated the AAA's desire for free and secret voting by ordering the community committee to "hold the referenda in a fair and unbiased manner and see that appropriate measures are taken to insure that the referenda are conducted by secret ballot." Going beyond this, the committee's instructions of November 1938 further were:

See that no device is used whereby any voter's ballot may be identified (except in the case of a challenged ballot). Instruct each voter, as he is handed a ballot form, as to the procedure to be followed in casting his ballot and instruct him to fold his ballot before he places it in the ballot box after he has marked it. . . .

The hours of voting in the referendums were usually from 9 a.m. until about 5 p.m., after which the ballot boxes were opened and the ballots canvassed. The canvassing of ballots was always to be "kept open to the public." After the ballots were counted, recorded on specified forms, and their accuracy certified, the referendum committee's work ended with the delivery of the sealed ballots and executed forms to the County Committee. The State committee was given the job of summarizing the county referendum returns and forwarding them to the Agricultural Adjustment Administrator in Washington, where the "final and official tabulation of votes cast" was made by the AAA and the results of the referendum announced by the Secretary of Agriculture. The State committee also was required to:

Complete the investigation of any report from any county regarding controversies, irregularities, or the correctness of summaries of the referenda, not later than seven calendar days after the date of the referenda, and forward its findings in such cases to the applicable regional director.

These referendums have been carried out so smoothly and efficiently, however, that this provision has seldom been utilized.

Since 1938 several marketing quota referendums have been held among producers of cotton, tobacco, and several other crops under the general administrative conditions described above. The referendum process has been found to be generally satisfactory and has become an important method of ascertaining the opinion of farmers on crop control. It is interesting to observe how different the use of the referendum device has been in Europe and America during recent years. At the very time the referendum was being utilized for

the purpose of attempting to extend and strengthen democracy in the United States, European dictators were wielding it to weaken democratic institutions and to consolidate their authoritarian dictatorships. Technically the voting in Europe concerned changes in the sovereignty of given territories and peoples and to be more precise, therefore, were called plebiscites. Essentially, however, "A plebiscite is, literally, a popular referendum on any question."³²

The close relationship of the referendum to popular political institutions was expressed by Henry A. Wallace when as Secretary of Agriculture he said that the referendums were "in line with the democratic principles under which this Government is founded." As a matter of fact, many people became convinced very early that the referendum process, and the accompanying program of utilizing local committees of farmers, started us as Wallace said "on our way toward a true economic democracy, designed to rescue our political democracy from the danger of becoming a hollow mockery."³³

Constitutional Aspects of the AAA. The Agricultural Adjustment Act raised interesting questions of constitutional and administrative law as well as rather important political considerations. Like a number of other basic New Deal measures, notably the National Industrial Recovery Act and the Bituminous Coal Conservation Act (commonly referred to as the Guffey Coal Act), this act provided for the participation of private or unofficial groups in its administration and also certain discretion on the part of those charged with carrying it out. As Congress has found it necessary to legislate on increasingly complex economic problems, "it has seemed expedient to invoke the assistance of interested parties, familiar with the minutiae upon which specific rules must be based and competent to pass judgment upon the efficacy of such regulations."³⁴

The constitutional issues resulting from this situation center around such problems as the delegation of legislative authority, administrative

discretion, and the extent to which private groups may legitimately participate in the administration of regulatory legislation carrying penalties. The matter of delegation of power to executive or administrative officers and agencies usually has been construed by the courts on the basis of whether a definite and adequate "rule" or "standard" for executive guidance was laid down by the statute, and whether checks to administrative discretion—such as the right of appeal—were provided. The National Industrial Recovery Act was voided by the Supreme Court on the ground, among others, that the powers delegated to the President were "unfettered" or "unconfined and vagrant," going far beyond the bounds that a clear standard would have imposed.³⁵ Judicial construction of cases involving delegations to unofficial groups, however, has not been grounded on any similarly consistent, even if sometimes vague, principle such as "definite standards."³⁶ Instead, "a variety of ostensibly unrelated rationales" have been utilized, "with a tendency to employ tests which vary with the type of statute examined."³⁷

A rather common type of delegation to private parties is the submission of a statute to the electorate for its approval—the basic referendum process. In the majority of cases, the courts have held, in the absence of a constitutional provision for a referendum, that submission of a proposal to all the State's voters is an illegal delegation of legislative authority.³⁸

³⁵ *Panama Refining Co. v. Ryan*, in 293 U. S. 388, 421 (1935); and *Schechter v. United States*, in 295 U. S. 495, 529–542 (1935).

