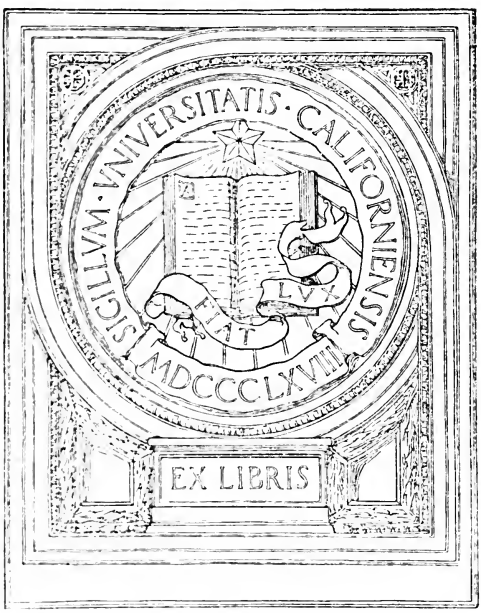

CONSTITUTIONS OF ARIZONA AND NEW MEXICO

THE INITIATIVE, REFERENDUM, AND RECALL AS EMBODIED IN THE ARIZONA CONSTITUTION, WITH A HISTORY OF THEIR ORIGIN AND DEVELOPMENT IN THE UNITED STATES

SPEECH

OF

HON. GEORGE E. CHAMBERLAIN

OF OREGON

IN THE

SENATE OF THE UNITED STATES

APRIL 17, 1911

WASHINGTON
1911

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SPEECH

OF

HON. GEORGE E. CHAMBERLAIN.

The Senate having under consideration the resolution (S. J. Res. 2) approving the constitutions formed by the constitutional conventions of the Territory of New Mexico and the Territory of Arizona—

Mr. CHAMBERLAIN said:

Mr. PRESIDENT: The Sixty-first Congress passed an act entitled "An act to enable the people of New Mexico to form a constitution and State government and be admitted to the Union on an equal footing with the original States, and to enable the people of Arizona to form a constitution and State government and be admitted to the Union on an equal footing with the original States." This act was approved by the President on the 20th day of June, 1910.

On the 21st day of January, 1911, the people of New Mexico adopted a constitution, and on the 7th day of February, 1911, the people of Arizona adopted theirs. An effort was made in the expiring moments of the last Congress to adopt House joint resolution 295, approving the constitution of New Mexico, and the purpose of the friends of the resolution, in the light of subsequent events, seems to have been to admit New Mexico to the Union and postpone or defeat the admission of Arizona. But if this was the purpose it was defeated, because the friends of Arizona were there to insist that the same treatment should be accorded to the people of both Territories, and the splendid fight made by the distinguished Senator from Oklahoma to see that equal and exact justice should be accorded to the people of both is fresh in the minds of most of the Members of this body.

No enabling act was necessary under the Constitution, nor under any law of Congress, to authorize the people of either of these Territories to apply to Congress for admission to the Union. On the contrary, the method of procedure has been left entirely to the States, and in some instances, notably upon the admission of Vermont, Kentucky, Tennessee, Maine, Michigan, Arkansas, Florida, Idaho, California, and Oregon, the initial steps were taken for the preparation of their constitutions and admission to the Union without any enabling acts having been previously passed by Congress.

The act in question is the first in the history of our country where provision has been made in a single act enabling two Territories to take the initial steps looking to the framing and adoption of a constitution as preliminary to their knocking at the doors of Congress for admission as component parts of the Federal Union. The restrictions and limitations applicable to each of the Territories in question are practically the same, and I shall insist that both Territories are entitled to admission at one and the same time under the same terms and conditions, if

they have met the requirements of the Constitution and the act of authorization, and the conditions exist in both which entitle them to admission at the hands of this Congress.

I do not understand that any objection is made to their admission on the ground that the necessary conditions do not exist in both to entitle them to admission, or that any objection whatsoever has heretofore been made to the admission of the Territory of New Mexico, either because of any constitutional inhibition or any alleged violation of the Constitution of the United States in the provisions of the constitution which her people have adopted and certified up through the proper channels for the approval of Congress, notwithstanding the fact that they have adopted one entirely hostile to their best interests; but it has been objected to the constitution adopted by the people of Arizona that it is violative of that portion of section 4 of Article IV of the Constitution of the United States, which provides that—

> The United States shall guarantee to every State in this Union a republican form of government.

If the constitution adopted by the constitutional convention of Arizona is violative of this provision, it is also violative of section 20 of the enabling act of June 20, 1910, which provides in substance that the constitution of Arizona shall be republican in form and shall make no distinction in civil or political rights on account of race or color, and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence.

Section 4 of Article IV of the Constitution is a restatement in slightly different language of the substance of a proviso in Article IV of the Ordinance of 1787 for the government of the territory of the United States northwest of the Ohio River, requiring that the constitutions and government of the States carved out of this territory and admitted by their delegates into the Congress shall be republican and in conformity to the principles contained in said articles.

The provision of the enabling act with reference to the admission of Arizona is a reenactment, first, of the provision covering the admission of new States adopted by the Constitutional Congress on the 13th of July, 1787, and, second, of section 4 of Article IV of the Constitution of the United States, as it was finally ratified by the Thirteen Colonies.

The territory embraced within the limits of Arizona is a part of the territory ceded to the United States by Mexico under the terms of the treaty of Guadalupe Hidalgo on February 2, 1848, and a part of what is known as the Gadsden Purchase of 1852, and there is no limitation or restriction placed upon the Congress of the United States in either the treaty or the agreement of purchase as to the admission of this acquired territory into the Union.

In the Louisiana Purchase, however, the duty is imposed that States carved out of the territory shall be admitted to the Union under the terms of the Constitution. It has been assumed without question, even in the absence of such treaty stipulation, that all territory acquired by the United States, whether under treaty or otherwise, can only be admitted to the Union upon a compliance with the provisions of the Constitution and the requirements of the ordinance of 1787, which became a com-

pact between the several States of the Union at the time of its adoption with reference to the territory then owned by them, and which was practically ceded to the United States to be later admitted in due course to statehood.

In considering the constitution adopted by the people of Arizona, therefore, it will be necessary to consider it in the light of these instruments and the construction placed thereon by all the departments of government, national and State.

The provisions of the Arizona constitution which it is insisted are obnoxious to the Constitution are Articles IV and VIII, establishing as a part of the fundamental law the initiative, the referendum, and the recall. These provisions are as follows:

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

1. Initiative and referendum.

SEC. 1. (1) The legislative authority of the State shall be vested in a legislature, consisting of a senate and a house of representatives, but the people reserve the power to propose laws and amendments to the constitution and to enact or reject such laws and amendments at the polls, independently of the legislature; and they also reserve, for use at their own option, the power to approve or reject at the polls any act, or item, section, or part of any act, of the legislature.

(2) The first of these reserved powers is the initiative. Under this power 10 per cent of the qualified electors shall have the right to propose any measure, and 15 per cent shall have the right to propose any amendment to the constitution.

(3) The second of these reserved powers is the referendum. Under this power the legislature, or 5 per cent of the qualified electors, may order the submission to the people at the polls of any measure, or item, section, or part of any measure, enacted by the legislature, except laws immediately necessary for the preservation of the public peace, health, or safety, or for the support and maintenance of the departments of the State government and State institutions; but to allow opportunity for referendum petitions, no act passed by the legislature shall be operative for 90 days after the close of the session of the legislature enacting such measure, except such as require earlier operation to preserve the public peace, health, or safety, or to provide appropriations for the support and maintenance of the departments of State and of State institutions: *Provided*, That no such emergency measure shall be considered passed by the legislature unless it shall state in a separate section why it is necessary that it shall become immediately operative, and shall be approved by the affirmative votes of two-thirds of the members elected to each house of the legislature, taken by roll call of ayes and nays, and also approved by the governor; and should such measure be vetoed by the governor, it shall not become a law unless it shall be approved by the votes of three-fourths of the members elected to each house of the legislature, taken by roll call of ayes and nays.

(4) All petitions submitted under the power of the initiative shall be known as initiative petitions, and shall be filed with the secretary of state not less than four months preceding the date of the election at which the measures so proposed are to be voted upon. All petitions submitted under the power of the referendum shall be known as referendum petitions, and shall be filed with the secretary of state not more than 90 days after the final adjournment of the session of the legislature which shall have passed the measure to which the referendum is applied. The filing of a referendum petition against any item, section, or part of any measure shall not prevent the remainder of such measure from becoming operative.

(5) Any measure of amendment to the constitution proposed under the initiative, and any measure to which the referendum is applied, shall be referred to a vote of the qualified electors, and shall become law when approved by a majority of the votes cast thereon and upon proclamation of the governor, and not otherwise.

(6) The veto power of the governor shall not extend to initiative or referendum measures approved by a majority of the qualified electors.

(7) The whole number of votes cast for all candidates for governor at the general election last preceding the filing of any initiative or referendum petition on a State or county measure shall be the basis on which the number of qualified electors required to sign such petition shall be computed.

(8) The powers of the initiative and the referendum are hereby further reserved to the qualified electors of every incorporated city, town, and county as to all local, city, town, or county matters on which such incorporated cities, towns, and counties are or shall be empowered by general laws to legislate. Such incorporated cities, towns, and counties may prescribe the manner of exercising said power within the restrictions of general laws. Under the power of the initiative 15 per cent of the qualified electors may propose measures on such local, city, town, or county matters, and 10 per cent of the electors may propose the referendum on legislation enacted within and by such city, town, or county. Until provided by general law, said cities and towns may prescribe the basis on which said percentages shall be computed.

