Also, a bill (H. R. 13782) granting an increase of pension to Rhoda M. Le Gros; to the Committee on Invalid Pensions.

Also, a bill (H. R. 13783) granting a pension to George H. Lozon; to the Committee on Invalid Pensions.

Also, a bill (H. R. 13784) granting an increase of pension to Hannah Anglin; to the Committee on Invalid Pensions.

By Mr. DUPRE: A bill (H. R. 13785) for the relief of the estate of James H. Ashby, deceased; to the Committee on War Claims.

By Mr. FRANCIS: A bill (H. R. 13786) granting an increase of pension to William E. Brown; to the Committee on Invalid Pensions.

Also, a bill (H. R. 13787) granting an increase of pension to Ambrose U. Moore; to the Committee on Invalid Pensions.

Also, a bill (H. R. 13788) granting an increase of pension to Joshua W. Cole; to the Committee on Invalid Pensions.

By Mr. KAHN: A bill (H. R. 13789) for the relief of the estate of the late Thomas J. Rodman, brigadier general, United States Army; to the Committee on War Claims.

Also, a bill (H. R. 13790) for the relief of the estate of the late James Cooper Ayres, captain, United States Army; to the Committee on War Claims.

By Mr. LANGHAM: A bill (H. R. 13791) granting an increase of pension to James W. Marshall; to the Committee on Invalid Pensions.

By Mr. MONDELL: A bill (H. R. 13792) granting an increase of pension to Frank Church; to the Committee on Invalid Pensions.

By Mr. MORGAN: A bill (H. R. 13793) granting an increase of pension to Mary D. Sheeley; to the Committee on Invalid Pensions.

Also, a bill (H. R. 13794) granting an increase of pension to William Starry; to the Committee on Invalid Pensions.

By Mr. RAKER: A bill (H. R. 13795) to correct the military record of George F. Reid and to pay his widow, Isabella Reid, a pension; to the Committee on Military Affairs.

By Mr. RUBEY: A bill (H. R. 13796) granting an increase of pension to Thomas D. Smith; to the Committee on Invalid Pensions.

By Mr. RUSSELL: A bill (H. R. 13797) granting a pension to William J. Clayton; to the Committee on Invalid Pensions.

By Mr. SELLS: A bill (H. R. 13798) granting a pension to Malinda Graham; to the Committee on Invalid Pensions.

Also, a bill (H. R. 13799) granting an increase of pension to Joseph Duncan; to the Committee on Invalid Pensions.

Also, a bill (H. R. 13800) granting an increase of pension to William D. Williams; to the Committee on Invalid Pensions.

Also, a bill (H. R. 13801) granting a pension to Benjamin Wardell; to the Committee on Invalid Pensions.

By Mr. SLAYDEN: A bill (H. R. 13802) for the relief of Ramon Hernandez; to the Committee on Claims.

By Mr. J. M. C. SMITH: A bill (H. R. 13803) granting an increase of pension to Cyrenous Dalley; to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

By Mr. BARTHOLDT: Papers to accompany a bill for the relief of the heirs of Julius P. Garesché; to the Committee on War Claims.

By Mr. BORLAND: Petition of numerous residents of Kansas City, remonstrating against the proposed sale of land known as the Huron Cemetery, situated in Kansas City, Kans.; to the Committee on the Public Lands.

By Mr. CALDER: Resolutions of the Union League Club of Brooklyn, N. Y., indorsing the reciprocity bill; to the Committee on Ways and Means.

Also, resolution of the Arizona Woolgrowers' Association, protesting against any proposed change in the tariff on wool and meats; to the Committee on Ways and Means.

Also, petition of several residents of Brooklyn, N. Y., asking that the duty on lemons be repealed; to the Committee on Ways and Means.

By Mr. DICKINSON: Petition of numerous residents of Garden City, Mo., protesting against a parcels post; to the Committee on the Post Office and Post Roads.

By Mr. GARDNER of Massachusetts: Communication from Haverhill Central Labor Union, indorsing resolution passed by Central Labor Union of the District of Columbia on arbitration treaty; to the Committee on Foreign Affairs.

By Mr. KAHN: Papers to accompany bills for the relief of the estates of the late James Cooper Ayres and Thomas J. Rodman; to the Committee on War Claims.

By Mr. MORGAN: Petition of residents of Cement, Kans., urging an investigation of the management of the Federal prison at Leavenworth, Kans.; to the Committee on Rules.