³⁶ On the problems involved in judicial construction of the Constitution and the broad discretion permitted the Court in considering major questions of constitutionality, see Edward S. Corwin, *The Twilight of the Supreme Court* (New Haven, 1934), especially 180–184; and Robert H. Jackson, *The Struggle for Judicial Supremacy* (New York, 1941), especially 86–235.

Determination of when standards are sufficiently "clear and definite" is no easy task. See Louis L. Jaffe, "Law Making by Private Groups," *Harvard Law Review*, 51: 201–253 (Dec. 1937), especially p. 214.

³⁷ "Delegation of Power to Private Parties," *Columbia Law Review*, 37: 448.

³⁸ *People ex rel Thompson v. Barnett*, in 344 Illinois 62, 176 N. E. 108 (1931). See also Westel Woodbury Willoughby, *Constitutional Law of the United States* (ed. 2, New York, 1929), 224–226.

On the use of referendums in local government, see Walter F. Dodd, *State Government* (ed. 2, New York, 1928), 524–535.

³² Sarah Wambaugh, "Plebiscite," *Encyclopaedia of the Social Sciences*, 12: 163 (New York, 1934).

³³ Wallace, *Planning Ahead under the AAA*, 1. The local manifestations of this machinery of "economic democracy" and the attitudes and action patterns which crystallized around it are important considerations of the writer's study of participation in the AAA.

³⁴ "Delegation of Power to Private Parties," *Columbia Law Review*, 37: 448 (Mar. 1937).

Some justices, however, have made notable dissents, one holding that this device was "an important adjunct to democratic government: it tests the readiness of the people and the likelihood of enforceability." Expressing the same point of view, Justice Holmes once declared that "the contrary view seems to me an echo of Hobbes' theory that the surrender of Sovereignty by the people was final."³⁹ On the other hand, local option laws, which are presented to the voters of smaller political areas and which deal with purely local matters, have been upheld.⁴⁰ The state-wide referendum was considered to be an abdication of legislative functions, while the local option laws were seen as "contingencies" upon which the act of the legislature is to take effect. This judicial distinction is regarded by some observers as rather weak and tenuous because the legality of the statute, on both State and local levels, is conditionally dependent upon a favorable reception by the voters, and since in both situations a legislative function is performed by the electorate. They believe that the test of "contingency" should be strengthened by the use of a definite principle—one which determined whether the given body of voters specified in the statute is substantially the sole group affected by the action, and is adequately informed of the necessity for the legislation to be competent to pass judgment as to its desirability. This, it is concluded, would bring state-wide referendums within the pale of constitutionality where the legislation presented to the voters is of "general" concern. This assumes that inhabitants are best able to dispose of, and are alone seriously affected by, local matters.

The Supreme Court of the United States passed on the constitutionality of the delegation of power to private groups made in the Guffey Coal Act. In this case,⁴¹ the court considered the provisions of the act which enabled part of the operators and miners—the latter represented by the union—to enter into agreements fixing maximum hours and minimum wages for the entire industry. The court declared that control of a minority by a competing majority was "legislative delegation in its most

obnoxious form." In the Guffey Coal Act, Congress specified the sanctions for violation of the law whatever it might be; the precise content, however, was to be worked out in part by private parties. This, the court held, was a "governmental function" and delegating it to private bodies constituted "clearly a denial of rights safeguarded by the due process clause of the Fifth Amendment. . . ."

