1916

A Proposal to Make the Political Party Answerable to the People for Legislation and Administration

Lyman Chalkley
University of Kentucky

Follow this and additional works at: https://uknowledge.uky.edu/klj

Part of the Law and Politics Commons

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation
Chalkley, Lyman (1916) "A Proposal to Make the Political Party Answerable to the People for Legislation and Administration," Kentucky Law Journal: Vol. 4 : Iss. 5 , Article 2. Available at: https://uknowledge.uky.edu/klj/vol4/iss5/2

This Article is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.
A PROPOSAL TO MAKE THE POLITICAL PARTY ANSWERABLE TO THE PEOPLE FOR LEGISLATION AND ADMINISTRATION.

To Thomas A. Combs, Esquire, Senator from Fayette County:

In reliance upon the conviction of your patriotic desire to further the interests of the whole body of people of the Commonwealth of Kentucky by every worthy expedient, the enclosed draft of an amendment to the Constitution is submitted to you, with the request that you give it serious and critical consideration; and, if it meets with your entire satisfaction and approval as to its wisdom and expediency, that you will use every effort to have it submitted to the people by a resolution of the present session of the General Assembly.

Analysis of Amendment.

Upon analysis of the amendment, it will be seen that there are substantially four proposals contained in it:

1. That the terms of Representatives be extended to six years, and of Senators to eight years;

2. That no enactment of the General Assembly shall go into effect until after the expiration of one year from its approval;

3. That the General Assembly shall be subjected after each regular session to a vote of confidence at the hands of the people;

4. That if a vote of confidence fail, an extra session shall be called to reconsider the recent legislation.

Consider these proposals seriatim.

This article was first published in the Lexington Herald.
(1). That the terms of legislators be extended:

It will be hardly necessary to consider the reasons for this proposition in detail, since the same considerations as to the expediency of lengthening the terms of service obtain here as in all cases, with this exception: that such extension will appear to be called for by the general scheme of the four proposals. It will appear, also, that the general scheme has provisions for greater benefits than are to be gained by frequent changes through biennial elections, and at the same time it provides against inexperience and inefficiency in members.

(2). That no law go into effect until after a year:

The sole object of this provision is that there shall be a time for consideration by the people of the results of the regular session so that they may be informed and act intelligently in voting confidence and lack of confidence. In other respects, the same considerations would obtain here as in other cases involving the general policy of deferring the commencement of the new laws.

(3). That the General Assembly shall be subjected after each regular session to a vote of confidence at the hands of the people:

This is the critical proposition. Its purpose is to fix responsibility for legislative action by calling to account the dominant political party and subjecting it to direction and control exercised by all the people. In order to understand its application and its operation to accomplish that purpose, it will be necessary to consider the present organization of the state administration and the machinery of it.

Theory of Control.

It may be laid down as undisputed that the only direction and control which the people now exercise over the General Assembly is through two-year and four-year elections of members. This is a control over the members severally. It does not constitute a control over the members when organized and discharging the functions of an assembly. The organized body is limited by provisions of the
constitution in the scope of its powers, but the only control over it in the way of direction of its policy and the details of its application is outside the Constitution. No such control was provided for in our constitutional establishment. The theory was at the beginning that the legislature would be the immediate mouthpiece and voice of the people, changing frequently, always fresh from the source and always prepared to express and announce the will of the people on all subjects.

It was believed that the “checks and balances” would provide stability in structure and policy, while the frequent meeting of the direct representatives of the people would secure ready alteration of the law to meet change in the public will. In other words, it was conceived that the legislative power was the heart of the organism and should throb in harmony with and immediate response to the will of the people; moreover, it was contemplated that the people would keep in close control of the making of the laws and their administration, accomplishing through that control complete and harmonious direction of the whole governmental system.

Theoretical Compartments.

To sum up: The theory was that through frequent elections of representatives, the people would direct and control the making of laws immediately; through the powers of appointment and removal of officers, the people would control the administration of the laws; through the people's courts, controversies would be adjudicated consistently with established principles and harmony and cohesion would be secured through the political supremacy and influence of the Governor.