By Mr. RAKER: Resolutions of the Alameda County (Cal.) Pharmaceutical Association, protesting against House bill 8887; to the Committee on Ways and Means.

By Mr. TALCOTT: Petition of Rev. John L. Robinson and others, of Barneveld, N. Y., favoring arbitration treaties; to the Committee on Foreign Affairs.

SENATE.

FRIDAY, *August 18, 1911.*

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

The Secretary proceeded to read the Journal of yesterday's proceedings when, on request of Mr. CULLOM and by unanimous consent, the further reading was dispensed with and the Journal was approved.

PUBLIC BUILDING AT NEWARK, OHIO.

Mr. POMERENE. I desire to move a reconsideration of the votes on the third reading and passage of the bill (H. R. 13276) to provide for the disposal of the present Federal building site at Newark, Ohio, and for the purchase of a new site for such building, for the purpose of offering an amendment.

The motion to reconsider was agreed to.

Mr. POMERENE. I move to amend the bill on page 2, line 1, by inserting the word "and" after the word "building," so as to read "building and site."

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

IMPROVEMENT OF BLACK WARRIOR RIVER, ALA.

The VICE PRESIDENT laid before the Senate the amendment of the House of Representatives to the bill (S. 943) to improve navigation on Black Warrior River, in the State of Alabama, which was to strike out all after the enacting clause and insert:

That the Secretary of War is hereby authorized, in his discretion, to change the detailed plans and specifications for the construction of Lock and Dam 17, on the Black Warrior River, Ala., so as to increase the height of the pool level over the dam crest of Lock 17 to a height of 63 feet above the pool level of Lock 16, so as to render unnecessary the building of Locks 18 and 19, as now authorized, and so as to provide for the extension of slack water up the Mulberry and Locust Forks of the Black Warrior River to Sanders Shoals and Nichols Shoals, respectively, and for the development of water power.

SEC. 2. That the Secretary of War is hereby authorized and directed to have prepared such detailed plans and estimates as may be necessary to carry into effect the purposes of this act, and he is further authorized in his discretion to suspend operations during his investigations and to enter into supplemental agreements with the present contractors for Lock and Dam 17, providing for the annulment of existing contracts or for their modification so as to cover the work required for the construction of the higher lock and dam, as he may deem most advantageous for the interests of the United States.

SEC. 3. That should the construction of the higher dam at site 17 be found advisable the appropriations and authorizations heretofore made for the cost of locks and dams on the Black Warrior, Warrior, and Tombigbee Rivers, Ala., shall be available for the construction of Dam 17 and such locks as may be necessary to overcome the lift between the pools created by Dams 16 and 17.

SEC. 4. That the Secretary of War is authorized and empowered to enter into a contract with the Birmingham Water, Light & Power Co. (hereinafter styled "the company"), a corporation organized under the laws of the State of Alabama, its successors and assigns, for the purpose of carrying out the stipulations and performances herein mentioned. It shall be provided in said contract that the company, its successors and assigns, shall have the right to construct, maintain, own, and operate, at its own cost, in connection with Dams and Locks 16 and 17, for a period of 25 years from the time fixed in this act for completion of the works herein authorized, electrical power stations and other structures for the development of water power for industrial and other purposes, and for converting to its own use, benefit, and profit the power developed with the surplus water not needed for lockage, including the right to sell, lease, or otherwise dispose of said power: *Provided,* That the Secretary of War shall have the power to fix and regulate, from time to time, the rates which the said company may charge consumers for light, heat, and power: *And provided,* That the company shall furnish and deliver, free of charge to the Government, at Locks 16 and 17, all power necessary for the lighting and operation of said locks and for the lighting of the Government grounds and houses situated at said locks and dams: *And provided further,* That said company shall only sell light, heat, and power developed from said water power direct to the consumer. The said contract shall further provide for the payment by the company to the Government of an annual rental for its use of the water power developed at Dams 16 and 17. For a period of 20 years the rental shall be at the rate of not less than $1 per annum per horsepower developed, which rate shall be subject to be changed and fixed in his discretion by the Secretary of War at the end of that period and thereafter at the end of every 10-year period. Payment for the power developed at each dam shall begin one year after the locks and dam at 17 shall have been completed. Beginning with the year 1920, the minimum rental to be paid to the Government by the company shall be on the basis of 15,000 horsepower. The company shall have ingress and egress over Government lands for the construction and operation of its plants and works and the right to use Government