The original Agricultural Adjustment Act required neither group initiative nor participation, although it authorized the Secretary of Agriculture to utilize producers and producer associations in the administration of the act. Section 10b of the act provided that "The Secretary of Agriculture is authorized to establish, for the more effective administration of the functions vested in him by this title, State and local committees, or associations of producers . . . when in his judgment they are qualified to do so, to act as agents of their members and patrons in connection with the distribution of rental or benefit payments."

Two types of programs were carried on under this act. First, benefit payments were made to farmers who agreed to reduce their crop acreage. Formally, this was a program of voluntary participation—at least in a legal sense. The early crop restriction programs were not subject to the vote of the farmers, but in drafting the plan farm organizations were consulted regularly. At the end of the first year, the question of continuing acreage control was put to a vote of the producers who gave it a heavy majority.

The other program provided for by the act was a series of "licenses" and "marketing agreements." These were compulsory schemes but applied only to the marketing of the minor crops—fruits, vegetables, and dairy products. They controlled the activities of growers and handlers. A total quota for market was usually set and prorated among growers and handlers. Such matters as terms and practices and, at times, the price to the producer, were fixed. It was administrative practice to consult producer representatives (cooperatives were usually dominant) before drawing up the regulations. The proposed regulations were then discussed at public hearings and, before going into effect, were submitted to producers for their approval.⁴²

The participation of producers in carrying out

³⁹ This statement and the preceding are quoted by Jaffe in *Harvard Law Review*, 51: 222.

⁴⁰ *State ex rel McLeod v. Harvey*, in 170 So. 153 (Fla. 1936). Other cases are cited in the *Yale Law Journal*, 41: 134, n. 15-17 (Nov. 1931).

⁴¹ *Carter v. Carter Coal Company*, in 298 U. S. 238, 311 (1936).

⁴² Processors and handlers apparently were not generally polled. See Jaffe in *Harvard Law Review*, 51: 238.

the agricultural adjustment program was quite important, as pointed out in the discussion of the county and community committees. Administration of the benefit payment plans, fixing of quotas for individual farmers, checking on compliance with allotments, and other duties were performed by these local farmer committees. It appears that these county associations had no legislative or rule-making functions. None of the decisions of these committees were final, appeal to the higher State and Federal authorities being possible.⁴³

Perhaps of even greater importance was the participation of interested private groups in the administration of the licenses and marketing agreements. Their participation was not provided for in the statute itself, but was usual administrative practice.⁴⁴ Sometimes boards, elected by growers and packers, were authorized to estimate market demand, to fix quotas for handlers, and to control prices. Their rulings were subject to disapproval by the Secretary of Agriculture. When the Agricultural Adjustment Act was amended in 1935, the principle of producer and handler approval was adopted formally. However, the compulsory program could not be made effective unless the "Secretary of Agriculture determines that the issuance of such order is approved or favored" by at least two-thirds of the growers in number or volume of the product to be put under quotas.⁴⁵

The Supreme Court has passed on constitutional aspects of the revised AAA program in several important cases. In two of these cases,⁴⁶ it held a very liberal view as to how clear and definite must be the legislative standards or criteria under which Congress may delegate legislative power to executive officers. The cases involved action of the Secretary of Agriculture under the statute regulating the marketing of milk in the urban areas

⁴³ However, their views must have had considerable weight in Washington. The correspondence of the Secretary of Agriculture in the National Archives shows that when the Secretary received a complaint from a farmer the first step was usually to refer him to his county committee.

⁴⁴ Harold B. Rowe, *Tobacco Under the AAA* (Washington, 1935), 100-105, 112-113.

⁴⁵ 49 Stat. 753 (1935), 7 U. S. C. A. Sec. 608c (8-9). The approval of only 50 percent of the handlers is sought, but it may be dispensed with if the Secretary finds urgency.