Judicial Department.

It will be seen from this statement that the function of governing was to be divided into four compartments: (1) Law Making; (2) Law Administering; (3) Settling of Disputes; (4) Execution of Governmental Policy.

As the administration of justice is only one of the specialized provinces of the administration of law for present purposes we need not consider it further. It has been differentiated and has its own
individual place and theory of control which place it, of necessity, in a class by itself, with which there is no present plan to interfere.

No Office of Administration.

No separate office was created charged with the duty of administering the law. It was taken for granted that this duty would be taken over by the governor, but this assumption has proved to be entirely unfounded. He was called "Chief Executive," and the popular imagination supplied the additional phrase "of the laws." There seems to be no other warrant for this interpretation. On the contrary, it would seem that in the distribution of the powers of government the only one to which he could lay claim was that of executing the general policy of the state through supervision of the other departments regarded as a unity.

Executive Can Not Remove.

The State courts have generally held that the governor has not the power of appointment and removal of officers, thus denying to him the control of the administration of the laws. This was, no doubt, an expression of the prevailing sentiment adverse to a centralized administration. Whatever may have been the source of the decision, it prevented the development under the headship of the governor of an organized department of government, and wiped out all conception of an articulated compartment of administration.

Old Hickory's Legacy.

It is interesting and important to consider the fact that Andrew Jackson, ostentatiously the greatest of all Democrats, undoubtedly the most aggressive and beloved champion of a pseudo-decentralized government, professedly the discoverer and patron saint of "The Great Common People," that Old Hickory, the self-confessed exploiter of our policy, Power Nowhere, seized pointedly upon the power of removal of administrative officers, and asserted that it was inherent in the "Executive." He won his fight in the Federal courts and wielded the power to so good effect that the admirable executive department of the Federal Government has resulted, a compact, co-
ordinate, closely articulated, highly efficient scheme of administration with exclusive power in a single head. What a contrast when we consider the state governments, weak, poor, dependent, profligate, prodigal, inefficient, despised and ridiculous. Yet the Federal administration is the foundation and the legacy to the states of that arch conspirator for the rights of "The Great Common People." Sic Transit Gloria Mundi.

**Occupation for the People.**

Reduced to its simplest terms, Old Hickory's theory was that it was good politics to throw a sop to the people in the form of power to choose officers, if he himself had the power to remove them and fill the vacancies when they were obstinate in obeying his wishes. He provided harmless and satisfying occupations for his friends in the back yard by allowing them to play at the game of controlling the administration by electing the officers while he entertained a select few in the front yard umpiring the sport of dividing the spoils. Those in the front yard were in great glee. Those in the back yard were the same. And as for Old Andy:

"Old King Cole was a merry old soul,
A merry old soul was he:
He called for his pipe, he called for his bowl,
He called for his fiddlers three."

Ah! Those fiddlers! All would have gone well but for those fiddlers. Old Hickory could get the materials for his pipe and for his bowl by sending to the store; but those fiddlers demanded ready money, and ready money they must have. Yet Andrew Jackson loved to see his subjects happy. The only person who was not happy in this golden age of Democracy was the unfortunate political pariah, whose only reason for being was that he should pay the fiddlers at both these entertainments.

And the sincerity and simplicity of it all! How smoothly it worked! What a contrast with our present condition! We might well say with General Jackson Redeant in Aurum Saecula Priscum. In the simplicity and directness of his soul he wore a shock of hair
which stood up and out, four-square to all the corners of all the heavens. He wore on earth a coon-skin cap to keep his head warm. He wears a crown in heaven. Alas, alas! Our governor wears a shining crown in Frankfort, Kentucky. Shades of Samson defend us! for he, too, did "begin to deliver Israel out of the hands of the Philistines."

"The Philistines be upon thee, Samson!"

No Responsibility of Public Officers.

This truly Democratic doctrine—that the executive has the inherent power to remove officers of administration—our state courts have refused to recognize, with the consequence that the governor has no part anywhere in the administration. The situation which has resulted is that, in our states, Andrew Jackson's theory that all officers, even the most petty, should be elected by the people, is in full swing, and, as a result of the ruling of the courts, they are not answerable by law to anybody.