lands at or near said locks for the erecting of power houses and appurtenances in connection therewith, subject to approval and regulation by the Secretary of War. It shall be provided further in the contract that the company shall transfer to the Government flowage rights over all lands that will be temporarily or permanently overflowed by reason or in connection with the construction or improvement of Lock and Dam 17. The Government shall have free access to all the books of the company and all other records necessary for ascertaining and calculating the price, rates, and amount of power produced, developed, or sold by the company at said locks and at its storage reservoir. The contract shall further provide that the works herein contemplated, except the storage reservoir at or near Sanders Shoals, on the Mulberry Fork of the Black Warrior River, shall be commenced within one year and that the power-house foundations to be constructed by the company as a part of the dam shall be completed at least as soon as Dam 17. The said company is hereby authorized to construct said storage dam and reservoir at Sanders Shoals in accordance with the act to regulate the construction of dams across navigable waters, as amended by the act of June 23, 1910: *Provided*, That the construction of said dam and reservoir shall be commenced within 1 year after the completion of Dam 17, and shall be completed within 10 years from the date of approval of this act.

SEC. 5. That in the exercise of the authority granted to the company herein or by said contract the company shall conform to such regulations as may be imposed by the Secretary of War for the protection of navigation and of the property and other interests of the United States. The company shall at no time lower the pool level made by the erection of Dam 16, nor the pool level of Dam 17 below 63 feet above the crest of Dam 16, but in order to create a storage surplus for water-power purposes the Secretary of War may, in his discretion, permit flashboards or a removable crest not exceeding 3 feet in height to be installed on Dam 17 by the company, at its own expense; the United States shall not be liable to said company for any failure of water power from any cause whatsoever. The work and improvements herein provided for shall be executed under the direction and with the approval of the Chief of Engineers and the Secretary of War, the structures provided for being always subject to the provisions and requirements of this act and to such stipulations as may be imposed by Congress or by the Secretary of War for the protection of navigation and property and other interests of the United States. To insure the performance by the company of the acts and obligations imposed upon it by said contract, the Secretary of War may require the company to execute a bond in such an amount and with such surety as he may determine to be necessary. Whenever the company shall have acquired and transferred to the United States Government flowage rights over all lands to be flooded and temporarily or permanently overflowed, and shall have erected power stations sufficient to supply the Government with all necessary power to light and operate said locks, said bond may be reduced to an amount not to exceed $50,000.

SEC. 6. That nothing shall be done in the use of the water from said dam or otherwise to interfere with or in any way impede or retard the operations of said locks or the proper and complete navigation of the river at all times, nor in any way to interfere with the use and control of the same by the United States Government or the maintenance of the water surface above the dam at the established minimum pool level; and the Secretary of War is hereby authorized to prescribe regulations to govern the use of said water power and the operations of the plants and force employed in connection therewith, so far as the same applies to the operation of the locks.

SEC. 7. All repairs, renewals, and other necessary expenditures upon the works, which the company shall be allowed to construct exclusively for the use of power generation, shall be made by the company, so that their condition shall at no time interfere with the interests of navigation: *Provided*, That whenever in the opinion of the Secretary of War the condition of said works endangers the interests of navigation he shall notify the said company to repair the same, and if the company shall not immediately comply with the demand of the Secretary of War to make such repairs, he is hereby authorized and empowered to enter upon such works and cause them to be repaired; and the expense thereof shall constitute a debt against said company, its successors or assigns, and a lien upon all its property.

SEC. 8. The determination by the Secretary of War of the amount of rendal due the Government from the company at any time shall be conclusive and binding on the company; and if the company at any time fails to pay to the Government the amount of rental due, within a time to be fixed by the Secretary of War, or fails to comply with any of the provisions of this act on its part to be complied with, or fails to comply with any of the provisions of the contract on its part to be complied with, or fails to comply with any regulations or directions which the Secretary of War may lawfully make or give, or fails to observe the charges for the sale, lease, or other disposition of its power which may be prescribed from time to time by the Secretary of War, then the rights hereby granted shall become null and void as to the company and shall become thereby vested in the United States. At the end of the period of 50 years, hereinabove provided for, all rights, interests, and property of the company acquired under or by virtue of this act shall pass at once absolutely to the Government, unless Congress otherwise provides. Before this Act shall take effect as to the Birmingham Water, Light & Power Co., the Secretary of War shall, in a public manner, advertise for and receive bids from persons or corporations who may desire to be substituted for the Birmingham Water, Light & Power Co. as the beneficiary of this act, and if any person or company shall, in making a bid, offer better terms for the Government than are herein provided for to be received from the Birmingham Water, Light & Power Co., then the Secretary of War shall accept the best bid offered, and thereupon such best bidder shall in all respects as to this act be substituted in place of the Birmingham Water, Light & Power Co. if such best bid be not made by that company, in which case the Birmingham Water, Light & Power Co. shall not have or receive any right, title, or interest under the provisions of this act.