(9) Every initiative or referendum petition shall be addressed to the secretary of state in the case of petitions for or on State measures, and to the clerk of the board of supervisors, city clerk, or corresponding officer in the case of petitions for or on county, city, or town measures; and shall contain the declaration of each petitioner, for himself, that he is a qualified elector of the State (and in the case of petitions for or on city, town, or county measures, of the city, town, or county affected), his post-office address, the street and number, if any, of his residence, and the date on which he signed such petition. Each sheet containing petitioners' signatures shall be attached to a full and correct copy of the title and text of the measure so proposed to be initiated or referred to the people, and every sheet of every such petition containing signatures shall be verified by the affidavit of the person who circulated said sheet or petition, setting forth that each of the names on said sheet was signed in the presence of the affiant, and that in the belief of the affiant each signer was a qualified elector of the State, or, in the case of a city, town, or county measure, of the city, town, or county affected by the measure so proposed to be initiated or referred to the people.

(10) When any initiative or referendum petition or any measure referred to the people by the legislature shall be filed, in accordance with this section, with the secretary of state, he shall cause to be printed on the official ballot of the next regular general election the title and number of said measure, together with the words "Yes" and "No" in such manner that the electors may express at the polls their approval or disapproval of the measure.

(11) The text of all measures to be submitted shall be published as proposed amendments to the constitution are published, and in submitting such measures and proposed amendments the secretary of state and all other officers shall be guided by the general law until legislation shall be especially provided therefor.

(12) If two or more conflicting measures or amendments to the constitution shall be approved by the people at the same election, the measure or amendment receiving the greatest number of affirmative votes shall prevail in all particulars as to which there is conflict.

(13) It shall be the duty of the secretary of state, in the presence of the governor and the chief justice of the supreme court, to canvass the votes for and against each such measure or proposed amendment to the constitution within 30 days after the election, and upon the completion of the canvass the governor shall forthwith issue a proclamation, giving the whole number of votes cast for and against each measure or proposed amendment, and declaring such measures or amendments as are approved by a majority of those voting thereon to be law.

(14) This section shall not be construed to deprive the legislature of the right to enact any measure.

(15) This section of the constitution shall be, in all respects, self-executing.

SEC. 2. The legislature shall provide a penalty for any willful violation of any of the provisions of the preceding section.

ARTICLE VIII.

REMOVAL FROM OFFICE.

1. Recall of public officers.

SECTION 1. Every public officer in the State of Arizona holding an elective office, either by election or appointment, is subject to recall from such office by the qualified electors of the electoral district from which candidates are elected to such office. Such electoral district may include the whole State. Such number of said electors as shall equal 25 per cent of the number of votes cast at the last preceding general election for all of the candidates for the office held by such officer may by petition, which shall be known as a recall petition, demand his recall.

SEC. 2. Every recall petition must contain a general statement in not more than 200 words of the grounds of such demand, and must be filed in the office in which petitions for nominations to the office held by the incumbent are required to be filed. The signatures to such recall petition need not all be on one sheet of paper, but each signer must add to his signature the date of his signing said petition and his place of residence, giving his street and number, if any, should he reside in a town or city. One of the signers of each sheet of such petition, or the person circulating such sheet, must make and subscribe an oath on said sheet that the signatures thereon are genuine.

SEC. 3. If said officer shall offer his resignation, it shall be accepted, and the vacancy shall be filled as may be provided by law. If he shall not resign within five days after a recall petition is filed, a special election shall be ordered to be held, not less than 20 nor more than 30 days after such order, to determine whether such officer shall be recalled. On the ballots at said election shall be printed the reasons, as set forth in the petition, for demanding his recall, and, in not more than 200 words, the officer's justification of his course in office. He shall continue to perform the duties of his office until the result of said election shall have been officially declared.

SEC. 4. Unless he otherwise request, in writing, his name shall be placed as a candidate on the official ballot without nomination. Other candidates for the office may be nominated to be voted for at said election. The candidate who shall receive the highest number of votes shall be declared elected for the remainder of the term. Unless the incumbent receive the highest number of votes, he shall be deemed to be removed from office, upon qualification of his successor. In the event that his successor shall not qualify within five days after the result of said election shall have been declared, the said office shall be vacant, and may be filled as provided by law.

SEC. 5. No recall petition shall be circulated against any officer until he shall have held his office for a period of six months, except that it may be filed against a member of the legislature at any time after five days from the beginning of the first session after his election. After one recall petition and election, no further recall petition shall be filed against the same officer during the term for which he was elected, unless petitioners signing such petition shall first pay into the public treasury, which has paid such election expenses, all expenses of the preceding election.

SEC. 6. The general election laws shall apply to recall elections in so far as applicable. Laws necessary to facilitate the operation of the provisions of this article shall be enacted, including provision for payment by the public treasury of the reasonable special election campaign expenses of such officer.

Is there anything in these provisions violative either of the letter or the spirit of the Constitution or, if you please, of the terms of the enabling act? If not, nothing remains for Congress to determine except the single question whether the necessary conditions exist in Arizona as to area, productivity, capacity, population, and the loyalty and good disposition of her people. As to this latter proposition no objection has been raised, and I shall confine myself to a discussion of the question whether the constitution of Arizona does in any respect violate section 4 of Article IV of the Constitution of the United States; and I maintain, first, that no argument can be found, either in reason or by analogy, that makes the Arizona constitution providing for the initiative, referendum, and recall obnoxious to this or any provision of the Constitution of the United States; second, that these provisions are but the reservation of powers in a written constitution which have been exercised in this country from the earliest colonial times, and the exercise of them has been recognized as constitutional by the legislative, judicial, and executive branches of the Government, both State and National.

In ascertaining what the framers of the Constitution meant when they declared that Congress should guarantee to every State a republican form of government, resort must be had to the conditions which surrounded the administration of the

governments of the several Colonies as well as to contemporaneous and subsequent discussion and judicial decision.

There was nothing which preceded the Constitutional Convention that could have caused the framers of what Gladstone declared "the most wonderful work ever struck off at a given time by the brain and purpose of man" to fear to intrust the people of the States that might thereafter be admitted to the Union with the power of governing themselves, of enacting their own laws, whether directly or by representatives or by the union of both. Both of these systems, separately and in combination, were in vogue in the Colonies at the adoption of the Constitution, and had been since the earliest settlement of New England. The Revolutionary War had been fought to a successful conclusion by the participation of Colonies some of which were practically governed by the people without more than the form of representative governments. If in framing the constitutional provision under discussion its framers feared to intrust the people with all power, why did they not go further and enjoin, as a condition of admission to the Union, a modification of the Constitution and laws of the Colonies to the idea that the people could not be trusted?

A fair consideration of contemporary literature and discussion will lead to the inevitable conclusion that the fear that animated the framers of the Constitution was not the fear of the mob spirit which we hear so much about in these days, it was not the fear that the people were incapable of self-government or that they could not be trusted to legislate for themselves, but it was a fear that attempts might later be made to establish forms of government with aristocratic or monarchical tendencies, and to protect them from domestic insurrection or foreign invasion.

The Declaration of Independence itself contains the severest possible arraignment of the despotism of a monarchy, and expresses absolute confidence in the people. There is no suggestion in that remarkable document that the people themselves were incapable of self-government; on the contrary, one of its most frequently quoted provisions is that wherein it is stated as a self-evident truth—

> that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these things it is the right of the people to alter or abolish it and to institute new government, laying its foundations on such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness.

To establish and maintain a government deriving its just powers from the consent of the governed the Revolution was fought. It was a battle for individual rights and individual liberty against the despotism of monarchy, and emerging from the smoke of battle the framers of the Constitution could only have had in mind the establishment of a republican form of government deriving its just powers from the consent of the governed as contradistinguished from a monarchical form. It was upon this theory that one of the resolutions submitted to the convention by Edmund Randolph, of Virginia, was, after some slight amendments, unanimously adopted declaring it the

duty of Congress to guarantee to every State a republican form of government.

As further tending to prove that this was the object and purpose of the framers of the Constitution let us recur to the letter of Madison in The Federalist, edited by him in conjunction with Hamilton and Jay. In discussing the provision of the Constitution now under consideration he says:

> To guarantee to every State in the Union a republican form of government, to protect each of them against invasion, and on application of the legislature or of the executive (when the legislature can not be convened) against domestic violence.
>
> In a confederacy founded on republican principles and composed of republican members the superintending government ought clearly to possess authority to defend the system against aristocratic or monarchical innovations. The more intimate the nature of such a union may be the greater interest have the members in the political institutions of each other, and the greater right to insist that the forms of government under which the compact was entered into should be substantially maintained. But a right implies a remedy; and where else could the remedy be deposited than where it is deposited by the Constitution? Governments of dissimilar principles and forms have been found less adapted to a Federal coalition of any sort than those of kindred nature. * * * But the authority extends no further than to a guaranty of a republican form of government, which supposes a preexisting government of the form which is to be guaranteed. As long, therefore, as the existing republican forms are continued by the States they are guaranteed by the Federal Constitution. Whenever the States may choose to substitute other republican forms they have a right to do so and to claim the Federal guaranty for the latter. The only restriction imposed on them is that they shall not exchange republican for antirepublican constitutions, a restriction which, it is presumed, will hardly be considered as a grievance. (Letter No. 43.)