Schemes of Remedy.

Many proposals have been made for the remedy of this evil, none of them, however, reaching the source of the trouble, and all, consequently, ineffectual if not harmful. It is a general practice to attempt to control official action through detailed directions for conduct of office set out in the Constitution. The consequence of this performance is that the officer may do as he pleases with impunity, while the people have forged additional fetters for themselves by making it harder to change the law. The Referendum and Recall are advocated by some as a last resort of desperation. In some states the powers of the governor have been enlarged, with an effect altogether wholesome. But all these (except the last, which our people do not yet seem to be ready to adopt) fail because there is no articulated organization under a responsible head. In all these is the fatal vice that each administrative officer is independent of immediate direction and control. They are responsible only to the people at the polls, individually and severally.
Legislature Gives a Stone.

While the people, not being able to probe back of the symptoms of which, alone, they are conscious, are thus stumbling in the dark, not arriving at a cure because they have not diagnosed the disease, two forces have been at work. The General Assembly has been providing for administration of the laws by providing additional officers and departments and specifying the duties of administrative officers in detail. This, however, is not a cure but an aggravation. The officer is no more under control because there are two of him, or three of him, or four of him, or any other number of him. Control and direction are needed, not officers. The long suffering people ask for bread.

Political Control of Officers.

Yet direction and control have developed, but outside of the Constitution, in that the dominant political party has gradually taken under its charge the administration as well as the enactment of the laws. The field which the people left unoccupied has in both cases been seized as the spoils of war. This means that the direction and control of both the legislative body and of the officers who administer the laws are accomplished through political influence exerted by a power which is irresponsible, is outside the law and the Constitution, is above the law, and which is neither the people nor representative of the people. In the meanwhile, the people are busy digesting the sop of nominating those who shall enjoy the fruits. Again, to sum up: By reason of the failure of the people to make provision in the governmental establishment for an effective control and direction of the General Assembly and the officers of administration, direction and control have been assumed by an irresponsible power which is itself not under the control either of the state or the people, and at best is partisan and self-seeking, a hideous, myriad-headed monster.

The Fathers Dreaded the Party.

This very outcome was foreseen and feared by the Fathers of the Constitution at the time of the inauguration of our system of government. On many occasions they evinced the fear that the control of
government would pass away from the people into the possession of irresponsible political parties. They failed to make any provision, however, by which either to recognize the party as the logical controller of the legislature and to regulate it by law or to meet the situation if the contingency should arise. It was, perhaps, believed that no administrative department was needed since this was to be a "government of laws and not of men," one in which men would obey the laws through inevitable impulse and virtuous disposition. They left the question of policy to be determined by the people in the future at the time of the happening and according to the nature of the outcome. No American constitution today has more than a rudimentary recognition of the governmental principle that the people shall utilize the party for the control of the legislative body and of the officers of administration.

The Problem and Answer.

The dread of the Fathers has been realized and we face, today, the problems: How can a readjustment be accomplished to the end that the Legislature shall be made responsible to and brought under the control of the ultimate sovereignty of the People? How can the administration be made responsible and reduced to systematic and orderly operation under the direction and control of the People?

The answer to both branches of the question seems to be the same: Make the Political Party Accountable to the People.

The Party, the People's Keeper?

It will be asked at once, Is not the dominant party the people? The answer is as direct and unequivocal, as emphatic denial can make it. No!

Government a Franchise.

Under our present system the control of the government for partisan purposes is the prize at stake in every general and local election. Victory in a political contest is now looked upon as the grant of an unlimited franchise, a monopoly conferred by the citizens upon the victor to exercise the entire power of government. This is true in spite of the fact that the theory is, and the deluded people believe
that through the polls, they declare only their choice as to which of the organizations shall exercise power and execute policies impartially and fairly for the common and general good. They imagine that they indicate a preference for a general policy of administration which shall be executed to the common welfare of all citizens. They mean to repose a confidence in the successful party that that policy shall be carried out impersonally, altruistically and with due process and equal protection in all cases. They do confide and trust that power shall not be used arbitrarily for or against any person or interest. They intend to appoint agents who shall be agents of all alike, to control affairs for a united body politic, although only a majority or a plurality chose the particular agent.