⁴⁶ *United States v. Rock Royal Cooperative*, in 307 U. S. 533 (1939); and *Hood and Sons v. United States*, *ibid.*, 588.

of New York and Boston respectively. The Secretary was given broad powers to carry out the purposes of the Agricultural Marketing Agreement Act of 1937; the only restriction on his actions was the declaration of policy in the act which says: "to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy equivalent to the purchasing power of agricultural commodities in the base period [1909-1914]."⁴⁷

To carry out this policy, the Secretary was authorized to enter into agreements with producers and handlers of agricultural products, to establish uniform prices to be paid to producers by handlers of milk, to stabilize prices received by producers, etc. It was alleged that this act unconstitutionally delegated legislative power to the Secretary of Agriculture. Objection was also made to subsection 19 which provided that, for the purpose of determining whether the issuance of an order is approved, the "Secretary may conduct a referendum among producers." This, it was charged, was an unlawful delegation to producers of the legislative power to put an order into effect in a market. A majority of the court, however, declared that the basic policy of restoring "parity prices" was a sufficiently adequate guide to the Secretary's discretion to meet the allegation of invalid delegation. As to the producer referendum, Justice Reed, speaking for the court in the *Rock Royal Case*, stated that "in considering this question, we must assume that the Congress had the power to put this order into effect without the approval of anyone. Whether producer approval by election is necessary or not, a question we reserve, a requirement of such approval would not be an invalid delegation."

An attack on the validity of the Agricultural Adjustment Act of 1938 arose under the sections providing for the establishment of marketing quotas for flue-cured tobacco. (There are similar sections dealing with cotton, corn, wheat, and rice.) An injunction was sought by certain producers who exceeded their quotas to prevent local warehousemen from deducting the 50 percent penalties provided for under the act from the sale of the amount of tobacco in excess of the assigned

⁴⁷ 50 Stat. 246 (1937), 7 U. S. C. A. Sec. 602 (1).

quotas.⁴⁸ The appellants alleged that the act was unconstitutional on the ground, as outlined by Justice Roberts, "(1) that the act is a statutory plan to control agricultural production and, therefore, beyond the powers delegated to Congress; (2) that the standard for calculating farm quotas is uncertain, vague, and indefinite, resulting in an unconstitutional delegation of legislative power to the Secretary; (3) that, as applied to the appellants' 1938 crop, the act takes their property without due process of law."

The Supreme Court held that the statute did not attempt to control production. "It sets no limit upon the acreage which may be planted or produced and imposes no penalty for the planting and producing of tobacco in excess of the marketing quota. It purports to be solely a regulation of interstate commerce, which it reaches and effects at the throat where tobacco enters the stream of commerce,—the marketing warehouse." On the second point, the Court declared that "definite standards are laid down for the government of the Secretary, first, in fixing the quota and, second, in its allotment amongst states and farms."

Continuing, the Court pointed out:

He is directed to adjust the allotments so as to allow for specified factors which have abnormally affected the production of the state or the farm in question in the test years. Certainly fairness requires that some such adjustment shall be made. The Congress has indicated in detail the considerations which are to be held in view in making these adjustments, and, in order to protect against arbitrary action, has afforded both administrative and judicial review to correct errors. This is not to confer unrestrained arbitrary power on an executive officer. In this respect the act is valid within the decisions of this court respecting delegation to administrative officers.

Regarding the third issue, the majority opinion stated that the argument of the appellants "overlooks the circumstance that the statute operates not on farm production, as the appellants insist, but upon the marketing of their tobacco in interstate commerce."

The revised AAA program thus has withstood the ordeal of judicial construction. As presently interpreted and administered, there appears to be no serious question of constitutionality. There are, however, important political considerations which should be discussed in connection with the act.

Political Implications of the Referendum Process.

⁴⁸ *Mulford v. Smith*, in 307 U. S. 38 (1939).

A basic question may arise in the minds of some as to the wisdom and propriety of utilizing the referendum process. In systems of democratic control, the machinery through which the control is made effective is patently of great concern. Is it wise to permit functional groups to participate in the administration of important economic legislation of this sort? May the referendums be construed as a situation in which "farmers vote programs for themselves"? In short, what may be the consequences of permitting private functional groups to participate in the governmental process of policy determination?