This letter was addressed to the people of the State of New York at a time when the ratification of the Constitution by that State was under consideration, and by a distinguished member of the Constitutional Convention. Here is a distinct declaration of the purposes of the convention to authorize Congress to defend the system of government provided for by the Constitution against aristocratic or monarchical innovations and a right of any time to substitute other republican forms of government not inconsistent with the general plan and their right to claim a Federal guaranty for the latter, the only restriction being that no State should exchange a republican for an antirepublican constitution.

This statement, by so distinguished a statesman and one who was entirely familiar with the differing conditions and forms of government in the Thirteen Colonies prior to and at the time when the Constitution was being framed in convention, is entitled to the greatest weight in attempting to arrive at the purposes of the convention in framing the section thereof under consideration; and it must therefore be taken in connection with the conditions and forms of government as they existed in the Colonies before and at the time of the convention.

In this connection it is proper to call attention to some of the constitutions and bills of rights of the Colonies prior to the formation of the Federal Constitution.

The North Carolina bill of rights of 1776 declares:

> 1. That all political power is vested in and derived from the people only.

The Virginia bill of rights of 1776 declares:

> SECTION 1. That all men are by nature equal, free, and independent, and have certain inherent rights, of which, when they enter into a state of society, they can not by any compact deprive or divest their

posterity, namely, the enjoyment of life and liberty, with the means of acquiring and possessing property and pursuing and obtaining happiness and safety.

SEC. 2. That all power is vested in, and consequently derived from, the people.

The Maryland bill of rights of 1776 says:

1. That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole.

The Pennsylvania bill of rights of 1776 declares:

III. That the people of this State have the sole, exclusive, and inherent right of governing and regulating the internal police of the same.

The New York bill of rights of 1777 declares:

I. This convention, therefore, in the name and by the authority of the good people of this State, doth ordain, determine, and declare that no authority shall, on any pretense whatever, be exercised over the people or members of this State but such as shall be derived from and granted by them.

The Connecticut constitution of 1777 declares:

That the ancient form of civil government, contained in the charter from Charles the Second, King of England, and adopted by the people of this State, shall be and remain the civil constitution of this State, under the sole authority of the people thereof, independent of any king or prince whatever. And that this Republic is, and shall forever be and remain, a free, sovereign, and independent State, by the name of the State of Connecticut.

The first constitution submitted in Massachusetts was rejected by the people by direct vote at town meetings in the spring of 1779, because it contained no bill of rights, and for other reasons. The next constitution submitted, that of 1780, the people adopted by direct vote at town meetings and by more than two-thirds of all who voted. The bill of rights declares:

ARTICLE I. All men are born free and equal, and have certain natural, essential, and inalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

ART. IV. The people of this Commonwealth have the sole and exclusive right of governing themselves as a free, sovereign, and independent State, and do, and forever shall, exercise and enjoy every power, jurisdiction, and right which is not, or may not hereafter be, by them expressly delegated to the United States of America in Congress assembled.

In New Hampshire four constitutions were submitted to the people, who voted directly upon them at town meetings. The first three were rejected (American Political Science Review, Vol. II, p. 549), largely because there were no express limitations upon the power of the legislature—no bill of rights. The bill of rights of the fourth one, that of 1784, declares:

VII. The people of this State have the sole and exclusive right of governing themselves as a free, sovereign, and independent State, and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right pertaining thereto which is not or may not hereafter be by them expressly delegated to the United States of America in Congress assembled.

The Vermont constitution of 1777 declares:

IV. That the people of this State have the sole, exclusive, and inherent right of governing and regulating the internal police of the same.

The New Jersey constitution of 1776 declares:

Whereas all the constitutional authority ever possessed by the Kings of Great Britain over these Colonies or their other dominions was, by compact, derived from the people and held of them for the common

interest of the whole society, allegiance and protection are, in the nature of things, reciprocal ties, each equally depending upon the other and liable to be dissolved by the others being refused or withdrawn. And whereas George III, King of Great Britain, has refused protection to the good people of these Colonies, and, by assenting to sundry acts of the British Parliament, attempted to subject them to the absolute dominion of that body, and has also made war upon them in the most cruel and unnatural manner for no other cause than asserting their just rights, all civil authority under him is necessarily at an end and a dissolution of government in each Colony has consequently taken place.

The South Carolina constitution of 1776 declares:

I. That this congress, being a full and free representation of the people of this Colony, shall henceforth be deemed and called the General Assembly of South Carolina, and as such shall continue until the 21st day of October next, and no longer.

The Georgia constitution of 1777 declares:

We, therefore, the representatives of the people, from whom all power originates, and for whose benefit all government is intended, by virtue of the power delegated to us, do ordain and declare, and it is hereby ordained and declared, that the following rules and regulations be adopted for the future government of this State.

It will be seen from these excerpts from the bills of rights and constitutions of the several Colonies, each and all of which must have been in the minds of the framers of the Federal Constitution, that, far from entertaining any fear of the people, there was an expression of absolute confidence in them in each of the Colonies as the source from which all power had its origin. Many of the Colonies had been governed as pure democracies, the people legislating directly at town meetings held for that purpose and electing as well as instructing those who were to assist in administering the laws of their own making.

The representative idea was one of gradual evolution. There was no sudden change from a pure democracy to a representative form of government. There has never been a time when the governments, either of the Colonies or the States, were entirely representative. On the contrary, with the gradual trend toward the representative system the direct system remained intact for many years after the adoption of the Constitution, and it has never yet been entirely abolished in any of the States. Always the tendency was, even in the most typically representative forms of government, to make the representatives or agents of the people directly responsive to the popular will. I shall show later that so long as these representatives or agents of the people were acting in truth and in fact as their representatives, the people were satisfied with the transference of a part of the power which they had formerly exercised under constitutional limitations and restrictions to representatives, but when these agents began to reach a point where they ignored the popular will, were no longer responsive thereto, but responded rather to the dictation of the political machine and the corrupt party boss, the pendulum began to swing in the opposite direction, and checks began to be devised against legislative and representative usurpation. What was once, in part at least, a representative form of government, has become a misrepresentative form of government, and in a determination to correct this the initiative, the referendum, and the recall had their origin.

The Arizona constitution and the constitutions of other States from which it was copied are not an enlargement of the powers

which were exercised by the people of the Colonies in the regulation of their affairs, but it is a resumption or rather the assertion of powers which had become dormant by nonuse, by embodying them in the fundamental law—the written constitution. If there be any difference the powers of the people under the colonial forms of government were more ample and more frequently used for restraining the acts of their representatives than any power attempted to be reserved to or exercised by the people of Arizona under the constitution to which objection is now made.

I have undertaken briefly to call attention to conditions as they existed in the Colonies prior to the adoption of the Constitution and to contemporaneous interpretation of the provision now under consideration as to its purposes and as to the intent of its framers. Let us look now at the interpretation placed upon it by later text writers and courts.

Sutherland, in his Notes on the United States Constitution (p 603), says that—

> The distinguishing feature of the republican form of government is the right of the people to choose their own officers for governmental administration and to pass their own laws; by virtue of the legislative power reposed in representative bodies and by the adoption of a constitution the people limit their own power as against the sudden impulses of mere majorities. The State here referred to is a member of the Union, an organized people or a community of free citizens, occupying a definite territory. The provision does not undertake to designate any particular government as republican, nor is the exact form in any manner especially indicated.

Justice Story, in his work on the Constitution (Vol. II, sec. 1814), in giving the reasons for this provision of the Constitution, says:

> The want of a provision of this nature was felt as a capital defect in the plan of the confederation, as it might in its consequences endanger, if not overthrow, the Union. Without a guaranty the assistance to be derived from a national government in repairing domestic dangers which might threaten the existence of the State constitutions could not be demanded as a right from the National Government. Usurpation might raise its standard and trample upon the liberties of the people, while the National Government could legally do nothing more than behold the encroachment with indignation and regret. A successful faction might erect a tyranny on the ruins of order and law, while no succor could be constitutionally afforded by the Union to the friends and supporters of the Government. But this is not all; the destruction of the National Government itself or of neighboring States might result from a successful rebellion in a single State.

It will thus be seen that this eminent jurist did not suggest that there was any fear on the part of the framers of the Constitution that there was danger to be apprehended from the people because of the exercise of those powers which were inherent in them as sovereigns, or that the exercise of legislative or other power by them would make their Government unrepublican in form. The reasons given by him for the enactment of the constitutional provision were based on the dangers to be apprehended from internal usurpation or external invasion—in other words, the establishment through these instrumentalities of a form of government inconsistent with those which were in force in the Colonies at the time of the adoption of the Constitution.

This view is further strengthened by Judge Story in section 1815, where he says:

> That the Federalist has spoken with so much force and propriety upon this subject that it supersedes all further reasoning—

and then quotes the letter of Mr. Madison to the people of New York, which is heretofore referred to at length. Adopting the reasoning of that letter as his own, he states, after quoting it at length:

> It may not be amiss further to observe (in the language of another commentator) that every pretext for intermeddling with the domestic concerns of any State under color of protecting it against domestic violence is taken away by that part of the provision which renders an application from the legislature or executive authority of the State in danger necessary to be made to the General Government before this interference can be at all proper. On the other hand, this article becomes an immense acquisition of strength and additional force to the aid of any State government in case of an internal rebellion or insurrection against lawful authority.

Here again is the suggestion that Congress can not take the initiative, even in cases of domestic violence. The initiative must be taken and the application made by the legislative or executive authority of the State.