**Government Farmed Out.**

The people are deceived. In this transaction, they are an altruistic and impersonal benefactor engaged in the unsuccessful and suicidal pastime of stimulating contests between factional and selfish bodies of political exploiters, the reward and prize being the blood and fat of the People themselves. The slogan, "To the Victor Belong the Spoils" is translated thus; The government is a fat province flowing with milk and honey and goes to the winner without reserve and without regard. After the election, there exists only a political organization to whom the government is farmed out without compensation and without recourse upon the party. The party is neither the State nor the People; the State does not exist, and that, too, when the party is composed of, at most, a majority, but usually only a plurality of the members of the State. As at present organized, the State (the political society) of Kentucky has only two functions, namely, To determine by choice which of the organizations shall enjoy the franchise, and To execute the decrees of the Party.

**Legislation by Proprietary Right.**

Legislation and administration have been conferred upon the party to be exercised by proprietary right. It is not provided that the people shall be consulted with or otherwise recognized. We have created an imperium sole but of diverse and multiple constituency.
Yearning for a Savior.

The citizens bleed in silence, powerless, dumb, yearning for a savior to release them from the yoke of an autocratic and self-constituted tyrant. The Greek commonwealths and South American republics offer no more characteristic instances of irresponsible autocracy. How far have we gotten away from that simple, soul-inspiring motto of Virginia, Sic Semper Tyrannis.

Party Must be Answerable.

From this analysis it seems that direction and control of legislative and administrative action must be brought under subjection to the citizenship of the State as the ultimate judge, and that, in order to accomplish such a purpose, the Party must be made immediately responsible and accountable to the People. This can be achieved only by causing legislative action to be submitted to the criticism of all the citizens regardless of party affiliation and allegiance, and calling upon the Party to justify its course upon the hustings under the penalty of disintegration through defection of its own members individually and severally worked upon. This is the purpose of the third proposal to bring about.

Fourth Proposal.

The fourth proposal has for its object only the successful operation and accomplishment of the third. Its expediency will be determined alone by its fitness to attain that object.

Expediency and Expectation.

The plan of the amendment carries with it these expedients and expectations:

(1). Longer terms for the legislators with the consequent increase of efficiency and greater dignity of office and vocation.

(2). A real control over the General Assembly and over the administration through a vote of confidence by the People instead of the unsuccessful plan of frequent change of membership.

(3). The informing and education of the people in public affairs
and the stimulating of their interest and confidence in the government by the re-establishments of the hustings.

(4). A return to the "Frame" form of constitution, in which only structure and fundamental principles are laid down.

(5). Flexibility in execution and facility in change of public policy.

(6). Restoration to the General Assembly of wide scope of action, freed from unnecessary and paralyzing express limitations and restrictions.

(7). Facility in change of the laws for the benefit of the People.

(8). Possibility of the exercise of those powers which have been withdrawn from the General Assembly but not reposed in any other agency.

Some Advantages.

(9). Consideration of proposed legislation from the standpoint of the whole state rather than from the standpoint of the member's own locality.

(10). Trustworthy indication of the true will of the people with respect to desirable changes in the constitution.

(11). Effective elimination of inefficient and corrupt public officers.

(12). Divorcement of the administration from too great political control.

(13). Co-ordination between law-making and law-administering functions.

(14). Approximation to a government of administration readily responsive to an enlightened public sentiment.

Text.

The text of the proposed amendment is as follows:

I.

Senators and Representatives in the General Assembly, who shall be elected at the general election in November, 1917, shall be elected to hold office for terms respectively, that is to say, Senators for eight years and Representatives for six years.
II.

