

**REFERENDUM: AN ADDRESS
READ BEFORE THE VERMONT
BAR ASSOCIATION;
OCTOBER 28TH, A. D. 1902**

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Referendum: An Address Read Before the Vermont Bar Association; october 28th, A. D. 1902
by John Young

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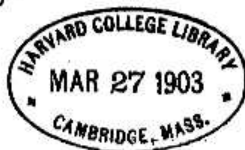
BY ITS PRESIDENT

JOHN YOUNG

OCTOBER 28TH, A. D. 1902.

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Resolved by the Senate and House of Representatives:

That Hon. John Young, the retiring President of the Vermont Bar Association, be requested to furnish a copy of his address before said Association upon the subject of the Constitutionality of a Referendum, for publication, and that the usual number of copies be printed for distribution to the members of the Legislature.

JOHN H. MERRIFIELD,

Speaker of the House of Representatives.

ZED S. STANTON,

President of the Senate.

Approved November 4, 1902.

JOHN G. McCULLOUGH,

Governor.

President's Address

To the Gentlemen of the Vermont Bar Association:

When the people of this State organized a state government, they adopted a written constitution. This was designed for the protection of the rights and privileges of the individual as well as of the people collectively. While recognizing the principle that all power originates with and flows from the people, the inhabitants fully appreciated the difficulty of organizing a government of the people on the principles of a pure Democracy.

The great inconvenience and expense of assembling the people together to discharge the various functions of government, and the uncertainties likely to result therefrom, led the people to adopt a representative form of government. To secure the best protection to the rights of the individual as well as of the people collectively, the governmental functions were delegated to three departments—the Executive, the Legislative, and the Judicial. The functions of each were defined in general and comprehensive, though clear and explicit terms. Each was designed to be a check upon the other, especially the Legislative upon the Judicial and the Judicial upon the Legislative. By the letter of that constitution the Legislative power was delegated to the General Assembly. No veto power was, by the letter of that instrument, reserved to the people.

Article 3 of the Amendments to this Constitution reads as follows:

“The Supreme legislative power of this State shall hereafter be exercised by a Senate and the House of Representatives.”

tatives; which shall be styled, 'The General Assembly of the State of Vermont,'—Each shall have and exercise the like powers in all acts of Legislation; and no bill, resolution, or other thing, which shall have been passed by the one, shall have the effect of, or be declared to be, a law, without the concurrence of the other."

Not only the language but the spirit of this article seems to delegate to the General Assembly the whole legislative power of the people, without reservation or limitation.

From the organization of the Government to the present time there have been very few attempts by the legislature to relieve itself of the final responsibility for the enactment of such laws as the wisdom of the Legislature determined to be for the best interest of the people.

While it may be claimed that the statutes of 1846 and of 1852, relating to the traffic in intoxicating liquor, each submitted to the people a proposition, each was sustained by our Supreme Court upon the ground that it was not a delegation of the legislative authority to the people.

The only way for the people to regain any part of the legislative power legitimately, must be by an amendment of the Constitution. For the Legislature to delegate this power to the people to be exercised by them *en masse* or through the ballot-box, or for the people to arbitrarily and forcibly resume any part of this power, of their own motion, must be revolutionary.

While the General Assembly has never attempted to delegate any part of its legislative power to the people of this State, if the scope of their action is to be finally determined from the decision of the Supreme Court heretofore made, the people themselves are now demanding the right to exercise the ultimate legislative functions, in determining the policy of this State in reference to the traffic in intoxicating liquor.

The Republican Party, at its last State Convention, adopted the following resolution :

“RESOLVED: That the Republican Party of Vermont adheres to its long cherished belief that unrestricted traffic in intoxicating liquor is a public evil, and that material modification of existing law on that subject should be made only after thorough discussion and mature deliberation of the people, and we request the State Legislature at its next session to make provision for ascertaining the will of the people by direct vote upon the acceptance or rejection of a license and local option law regulating the sale of intoxicating liquors and further providing that upon popular vote in favor of such a law, duly ascertained, the same shall become a statute law of the State in force.”

Another Convention called shortly after the dissolution of the Republican Convention adopted the following plank, as a part of its platform :

“We demand that the next Legislature pass a high license local-option law, and that the same be submitted to the voters of Vermont to become effective only when a majority of the voters of the State have signified their approval in the same manner as the prohibitory law became effective 50 years ago. And in the event of such a law being submitted to the people we urge all lovers of Vermont to support it at the polls.”

About 60,000 of the voters of this State have endorsed the referendum proposition contained in these platforms. In other words, about 60,000 out of about 70,000 of the voters of this State, have claimed the right, in themselves, by their vote at the ballot-box, to exercise the ultimate legislative power in determining the policy of this State in controlling the liquor traffic. 31,864 voters request this privilege to be granted to them. 28,201 voters demand it as a matter of right.

There is nothing uncertain in either of these two propositions. If you take the fair and usual meaning of the language used in each, the one requests and the other demands, for the voters of Vermont, through the ballot-box, the right to veto or approve whatever act the Legislature may see fit to pass upon this subject.

Will it be a waste of time for us to consider the constitutional problem raised by these propositions?

The judicial question involved is not new. In different phases the question of a referendum has been before the Courts of several of the states and has resulted in a great diversity of judicial opinion. Highly drawn pictures of the dangers likely to result from a pure Democracy, and subtle reasoning will be found in the opinions adverse to the referendum. On the other side will be found great confidence in the theory that ultimately, and after due deliberation, the majority of the people will vote right upon great questions of public policy. Ingenious, plausible and convincing arguments tend to establish that a referendum, properly framed, is not a delegation of legislative power but a law conditioned to become operative upon the happening of a certain contingency provided for in the act itself.

If the question is to be decided by the relative number of decisions in favor of and adverse to the reference of a general law to the vote of the whole state for acceptance or rejection, then, such practice is overwhelmingly condemned by the decisions of the courts of last resort in this country. Yet such proceeding is not entirely without support in judicial decision, and in strong, sound, convincing argument in dissenting opinions.

From the fact that to-day what are commonly known as "local option, high license liquor laws" are in force in so large a proportion of the states, I had assumed, before examining the matter, that the constitutionality of such laws