Mr. George Ticknor Curtis, in his Constitutional History of the United States (Vol. I, p. 363), states:

> The object of this provision was to secure to the people of each State the power of governing their community through the action of a majority, according to the fundamental rules which they might prescribe for ascertaining the public will.

Nowhere have I been able to find a suggestion that this provision was intended to curb the people in the adoption of constitutions and in the enactment of laws, whether directly or indirectly, within the several States which might seem to them best to conserve and preserve their liberties and their rights. They have the undoubted right at any time to change their fundamental law to suit their own needs, so long as the form of government adopted by them is republican in form.

That distinguished Democrat and authority on constitutional law, John Randolph Tucker, in his work on the United States (Vol. II, sec. 311), says:

> The word "guarantee" does not mean "to form," "to establish," "to create"; it means "to warrant," "to secure," "to protect" the State—that is, the body politic—in its right to have a republican form of government. It defends the people against the interference of any foreign power or of any intestine conspiracy against its right as a body politic to establish for itself republican forms of government. To allow the guarantor to take the initiative and, under the pretext of its duty as guarantor, to impose a form of government upon the people of a State would make this clause, intended for protection, an excuse for destructive invasion. No occasion for the exercise of this important yet dangerous power has ever arisen except as the result of civil war.

The supreme court of Oklahoma, whose constitution is substantially the same as that of the proposed constitution of Arizona, in ex parte Wagner (21 Okla., 33), sustained the constitution of that State as not obnoxious to the Federal Constitution guaranteeing to every State a republican form of government.

Mr. Justice Wilson, who was a member of the Constitutional Convention and was later a member of the Supreme Court of the United States, in the case of Chisholm *v.* Georgia (2 Dall., 419), speaking of what constituted a republican form of government, said:

> As a citizen I know the government of that State [Georgia] to be republican, and my short definition of such a government is one constructed on this principle, that the supreme power resides in the body of the people.

It should be remembered in connection with this decision that Mr. Justice Wilson was considered one of the ablest constitutional lawyers in the convention which framed the Constitution, and it was he who proposed the amendment to the resolution of Gov. Randolph which resulted in the unanimous adoption of the section of the Constitution as it now stands.

The Supreme Court of the United States, In re Duncan (139 U. S., 449), holds that the distinguishing feature of a republican form of government is the right of the people to choose officers for governmental administration and to pass their own laws; and in Miner *v.* Happersett (21 Wall., 162), in speaking of this provision of the Constitution, says:

> It is true that the United States guarantees to every State a republican form of government. * * * No particular government is designated as republican, neither is the exact form to be guaranteed in any manner especially designated. * * * The guaranty necessarily implies the duty on the part of the States themselves to supply such a government. All the States had governments when the Constitution was adopted. * * * These governments the Constitution did not change. They are accepted precisely as they were, and it is therefore to be presumed that they were such as it was the duty of the States to provide. Thus we have unmistakable evidence of what was republican in form within the meaning of that term as employed in the Constitution.

The supreme court of California, In re Pfahler (150 Cal., 171), where a similar attack was made upon the charter of the city of Los Angeles, held to substantially the same doctrine, overruling former decisions of the court which seemed to maintain a different view.

In Kadderly *v.* The City of Portland (44 Oreg., 118) the initiative and referendum amendment to the constitution of that State, which is on all fours with the constitution of Arizona, and which was attacked because it violated the provision of the Constitution now under consideration, Mr. Justice Bean, a judge of distinguished ability, who was subsequently appointed one of the United States circuit judges, delivering the opinion of the court, said:

> Nor do we think the amendment void because in conflict with the Constitution of the United States, Article IV, section 4, guaranteeing to every State a republican form of government. The purpose of this provision of the Constitution is to protect the people of the several States against aristocratic and monarchical invasions and against insurrections and domestic violence and to prevent them from abolishing a republican form of government. (Cooley, Const. Lim., 7 ed., 45; 2 Story, Const., 5 ed., sec. 1815.) But it does not forbid them from amending or changing their constitution in any way they may see fit, so long as none of these results is accomplished. No particular style of government is designated in the Constitution as republican, nor is its exact form in any way prescribed. A republican form of government is a government administered by representatives chosen or appointed by the people or by their authority. Mr. Madison says it is "a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior." (The Federalist, 302.) And in discussing the section of the Constitution of the United States now under consideration he says: "But the authority extends no further than a guaranty of a republican form of government, which supposes a preexisting government of the form which is to be guaranteed by the Federal Constitution. Whenever the States may choose to substitute other republican forms, they have a right to do so, and to claim the Federal guaranty for the latter. The only restriction imposed on them is that they shall not exchange republican for antirepublican constitutions." (The Federalist, 342.) Now, the initiative and referendum amendment does not abolish or destroy the republican form of government or substitute another in its place. The representative character of the government still remains.

The people have simply reserved to themselves a larger share of legislative power, but they have not overthrown the republican form of the government or substituted another in its place. The government is still divided into the legislative, executive, and judicial departments, the duties of which are discharged by representatives selected by the people.

8. Under this amendment, it is true, the people may exercise a legislative power, and may, in effect, veto or defeat bills passed and approved by the legislature and the governor; but the legislative and executive departments are not destroyed, nor are their powers or authority materially curtailed. Laws proposed and enacted by the people under the initiative clause of the amendment are subject to the same constitutional limitations as other statutes, and may be amended or repealed by the legislature at will.

In the case of Kiernan *v.* City of Portland (111 Pac. Rep., 379) the same court, speaking through Judge King, again upheld the Oregon system of direct legislation as not obnoxious to the Constitution of the United States, and, amongst other things, say:

It is difficult to conceive of any system of lawmaking coming nearer to the great body of the people of the entire State, or by those comprising the various municipalities, than that now in use here, and being so we are at a loss to understand how the adoption and use of this system can be held a departure from a republican form of government. It was to escape the oppression resulting from governments controlled by the select few, so often ruling under the assumption that "might makes right," that gave birth to republics. Monarchical rulers refuse to recognize their accountability to the people governed by them. In a republic the converse is the rule; the tenure of office may be for a short or a long period, or even for life, yet those in office are at all times answerable, either directly or indirectly, to the people, and in proportion to their responsibility to those for whom they may be the public agents, and the nearer the power to enact laws and control public servants lies with the great body of the people, the more nearly does a government take unto itself the form of a republic—not in name alone, but in fact. From this it follows that each republic may differ in its political system, or in the political machinery by which it moves, but so long as the ultimate control of its officials and affairs of state remains in its citizens it will, in the eye of all republics, be recognized as a government of that class. Of this we have many examples in Central and South America.

It becomes, then, a matter of degree, and the fear manifested by the briefs filed in this case would seem to indicate, not that we are drifting from the secure moorings of a republic, but that our State, by the direct system of legislation complained of, is becoming too democratic, advancing too rapidly toward a republic pure in form. This, it is true, counsel for petitioner does not concede, but under any interpretation of which the term is capable, or from any view thus far found expressed in the writings of the prominent statesmen who were members of the Constitutional Convention, or who figured in the early upbuilding of the Nation, it follows that the system here assailed brings us nearer to a State republican in form than before its adoption.

In the case of Hopkins *v.* The City of Duluth (81 Minn., 189) the charter of Duluth had been submitted to the direct vote of the citizens and adopted. It was subsequently assailed because it was violative of section 4 of Article IV of the Federal Constitution. This contention was not sustained, and the court held:

The provision referred to provides that "the United States shall guarantee to every State a republican form of government and protect them from invasion," etc. The purpose of this guaranty was to protect a union founded upon republican principles against aristocratic and monarchical invasions. * * * It will be admitted, however, that this State can not supplant its republican form of government by "aristocratic and monarchical invasions" upon principles inherent in the nature of a government, but it may change its constitution in any way consistent with its own fundamental law; and we are unable to see the force of the suggestion that the amendment of 1898 is not republican in form as well as in spirit. It is true that, by the submission of charters and amendments to municipalities in the manner provided for

by the amendment, a change is effected, but it is a change that by every historical sanction from the earliest times is republican in form and essence. The Federal as well as the State government is representative in character, and the people do not directly vote upon the adoption of the laws by which they are governed. Yet it can not be said that, if they were able to do so, a provision to effectuate that purpose would not be republican. * * * The test of republican or democratic government is the will of the people, expressed in majorities, under the proper forms of law. Every proposal for a change of government must of necessity be submitted, either directly or indirectly, through a designated origin, whether it be upon the motion of one or of more persons, upon the instance of an individual citizen or a number; but so long as the ultimatum of decision is left to the will of the people at the ballot box it is essentially republican, and the theoretical distinction urged by the learned counsel for the contestee practically amounts to no more than the argument that the change provided for is new and radical. It may turn out that the amendment is beneficial or otherwise, yet its tendencies are clearly republican, and must be upheld by this court.

The coordinate branches of the National Government—the executive, legislative, and judicial—as well as those of the State governments, have recognized that the government proposed to be established under the Arizona constitution is republican in form. The Arizona constitution is almost in ipsis verbis of the constitutions of Oregon, Montana, South Dakota, and Oklahoma, in each of which the popular initiative and the optional referendum, and in some of them the recall, make more effective the voice of the people and operate as checks and balances against legislative malfeasance, corruption, and misrule.

Oklahoma was admitted to the Union with these provisions in the constitution, and Congress recognized that it was republican in form by admitting it to the Union, and the President by proclamation, carrying out the resolution of Congress in that behalf, declared that the constitution of Oklahoma was republican in form.