After the election for Senators and Representatives in the General Assembly, which shall be held in 1917, elections for Senators and Representatives in the General Assembly shall be held, respectively, that is to say, for Senators, every fourth year, and for Representatives every sixth year: Provided, however, that the present scheme of classification of Senators based upon the alternation of one-half the whole number of Senators with the other half in time of election and commencement of term of office, shall continue.

III.

Senators whose terms do not expire on December 31, 1917, shall hold their offices for six years from the first of January in the year 1918.

IV.

Enactments made at a regular session of the General Assembly shall not go into effect and be binding until the expiration of a year and a day after the day of the final adjournment of the session at which they are made: Provided, however, that this provision shall not be applied to general appropriation bills, to bills to raise revenue, and to public school laws.

V.

(1). After the first day of January in the year 1918 it shall be the duty of the Governor of the Commonwealth on a day not subsequent to the 30th day of November nor prior to the 15th day of November in every year in which a regular session of the General Assembly is held, to issue his writ of election, addressed to the sheriff, the county clerk and the officers charged with the duty of canvassing and making return of elections in each county severally, by which writ he shall call and proclaim an election to be held in each county, upon the day which the Governor shall designate in his writ, which day shall be subsequent to the 11th day and prior to the 22nd day of the month of December next following the date of the writ.

(2). It shall be the duty of the sheriff, the county clerk, and the
officers charged with the duty of holding elections in each county, severally to give notice, prepare for and proceed to hold an election in pursuance of the writ of the Governor, and, in holding the election, the officers shall pursue the course and procedure prescribed in the statutes in force at the date of the writ of the Governor applicable to elections to fill vacancies in the General Assembly.

(3). It shall be the duty of the county clerk to cause to be printed upon the official ballots to be used at such elections the words in text as follows:

Shall the conduct and services of the sitting member, (or members as the case may be) of the General Assembly, representing this county, which were transacted at the regular session last past be approved?

Approved ............................
Not approved ........................

(4). It shall be the duty of the county officers holding the election to canvass the ballots and make returns, and of the officers charged with the duty of canvassing the returns of elections within each county, severally to act in all respects in accordance with the provisions of the statutes relating to the election of Representatives in the General Assembly, and make return as provided for therein.

(5). It shall be the duty of the Secretary of State to certify as soon as may be to the Governor a summary of the result of the election in each county.

VI.

If it appears to the Governor from the returns of the election held in pursuance of his writ and proclamation issued in November of any year in which a regular session of the General Assembly is held that the aggregate number of those for whom a majority of the electors voting in each county severally cast ballots marked "approved" is less than the number constituting one-half of the total number of Representatives provided for in the Constitution, then, in that case, it shall be the duty of the Governor to issue his writ convening the General Assembly in session in the mode and form provided by law at the time of the issuing of the writ. It shall be the duty of the Governor to designate in his writ the day for the convening of
the General Assembly, and to designate a day prior to the first day of March next succeeding.

VII.

When convened by the writ of the Governor issued in consequence of the failure of one-half the sitting members to receive a vote of approval at an election called by the Governor to be held in December following a regular session in any year, it shall be the duty of the General Assembly to reconsider all enactments made at its last preceding regular session, and any other matters that the Governor shall, by message, submit to them upon the convening of the Assembly.

VIII.

Each session of the General Assembly convened by writ of the Governor issued following an election at which less than one-half of the constituent membership of the House of Representatives received a vote of approval each, shall be deemed and considered to be one called to convene by the Governor on an extraordinary occasion.

LYMAN CHALKLEY.

THE NEW CODE.

"Morality is that science which teaches men their duty and the reason of it."—Paley, Mor. Ph. b. 1, c. 2.

The attitude of our President towards Columbia, his direct and forceful advocacy of a policy calculated to uplift world-politics, strict adherence to a principle long established by justice and God, devotion to duty as he sees that duty, has been assailed by a rabid throng of enthusiasts. Plausible but unreasonable, legal but illogical, their arguments are but cumulative evidences of a world-wide demoralization.

International law has been cited with great "gusto" by the "calamity howlers." England, France, Germany, Russia, Austria, Italy, practically all of the great powers have taken their possessions by right of force. Why, at this late hour, they inquire, does the