Technically, producer participation under the AAA referendum process does not raise as serious legal and political issues as did some of the other New Deal legislation alluded to, for the groups concerned in the AAA did not have the function of initiation. They voiced their acceptance or non-acceptance of a situation; they did not make it. The Secretary of Agriculture determined the need for and size of the quota. He, in the opinion of the Supreme Court, was guided by satisfactorily definite standards in exercising his discretion. Moreover, some courts have considered group initiation and participation to be permissible—when provision is made for the concurrence by the administrative official in the terms of the regulations.⁴⁹ This would appear to be logical and fair, since provision for appeal from local decisions seems to satisfy the necessary requirements of due process.

Federal agricultural policy requires a vote of ratification by interested producers before a control program or marketing plan can become effective. In certain cases, this obviously might, by giving it the use of coercive sanction, increase the power of the dominant group. It should also be remembered that a veto may not be of very much use without leadership and effective organization—attributes which inferior groups, such as croppers, usually do not have. But even with these limitations on the value of democratic procedures, it should not be forgotten that the franchise provides even the unorganized groups—who may in some instances be a majority—an opportunity they would not other-

⁴⁹ *Agricultural Prorate Committee v. Supreme Court*, in 5 Cal. (ed. 2) 550; 55 P. (2d) 495 (1936); *United States v. Edwards*, 14 F. Supp. 384 (S. D. Cal. 1936). In these cases, the legislation was held constitutional without passing on the question specifically. See Jaffe in *Harvard Law Review*, 51: 238, n. 1.

wise possess. The weaker elements of a functional group might face a situation in which it is necessary for them to accept some program, but they might be able to secure concessions otherwise unobtainable; awareness of them might conceivably affect the original drafting of the program.

To those who might feel inclined to question the AAA program's bringing private groups into policy formulation at this stage, it might be pointed out that the entrance of interest groups into this function is quite usual under our system of government. Furthermore, as mentioned previously, the function of the private groups at this point is *acceptance* rather than *initiation*. It seems inevitable that they bring their influence to bear at some stage of the legislative and administrative processes. Recognizing their existence formally, Congress now requires the registration of lobbyists in Washington. If they fail or have only limited success at one stage, they rejoin the attack at the next; and usually this sustained pressure gets results. Can it be that the particular time or stage at which they assert themselves is of transcending importance? One student of the subject has pointed out that "in practice the initiative and referendum have been used by various organized groups that have been unable to obtain or to block desired action by the legislature." And this, he concluded without alarm, "is, of course, not a matter for surprise, since the same organized groups furnish the activating force in the ordinary legislative process."⁵⁰

⁵⁰ Key, *Politics, Parties, and Pressure Groups*, 225. See also Jaffe in *Harvard Law Review*, 51: 252.

Indeed, some students of government are convinced that the real nature of modern society cannot be clearly understood unless analyzed in terms of the impact of pluralistic forces on the legal and political institutions.⁵¹ It may be that the referendum has possibilities of helping to meet part of the criticism aimed at contemporary society—and without seriously disturbing our basic traditional institutions and political ideals. A central idea of the political theory of some writers has been that the consent of those affected by law is needed in order to give it moral sanction and effective enforceability and that our present political organisms do not for this purpose place representation on a sufficiently realistic and equitable basis.⁵² From this point of view, the open participation of functional groups in the governmental process might be considered to represent a desirable development in the evolution of our political institutions. It may help to make public administration both more effective and more democratic. Certainly these are desirable goals, especially in a fast-moving era requiring increasingly complex action programs by the government.

⁵¹ See Francis W. Coker, "Pluralism," in Charles E. Merriam and Harry Elmer Barnes, *History of Political Theories* (New York, 1924), 111, and the same author's "Pluralism" in *Encyclopaedia of Social Sciences*, 12: 170-173 (New York, 1934); Harold J. Laski, *Studies in Law and Politics* (New Haven, 1932), 244-246, and *Foundations of Sovereignty* (New York, 1921), 232-249.

⁵² See the writings of Harold J. Laski; Jaffe, in *Harvard Law Review*, 51: 210-212; and Ernest S. Griffith, *The Impasse of Democracy* (New York, 1939), especially 128-140.