And again, after the adoption by the people of Oregon, Montana, and South Dakota of amendments to their constitutions putting into effect the provisions which it is claimed are obnoxious to the Federal Constitution, the Senators and the Representatives from these States, as well as from Oklahoma, have been admitted to their seats without question; and this constituted a recognition by Congress that these States had republican forms of government.

Sutherland, in the work referred to, restates, at page 604, a well-established rule on this subject when he says that:

> Recognition of a State government, as well as its republican character, is necessarily implied from the admission of its Senators and Representatives to seats in Congress, citing United States *v.* Rhodes (47 Fed. Cases, 16151), White *v.* Hart (13 Wall., 646), Luther *v.* Borden (7 How., 1) as authority for the doctrine enunciated in the text.

Legislative and executive interpretations are entitled to great weight, under well-established rules of law, in construing statutes and constitutions.

I maintain that the standard by which the Congress is to determine whether or not the constitution presented by a people asking admission as a State is that the constitution shall conform in its essential details to the governments that were in existence at the time of the adoption of the Constitution, and, applying that as the rule and guide of action, the constitution presented by the people of Arizona is republican in form because it is conformable in all essential details to the forms of government and methods of administration in many, at least, of the Colonies at the time of the adoption of the Constitution.

If a higher duty than this devolves upon the Congress of the United States, where is that duty to begin and end? If they have power to take the initiative and, taking the constitution of Arizona by its four corners, modeled as it has been after the constitutions which are in force in older States, say that it is not republican in form, can the Congress then go further and demand that those States which have constitutions amended and are now exact counterparts of the Arizona constitution shall amend these constitutions again, shall undo the work of the constitutional conventions, shall nullify laws that have been enacted by legislature and people, because the Congress of the United States is of the opinion that these particular constitutions are not republican in form?

How is the Congress to exercise this power of nullifying the constitutions of these States? Where is the modus operandi pointed out in the Constitution? Is it to be done by an act of Congress, or is it to be done by the declaration of war against a State that refuses to nullify its constitution and to adopt one that may be consonant with the views of Congress as to what, in its opinion, constitutes a republican form of government? The suggestion of the proposition carries its own refutation, and Congress has no such power.

If Congress determines that the constitution adopted by the people of Arizona is not republican in form because of the provisions in regard to the initiative, the referendum, and the recall, what does Congress intend to do with reference to South Dakota, Oregon, Montana, Arkansas, and a number of the older States which have amended their constitutions in these respects since their admission to the Union; and what is it to do with reference to Oklahoma, whose constitution has met the approval of Congress, of the President, and the court of last resort in that State?

Having discussed the intent of the framers of the Constitution with reference to section 4 of Article IV of the Constitution in the light of contemporaneous discussion and subsequent executive, legislative, and judicial interpretation, I desire to show that there is nothing new in the initiative, the referendum, and the recall to which objection is now made, and in the discussion of this question I do not deem it necessary to trace the genesis of either or to show the method of their development and application in any of the Old World governments. I shall confine myself to our own country, where abundant warrant can be found to sustain the position that the doctrine embodied in the Arizona constitution is not a new one.

And, first, as to the initiative. It will be observed that no attempt is made to abolish the Legislature of Arizona under the provisions of the Constitution; it is left intact, with all the powers that are usually given to the legislative body under the provisions of the constitutions of the other States of the Union. To that extent, therefore, the government sought to be established, in so far as the legislature is concerned, is distinctly representative in form, but the people reserve to themselves two distinct powers and point out the mode and manner of the exercise thereof, one of which it might truthfully be said is for the correction of sins of omission and the other for the correction of those of commission, namely: First, they reserve to themselves the power to initiate laws and, concurrently with the legislature,

to enact or reject by their vote such laws as may be so proposed; second, they reserve to themselves the power, at their option and upon proper steps being first taken, to have referred to them for approval or rejection any law or laws passed by the legislature. The system proposed by the Arizona constitution, and which, as I have stated, is modeled after the amended constitutions of Oregon and other of the older States, is not unlike the system of government that was in vogue in New England at and prior to the time of the adoption of the Constitution. There the people legislated directly upon local affairs, whilst in State affairs legislation was through a legislative assembly directly elected, each member of which was under instructions given by his constituents at special town meetings, which could be at any time called by the selectmen or any 10 citizens. In other of the Colonies legislation was had by the legislative assembly and by county governments, and in both cases the members were instructed at county conferences or mass meetings of the citizens.

I have already referred to and quoted from the bills of rights and constitutions of a number of the States antedating the adoption of the Constitution to show that sovereignty resided in the people, and that this fact was of necessity in the minds of those who subscribed to the Declaration of Independence when they declared—

> that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed—

as well as in the minds of those who framed the Federal Constitution. These constitutions, the Declaration of Independence, and the Constitution of the United States, recognize to the fullest extent the right of the people to govern themselves.

The power of the people under the initiative system takes the place of the power exercised by the colonists in New England of legislating directly and of instructing their delegates to the legislature—a power which, though exercised in the earlier days of the Republic, has been gradually abandoned under the party system. It is but a revival of that system, and in many States has become a part of the written constitutions.

The time was when the citizen instructed the delegates to the legislative bodies and the officers who were to administer the laws, but under the party and convention system there has been an abandonment of this salutary rule, and instead of the people instructing their delegates and the officers who are to administer the law these instructions come now from the political machine and corrupt party boss. There has been a complete reversal of the forms of government in vogue in the earlier days of the Republic, and it is because of this that it has been found necessary for the people to resume, or rather to reassert in a written constitution, a right and power which in days gone by they were wont to exercise, but which they have unconsciously and gradually ceased to use. This power is now to be exercised again under the initiative system, and where the representatives in the legislative assemblies ignore the will of the people and listen, rather, to those who in many cases have become the representatives of a corrupt party system, and of

those who are wont to clamor at the legislative halls for legislation in behalf of special interests, the people themselves can, upon their own initiative, enact laws in the interest of the whole people and can, under the power reserved to them through the referendum, defeat legislation which is hostile to the public interest.

Nor must it be forgotten that laws enacted by the people are subject in the final analysis to legislative control, because, as was held in the case of Kadderly *v.* The City of Portland (to which I have heretofore referred), the legislature has power to amend and to repeal any law enacted under the initiative system.

Further than that, it would be within the power of the legislature under the Arizona system, as it has been held to be within the power of the legislature and the executive under the Oregon constitution, to defeat a referendum upon a law passed by the legislature by the declaration of an emergency in the statute that the public peace, health, and safety demanded that it should go into effect at once. Such an emergency declared to an act passed by the legislature, when not vetoed by the executive, is beyond the reach of the people under the referendum system. The legislature is the sole judge as to whether or not an emergency shall be declared, and though there is some conflict of opinion the weight of authority is that the courts of the country can not interfere with that legislative right; so that in the final analysis the power reserved to the people under the initiative system and under the power of the referendum is but a method of expressing the will of the people, a method of instructing their representatives to the legislature, and a method of showing disapproval of their conduct in the enactment of laws which have not for their purpose the common good. No more perfect system of checks against the improvident or improper use of power, whether by the legislature or the people, was ever devised than the system now under discussion.

The system of government therefore proposed under this constitution is a mixed government, a representative government in combination with direct legislation, and it is none the less a republican form of government, because there is perfect cooperation between the legislative or representative body and the people acting directly.

Irrespective of the particular language used in the Arizona constitution reserving to the people the power of directly enacting laws and of taking a referendum on legislation passed by the legislature, both of these powers have been from time immemorial exercised by the people of the older States. Most, if not all, of the new States admitted to the Union have by direct vote of the people adopted their constitutions, whether acting pursuant to enabling acts which expressly directed this to be done or upon their own initiative. These constitutions are sometimes more than mere fundamentals of government. Many of them contain express provisions which are self-acting and need no further legislation to put them into effect. The adoption of these constitutions by direct vote of the people, containing, as many of them do, provisions regulating the duties of the citizen and the rights of property, are just as much direct legislation as if they had been enacted under just such limitations and restrictions as are contained in the

constitution of Arizona. No suggestion has ever been made at any time that because these fundamental laws have been enacted by a direct vote of the people that they are therefore unrepublican and ought not to be admitted to the Union. There can be no distinction between such legislation and legislation which might hereafter be enacted by the people under the provisions of the Arizona constitution, and which has heretofore been enacted by the people under the constitutions of Oregon and Oklahoma.

Let us look at some of the constitutions which have contained general legislation and which the courts have sustained as sufficient without additional legislation to make them effective.

Section 4 of Article XVI of the constitution of Pennsylvania adopted in 1873 provides as to how the shareholders may vote in the election of directors of a corporation.

Section 5 provides that all incorporations must have known place of business and an agent.

Section 7 provides that corporations shall not issue stock or bonds except under certain limitations, and that all fictitious increase of stock shall be void.

Article XVII regulates railroads and canals and provides among other things for the right of railroads to construct railroads across the State, and the right of one railroad to connect with or cross another railroad, and the duty of the railroad to receive passengers from other railroads. Also, that every railroad or canal corporation shall maintain an office where transfer of its stock shall be made, and its books shall be kept for inspection by stockholders and creditors, and so forth.

Section 8 of this article provides that there shall be no free passes issued except to officers and employees of the company. And there are many other similar provisions.

Now, note that. It is just as much direct legislation as if it had been enacted by a legislature or if it had been enacted by the people under the initiative system of legislation. It is just as complete and as active.

The constitution of New Jersey, 1844, Article I, section 5, provides:

> In all prosecutions or indictments for libel the truth may be given in evidence to the jury. And if it shall appear to the jury that the matter charged as libelous is true and was published with good motives and justifiable ends, the party shall be acquitted.

And the same provision is contained in many other constitutions.

Article XIII of the constitution of Illinois adopted in 1870 regulates warehouses. Among other provisions, section 4 is as follows:

> All railroad companies and other common carriers on railroads shall weigh and measure grain at points where it is shipped and receipt for the full amount, and shall be responsible for the delivery of such amount to the owner or the consignee thereof at the place of destination.

Section 6 of Article XI provides:

> That every stockholder in a railroad corporation or institution shall be individually responsible and liable to its creditors over and above the amount of stock by him or her held to an amount equal to his or her respective shares so held.

Substantially the same provision is contained in the constitutions of Iowa, Indiana, Washington, and other States.

Section 2 of Article XV of the constitution of Kansas adopted in 1855 prohibited lotteries in that State. Many other States have the same provision.

Section 6 of Article XV of the constitution of Kansas adopted in 1857 provides that—

> All property, both real and personal, of the wife owned or claimed by marriage and that acquired afterwards by gift, devise, or consent, shall be her separate property.

Section 9 of Article XV of the constitution of Kansas, 1859, provides:

> A homestead to the extent of 160 acres of farming land or of 1 acre within the limits of an incorporated town or city, occupied as a residence by the family of the owner, shall be exempt from officer's sale under any process of law, etc.

Similar provisions exist in many other States.

The constitution of Washington regulates corporations in great detail. Section 191 prohibits pooling; section 193 prohibits the consolidation of railroads; section 194, that railroad stock shall be considered personalty; section 197 prohibits passes; section 198 provides for the rights of express companies on railroads; and so forth.

Section 3 of Article IX of the constitution of Wyoming provides:

> No boy under the age of 14 years and no woman or girl of any age shall be permitted to be in or about any dangerous mine, etc.

Section 4 of Article IX provides for the liability for violation of the preceding section; and section 6 of Article X provides that no corporation shall have power to engage in more than one general line of business; Article X also regulates railroads and telegraph lines in detail; section 12 of Article XV provides for an exemption from taxation of churches, public cemeteries, and so forth; section 1 of Article XIX provides that eight hours shall constitute a lawful day's work in all lines. That article also provides that certain contracts with laborers shall be unlawful.

I have shown that legislation by direct vote of the people has been expressly authorized by and enacted in the constitutions of a number of the States and the power recognized by Congress. I shall now undertake to show that the power reserved under the referendum clause of the Arizona constitution has been reserved by the constitution of nearly every State in the Union, has been recognized by Congress as a valid reservation of power, and has been exercised as well by Congress itself. It has been exercised by the States under constitutional authority in matters affecting localities in the States, as well as in matters affecting the whole State.

And, first, as to those affecting the States at large. One of the earliest constitutional provisions for a referendum is to be found in Article I, section 23, of the constitution of Georgia (1798), which is as follows:

> And this convention doth further declare and assert that all the territory within the present temporary line, and within the limits aforesaid, is now, of right, the property of the free citizens of the State and held by them in sovereignty inalienable, but by their consent.

At the time of the adoption of the New York constitution in 1846 the question of extending the right of suffrage to the negroes was referred to the people, and a like provision was made in the Michigan constitution in 1850. The constitutions

of Wisconsin (1848), Kansas (1858), Colorado (1876), South Dakota (1889), Washington (1889), and North Dakota (1895) contain provisions for a referendum of questions affecting suffrage, leaving it absolutely and entirely to a vote of the majority of the people as to whether these provisions should be operative or not. The constitution of Rhode Island (1842) provides that the general assembly shall have no power without the express consent of the people to incur debts in excess of $50,000, nor shall they in any case without such consent pledge the faith of the State for the payment of the obligations of others.

The constitutions of Michigan (1843), New Jersey (1844), New York and Iowa (1846), Illinois (1848), California (1849), Kentucky (1850), Kansas (1859), Nebraska (1866), Missouri (1875), Colorado (1876), Louisiana (1879), Idaho, Montana, Washington, and Wyoming (1889), and South Carolina (1895) have adopted measures providing for a referendum involving the creation of debts on behalf of these States or the pledging of the credit thereof. The State of Texas, in its constitution of 1845, provided for the permanent establishment of the seat of government by vote of the people at an election the time, place, and conduct of which was fixed by the constitution. Numerous States followed the example set by Texas and adopted substantially the same provision with reference to the location of the State capital.

Following the same course, the State of Iowa, in its constitution of 1846, provided that no act of the general assembly authorizing or creating corporations or associations with banking powers should take effect or be in force until submitted to the people at a general or special election and by a majority of them approved. Illinois, Wisconsin, Michigan, Ohio, Kansas, and Missouri followed with constitutional provisions of substantially the same character.

Innumerable instances might be cited showing that legislation with reference to the sale of school lands, that relating to State aid to railways, to taxation, the location of State universities, the extension of suffrage, and appropriations for State purposes was required by constitutional provision to be submitted to the voters of the State for approval or rejection.

The second class of constitutional provisions providing for a referendum are those which affect local governments, and within this class come a great variety of subjects. The first provision of this kind is to be found in the constitution of Tennessee of 1834, where the people reserved to themselves the right to cooperate in acts of government involving the change of county lines. Section 4 of Article X provided that—

> No part of the county shall be taken to form a new county or a part thereof without the consent of a majority of the qualified voters in such part taken off.

Practically the same provision has been embodied in later constitutions of many of the States, some requiring a majority of the electors and some two-thirds as a condition to changing county lines.

Section 5 of Article VIII of the Maryland constitution of 1864 provided that—

> The general assembly shall levy at each regular session after the adoption of the constitution an annual tax of not less than 10 cents on each $100 of taxable property throughout the State for the purpose

of free schools: *Provided*, That the general assembly shall not levy any additional school tax upon particular counties unless such county express by popular vote its desire for such tax.

This provision is not only a provision of initiative legislation on the one part, but contains in the very section a provision for the referendum of the act to the people of the county.

Other States followed with constitutional provisions requiring a referendum on laws increasing the rate of taxation for school purposes. Amongst these were Missouri (1875), Texas (1876), and Florida (1885). Those providing for a referendum to authorize an increased tax rate in counties were Texas (1868), Illinois (1870), Nebraska (1875), West Virginia (1872), Missouri (1875), and Louisiana (1879). The provision in the Missouri constitution specifically fixes the rate which may be imposed upon the people, which can not be increased without the assent of the people, and inasmuch as it is an example of direct legislation, self-executing, as well as an example of the application of the referendum principle, I quote it at length. It is as follows:

Taxes for county, city, town, and school purposes may be levied on all subjects and objects of taxation, but the valuation of property therefor shall not exceed the valuation of the same property in such town, city, or school district for State and county purposes. For county purposes the annual rate on property in counties having $6,000,000 or less shall not, in the aggregate, exceed 50 cents on the $100 valuation; in counties having $6,000,000 and under $10,000,000 said rate shall not exceed 40 cents on the $100 valuation; in counties having $10,000,000 and under $30,000,000 said rate shall not exceed 50 cents on the $100 valuation; and in counties having $30,000,000 or more said rate shall not exceed 35 cents on the $100 valuation. For city and town purposes the annual rate on the property in cities and towns having 30,000 inhabitants or more shall not, in the aggregate, exceed 100 cents on the $100 valuation; in cities and towns having less than 30,000 and over 10,000 inhabitants said rate shall not exceed 60 cents on the $100 valuation; in cities and towns having less than 10,000 and more than 1,000 inhabitants said rate shall not exceed 50 cents on the $100 valuation; and in towns having 1,000 inhabitants or less said rate shall not exceed 25 cents on the $100 valuation. For school purposes in districts the annual rate on property shall not exceed 40 cents on the $100 valuation: *Provided*, The aforesaid annual rates for school purposes may be increased in districts formed of cities and towns to an amount not to exceed $1 on the $100 valuation; and in other districts to an amount not to exceed 65 cents on the $100 valuation, on the condition that a majority of the voters who are taxpayers, voting at an election to decide the question, vote for said increase. For the purpose of erecting public buildings in counties, cities, or school districts, the rates of taxation herein limited may be increased when the rate of such an increase and the purpose for which it is intended shall have been submitted to a vote of the people, and two-thirds of the qualified voters of such county, city, or school district voting at such election shall vote therefor. The rate herein allowed to each county shall be ascertained by the amount of taxable property therein, according to the last assessment for State and county purposes, and the rate allowed to each city and town by the number of inhabitants according to the last census taken under the authority of the State or the United States; said restrictions as to rates shall apply to taxes of every kind and description, whether general or special, except taxes to pay valid indebtedness now existing or bonds which may be issued in renewal of such indebtedness.

Provisions are also to be found in the constitutions of many of the States subjecting to a referendum local matters with regard to creating municipal indebtedness and the issuance of bonds, the acquiring of waterworks and plants for light, changing lines of judicial districts, the formation of new courts, and other questions of a purely local character; but I do not deem it necessary to quote at length from the constitutions embody-

ing these provisions, satisfying myself with a mere reference thereto.

The provisions of the first class have generally been sustained by the courts, with some difference of judicial opinion as to the latter class of cases; but the conflict of judicial decision, it will be found, usually precedes the written constitutions authorizing the referendum, and out of this conflict, it will be found, has grown the written constitution authorizing the referendum on matters affecting localities in the several States. The people have been driven to these constitutional restrictions to place a check upon legislative extravagance and the abuse of trust by the agents of government. It has been found necessary to protect the people through these instrumentalities, both from oppression and from uncertainty of judicial interpretation.

Other instances might be cited to show that affirmative legislation is contained in the fundamental laws of the States which have been enacted directly by the people. What difference can it make how the initial steps have been taken, whether pursuant to an enabling act which authorizes the people to formulate and directly vote upon a constitution, or whether without such enabling act, as has been done by Oregon and some other States of the Union on their own initiative, or by a certain percentage of the voters of a State, as authorized to be done under the Arizona constitution? Can it be said that in the latter case the constitution, which expressly authorizes it, makes the government of the State unrepublican, and in the former cases, where exactly the same results are obtained, the government of the States is republican? For Congress now to hold that the inclusion of the initiative and referendum in the fundamental law of Arizona would give to that State a form of government that was not republican in character, would of necessity revise the whole policy of the Government. Congress itself, by act of July 9, 1846, which had for its purpose the recession of a part of the District of Columbia to the State of Virginia, submitted to the qualified electors of the District the question of recession, provided the machinery for the election, and enacted that if a majority should be against accepting the provisions of the act it should be void and of no effect, otherwise it should be in full force.

The objection most seriously urged against the Arizona constitution is the provision which it contains with reference to the recall of public officers. There is no limitation as to the class of officers to whom it shall apply. It is general in its terms and is intended to reach those holding office, whether by election or appointment. The provision is not essentially different from that embodied in the constitutions of Oregon and Oklahoma, and possibly other States, as well as in the charters of many of the larger cities of the country.

The objection most frequently made to the Arizona constitution is the application of the recall to the judiciary. The question involved is not one of individual opinion but one of principle, and that is, whether the people of Arizona or the majority of them have the right, if they see fit, in their wisdom, to make the recall applicable to the judiciary as well as to other public servants. The argument usually urged against the application of the recall to the judiciary is that it tends to destroy its independence. To make this insistence impeaches the intelligence

and integrity of the people of a State, and it assumes that for slight and trivial reasons, based upon the determination of an issue between individuals, or between an individual and the Commonwealth or between the Commonwealth and a nation, the machinery of the recall might be set in motion to punish a court with whom the majority of the people might disagree. That may be possible, but it is not at all probable; for, although the recall has been in operation for a number of years under charter and constitutional provisions like the Arizona constitution, it has only been used twice—once in the city of Los Angeles, Cal., and one in the city of Seattle, Wash. (I have just learned that it has been used in Texas on one occasion.) It is generally admitted by friends, as well as opponents of the measure, that there was justification for the recall in both instances, in one, at least, of which a servant and agent of the people, occupying the highest position in their gift, had entered into combination with gamblers and thugs and the denizens of the red-light district to levy graft and defeat the will of the people to purposes of piracy and plunder.

But as an abstract proposition, why should a judicial officer any more than any other public official be independent of the wishes of his constituents? It is not a democratic conception of republican government that places the representative in a position which will make him indifferent to the wishes of his constituents. Such a conception is aristocratic; it is monarchical; it is autocratic. The democratic conception, on the contrary, is that the people will think for themselves and that the agent or servant of the people, in whatever position he serves, is but the reflection of the popular will. As an abstract proposition, therefore, there is no reason why the judicial officer, as well as every officer of the Government, should not be responsive to the will of those whose servant he is. But the idea of the recall as applied to the judiciary, as well as to other agents, representatives, and servants of the people, is older than the Constitution itself. The principle has been recognized in every department of Government, and more particularly is this true with reference to the judiciary.

Section 33 of the bill of rights of Maryland, of 1776, provides:

> That the independency and uprightness of judges are essential to the impartial administration of justice and a great security to the rights and liberties of the people; whereas the chancellor and judges ought to hold commissions during good behavior; and the said chancellor and judges shall be removed for misbehavior on conviction in a court of law, and may be removed by the governor upon the address of the general assembly: *Provided*, That two-thirds of all the members of each house concur in such address.

Absolutely leaving to the legislative body the power, upon the address of two-thirds of its membership, to remove the judge, even without a hearing; and there it was assumed that this was for the purpose of maintaining the independence of the judiciary rather than of affecting and destroying it.

This provision is reenacted in the constitution of 1851 (Art. IV, sec. 4) and in the constitution of 1864 (Art. IV, sec. 4) and again in the constitution of 1867 (Art. IV, sec. 4), and is at this time a part of the fundamental law of that State.

It has not had the effect to destroy the independency of the judiciary of that magnificent commonwealth.

This observation may be made—and it is applicable to the constitutions of other States to which I shall call attention—

that the recall of judges, in addition to the provision for removal on the ground of incompetency, of willful neglect of duty, of misbehavior in office, or any other crime, or on impeachment, is a general power and is left to the discretion of the general assembly. Sometimes a two-thirds vote is necessary and in other cases only a majority. The bill of rights of Maryland states the reasons for the vesting of this great discretionary power in the legislative assembly. It is because it was deemed necessary to maintain the independency and the uprightness of judges rather than to destroy their independency and responsibility for their acts.

The constitution of Georgia of 1798 (Art. III, sec. 1) provides that—

> The judges of the superior court shall be elected for the term of three years, removable by the governor on the address of two-thirds of both houses for that purpose, or by impeachment and conviction thereon.

The same provision is to be found in the amendment to the constitution ratified in 1812, and again in the amendment ratified in 1818, and again in 1835 and in 1865.

No one has ever heard the integrity of the judicial system called in question in that State.

I call the attention of the distinguished Senator from Virginia [Mr. MARTIN] to the constitution of Virginia, with which I know he is familiar.

The constitution of Virginia of 1830 (Art. V, sec. 6) contains the same provision. It was reenacted in the constitution of 1850 (Art. VII, sec. 17) and in 1864 (Art. VI, sec. 16) and in 1870 (Art. VI, sec. 23) and in 1902 (Art. VI, sec. 104). The power of removal for cause is vested in a majority of the members of the legislature. This provision is now a part of the fundamental law of Virginia.

The constitution of Texas of 1845 provides for the appointment of judges by the governor, by and with the advice and consent of two-thirds of the senate, and Article IV, section 8, provides:

> The judges of the supreme and district courts shall be removed by the governor, on the address of two-thirds of each house of the legislature, for willful neglect of duty or other reasonable cause—

Absolutely vesting in the legislature the power of determining whether or not a cause exists—

> which shall not be sufficient ground for impeachment: *Provided, however,* That the cause or causes for which such removal shall be required shall be stated at length in such address and entered on the journals of each house: *And provided further,* That the cause or causes shall be notified to the judge so intended to be removed; and he shall be admitted to a hearing in his own defense before any vote for such address shall pass; and in all such cases the vote shall be taken by yeas and nays and entered on the journals of each house, respectively.

It will be observed that the legislature is vested with the power, by a two-thirds vote, of compelling the governor to remove a judge for willful neglect of duty or other reasonable cause which shall not be sufficient ground for impeachment. This vests a most extraordinary power in a legislative body. Has its tendency been to compel the judiciary of that Commonwealth to decide controversies between citizens to suit the whims of the legislative assembly or to destroy the independence of the judiciary?

The same provision is to be found in the constitution of 1868 (Art. V, sec. 10) and in that of 1876 (Art. XV, sec. 8), and is now a part of the fundamental law of Texas.

The constitutions of Delaware, Connecticut, and other States have substantially the same provisions, but reference to a few only is sufficient to establish the principle for which I contend—that the power of recall with reference to the judiciary is not a new thing in the constitutional history of the country, and differs only in the Arizona constitution from the constitutions of other States in that there is a transference of the power of recall from the legislature to the people. The principle is the same. If the transference of this power to the people tends to destroy the independence of the judiciary may it not also be claimed that the power to exercise it in the case of the legislature tends to destroy that independence? Recent developments tend to show that some legislative bodies at least are influenced by the corruptest motives, and if they may be corrupted to secure the enactment or defeat of laws, or to secure the election or defeat of Senators, may they not be influenced by the same corrupt instrumentalities to unseat the judges? It is safe to say that the tenure of a judge, whether appointive or elective, is more secure in the hands of the people than in the average legislature of to-day.

But the recall has been applied from the earliest days of the Republic to other officers than judicial. In the summer of 1783—I call the attention of my Democratic friends to this—it was expected that the Assembly of Virginia would call a convention for the establishment of a constitution. Jefferson prepared a draft of one, with the design that it should be proposed in such convention. This draft, among other things, provided that—

> The Delegates to Congress shall be appointed by joint ballot of both houses of the assembly for a term not exceeding one year, subject to being recalled within the term by joint vote of both said houses. (Jefferson's Notes on Virginia.)

It is probable that this suggestion of Jefferson had its birth in Article VIII of the bill of rights of the Commonwealth of Massachusetts of 1780, which provides:

> In order to prevent those who are vested with authority from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life, and to fill up vacant places by certain and regular elections and appointments.

This declaration contained in the bill of rights of Massachusetts finds expression in Chapter IV of the constitution of 1780 of that Commonwealth, which provides for the election of Delegates to the Congress of the United States who "may be recalled at any time within the year and others chosen and commissioned" in their stead.

The constitution of New Hampshire of 1784 provides for the election of Delegates to the Congress, and states that they—

> may be recalled at any time within the year and others chosen and commissioned in the same manner in their stead.

The Articles of Confederation of 1778 (Art. V) contains, among other things, this provision:

> ART. V. For the more convenient management of the general interest of the United States, Delegates shall be annually appointed, in such manner as the legislature of each State shall direct, to meet in Con-

gress on the first Monday in November in every year, with a power reserved to each State to recall its Delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

So under the old Articles of Confederation that power was expressly reserved to each of the Colonies.

It may be argued that because this power was not reserved in the Federal Constitution that therefore the framers of that instrument thought it inadvisable to provide a method of recalling unfaithful or corrupt officials, but it must be remembered that the Constitution of the United States is but a grant of power and reserves to the people of the several States those powers which are not expressly granted; and in this view the Constitution of the United States is but a recognition of the power of the people of the several States to exercise those powers and privileges which had been exercised prior to the adoption of the Constitution. The exercise of the power by the people of Arizona is one of the rights reserved to the people, and the fact that they have seen fit to embody it in a written constitution should have no controlling influence with the Congress of the United States on the question of the admission of Arizona to the Union.

Having attempted to show that the initiative, the referendum, and the recall are as old or older than the Constitution of the United States, occasionally finding expression in the written constitutions of the Colonies and of the States, and again without this express recognition in such constitutions, being nevertheless exercised as a part of the power expressly reserved to the people of the several States, it is proper to consider why it is that one after another of the States of the Union has expressly ingrafted all of these powers as a part of the more modern written constitutions.

The movement has grown out of the perversion of the party system of government exercised through the caucus and convention. It has become necessary because this system, which was unknown to the framers of the Constitution, has through the instrumentality of the convention tended to destroy the integrity of the representative system of government. Just as the Australian-ballot law, the direct-primary law, and the corrupt-practices act have been resorted to for the protection of elections against the control and manipulation of corrupt influences, so the people have found it necessary to create a system of checks and balances in the fundamental laws of the States to protect them against the acts of the corrupt or faithless public servant, whether in the legislative or judicial or executive branches of the Government.

As long as these representatives nominated under the convention system were faithful to their duties there was no demand for the exercise of the reserve powers which are now expressly sought to be exercised through the instrumentality of the initiative, the referendum, and the recall. With the growth of the party system, however, and the development of the convention system, which removed the representative and public servant too far from the people and almost entirely out of touch with them, recourse to restrictive and controlling methods became necessary. It must be remembered in this connection that in colonial times and in the earlier days of the Government inaugurated under the Constitution parties as well as conventions

were practically unknown. The people acted directly in matters of selecting their representatives and instructed them as to their duties. These instructions were implicitly obeyed. Gradually, with the growth of parties, systems were evolved for suggesting candidates and formulating policies and platforms as well. Candidates for the Presidency were nominated in the congressional caucus by the Representatives in Congress of the different political parties, but this method soon subjected itself to the charge of usurping the functions of the people, who considered themselves, rightly, the source of all power. It was eventually abandoned, and the convention system took its place.

The first convention was that held in 1831 by the anti-Masonic Party, and this was later followed by the Democratic and Whig Parties. The convention of delegates, although not recognized by the Constitution of the United States or the laws of Congress or of the States, continued to grow in strength and influence, using its power with such insolence that in 1844 John C. Calhoun refused to suffer his name to go before a convention for the presidential nomination, publishing an address in which he said amongst other things:

> I hold it impossible to form a scheme more perfectly calculated to annihilate the control of the people over the presidential election and vest it in those who make politics a trade and who live and expect to live on the Government. (Benton's Thirty Years' View, Vol. II, p. 596.)

At the Democratic national convention of 1844, although a majority of the delegates were pledged to Van Buren, who had formerly been President, he failed of nomination by reason of violated pledges, and Polk was nominated. In speaking of the convention Senator Benton says:

> That convention is an era in our political history to be looked back upon as the starting point in a course of usurpation which has taken the choice of President out of the hands of the people and vested it in the hands of a self-constituted and irresponsible assemblage. The wrong to Mr. Van Buren was personal and temporary, and died with the occasion, and constitutes no part of the object in writing this chapter; the wrong to the people and the injury to republican institutions and to our form of government was deep and abiding, and calls for the grave and correctional judgment of history. It was the first instance in which a body of men, unknown to the laws and the Constitution, and many of them (as being Members of Congress or holding offices of honor or profit) constitutionally disqualified to serve even as electors, assumed to treat the American Presidency as their private property, to be disposed at their own will and pleasure, and, it may be added, for their own profit, for many of them demanded and received reward. It was the first instance of such a disposal of the Presidency—for these nominations are the election, so far as the party is concerned—but not the last. It has become the rule since, and has been improved upon. These assemblages now perpetuate themselves through a committee of their own, ramified into each State, sitting permanently from four years to four years, and working incessantly to govern the election that is to come, after having governed the one that is past. The man they choose must always be a character of no force, that they may rule him; and they rule always for their own advantage, "constituting a power behind the throne greater than the throne."

Commenting upon Calhoun's views of the convention, Mr. Benton remarks:

> Mr. Calhoun considered the convention system, degenerated to the point it was in 1844, to have been a hundred times more objectionable than the Congress caucuses, which had been repudiated by the people. Measured by the same scale, they are a thousand times worse at present (1853), having succeeded to every objection that was made against the Congress caucuses and superadded a multitude of others going di-

rectly to scandalous corruption, open intrigue, direct bargain and sale, and flagrant disregard of the popular will. (Thirty Years' View, Vol. II, p. 597.)

Mr. President, it has taken the people of this country more than 60 years to realize the truth of the statement contained by Calhoun in his address and by Benton in his work, but they have gradually come to an understanding of the matter, and that has given birth to this progressive movement.

We have, therefore, eminent and respectable authority for the statement that the convention system in the first half century of our history had degenerated into a machine which not only disregarded the rights of the people, but usurped the powers and functions which it was intended by the framers of the Constitution should be and remain a part of the reserved rights of the people of the several States. This system, instead of growing better, has gradually grown worse since the days of Calhoun and Benton. Through it the party machine and the corrupt political boss have practically obtained control of the instrumentalities of government, both National and State.

Men who have watched the political movements of the times know that the chairmen of the various political parties in the different States of the Union, directly or indirectly, name the delegates to the county conventions, to the State conventions, and sometimes under the direction of the national chairman the delegates to the national convention. Through the power thus exercised candidates for the legislature are named in the county conventions and candidates for the State offices in the State conventions, so that in the final analysis, although the people have been deluded into the belief that because they have assisted in the election of men nominated for office in the manner I have suggested they have had a voice in their affairs; they have practically had no voice, because they have had little to do with the selection of their candidates. It is well known that men are frequently nominated for the legislatures and for State offices as well under this system not so much because of their fitness to represent or to serve their several constituencies as because it was well understood that they would act as the faithful representatives of the particular interests that it was intended they should serve. It has not been found so extremely difficult in times past, by the corrupt and copious use of money, to control conventions and to secure the nomination of men who could be relied upon to carry out the dictates of an unscrupulous party machine dominated by a more unscrupulous party boss. The money to accomplish these purposes has been furnished not infrequently by public-service and other great financial interests, by corporations, and by men who were interested not in accomplishing the greatest good for the greatest number, but in securing valuable franchises and special privileges without compensation, or in preventing the passage of laws that would stay their hands in raids upon the public treasury.

The interests of the people of a State have too often been subordinated to the packing of a convention in the interest of a particular candidate for the Senate of the United States, and all the money that has been necessary to do this has been furnished sometimes by corporations and interests entirely outside of the particular States. This money has not been furnished from motives of disinterested patriotism or philanthropy,

but rather to insure the election of men who could be relied upon to stand as the representatives not of the people, but of special interests and the beneficiaries of class legislation.

We have recently had before us here in the Senate a case where the "jack pot" played an important part in the election of a Member of this Chamber, and it seems that the end of this celebrated case has not yet been reached. Instance after instance might be cited to show that particular interests, directing the movements of a corrupt political leader, have sought to control legislative bodies for their own corrupt purposes.

This condition is an absolute perversion of the purposes of government as established by our fathers. In theory the people have had a representative form of government; in fact it has not been representative. The history of the development of the party system of government, the evolution of the convention, the boss, the corrupt machine, and the spoils system is impartially and truthfully recited in Bryce's American Commonwealth, and not a statement therein contained but finds verification in the political conditions of to-day in State and Nation. We may, if we will, vilify the muckraker and abuse the independent press of the country, but these instrumentalities for the dissemination of news and turning the limelight on the rascals in public life have driven the people to understand at last that some corrective method must be applied to bring back the Government to the people, who are, and of right ought to be, the source of all power. The masses move slowly toward the correction of abuses and the adoption of reforms, but when once they know that their rights are being invaded they can be absolutely and entirely relied upon to work such reforms as may be necessary to correct the evils of government.

The magazines and the press, while they may have occasionally exaggerated conditions, have nevertheless told much of truth in reference to the rottenness of our system of government under the domination of the corrupt political boss and machine, and the movement for reforms may be traced to the light that has been turned on our affairs through their instrumentality. It is because of these conditions to which attention was called by Benton and Calhoun, and later by Bryce and the press and the magazine writers of the country, that the people have determined to secure to themselves purity, honesty, and efficiency in the administration of affairs. It was these conditions, which can not truthfully be denied, that gave life and vitality to the initiative and to the referendum as instrumentalities for securing to the people legislation which their representatives neglected to give them and to check extravagance and corruption on the part of these same representatives in the enactment of laws which were opposed to the public welfare and in the interests of the privileged classes. It was this condition which determined the people to assert their right to recall the faithless public servant, and the three in combination are a perfect safeguard to the rights of the people and an absolute check upon maladministration of affairs. They are essential to the perpetuation of our institutions and the preservation of a republican form of government.

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