SEC. 9. That the right to alter, amend, or repeal this act is hereby expressly reserved, and the United States shall incur no liability for the alteration, amendment, or repeal thereof to the owner, owners, or any other persons interested in any dam or other structures which shall have been constructed in accordance with its provisions at or in connection with Dams Nos. 16 and 17.

Mr. NELSON. I move that the Senate disagree to the amendment of the House, request a conference on the disagreeing votes of the two Houses thereon, and that the Chair appoint the conferees on the part of the Senate.

Mr. LA FOLLETTE. Mr. President, yesterday, when this bill was messaged over from the House, I submitted a motion that it be referred to the Committee on Commerce, from which it was reported to the Senate. The RECORD discloses that the bill as passed by the Senate was amended in the House committee by striking out all after the enacting clause and substituting an entirely new bill. The bill as thus amended and reported by that committee was radically changed by amendments adopted during its consideration in the House.

I have had no opportunity to make such an examination of the amendments made to the bill in the House of Representatives as will enable me to discuss them intelligently at this time. I am advised, however, that the bill will confer upon a private corporation great advantages; that it proposes to authorize the Secretary of War to make this contract for a period of 30 years at rates which are preposterously low. The bill in its present form has had no consideration by this body. It has never been considered in its present form by a Senate committee. It ought not to be sent to conference without thorough consideration by the Senate Committee on Commerce. It is a measure of too great importance to dispose of it in conference in the closing hours of this session.

The VICE PRESIDENT. It is the recollection of the Chair that the Senator from Wisconsin made a motion for reference, but the Chair does not find it in the RECORD.

Mr. LA FOLLETTE. I distinctly remember having made the motion.

The VICE PRESIDENT. Yes.

Mr. LA FOLLETTE. I find a number of remarkable interpolations in the RECORD this morning, and some very notable omissions.

Mr. JOHNSTON of Alabama. The Senator from Wisconsin is correct about it. He made the motion yesterday.

Mr. LA FOLLETTE. I am certain that I made the motion.

The VICE PRESIDENT. The Senator from Wisconsin desires to make the motion now, anyway, the Chair understands.

Mr. LA FOLLETTE. I do. I renew that motion.

The VICE PRESIDENT. The Senator renews the motion, which saves the trouble of looking to find it in the record of yesterday's proceedings.

Mr. LA FOLLETTE. The Senator from Idaho [Mr. HEYBURN] says that my motion to refer this bill to the Committee on Commerce carried yesterday.

The VICE PRESIDENT. No; the motion was not put. At the request of the Chair the matter was laid aside until some other matter was disposed of.

Mr. HEYBURN. I was under the impression that it went to the committee.

The VICE PRESIDENT. No; it was some other matter.

Mr. NELSON. The motion was never put.

The VICE PRESIDENT. The Chair asked the Senator from Minnesota if he was entirely willing that the matter should remain on the table. The question is on the motion of the Senator from Wisconsin to refer the bill with the House amendment to the Committee on Commerce.

Mr. BANKHEAD. Mr. President, I rise to a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. BANKHEAD. Does not a motion to nonconcur in the House amendment and request a conference take precedence of a motion to commit the bill to the Committee on Commerce?

The VICE PRESIDENT. The Chair thinks not. The Chair thinks the motion to refer would take precedence.

Mr. BANKHEAD. Is that motion debatable?

The VICE PRESIDENT. The Chair thinks it is.

Mr. BANKHEAD. Mr. President, this bill was reported from the Commerce Committee of the Senate and passed. It went over to the House, and under conditions there it was doubtful whether the bill would be considered. But the Chief of Engineers and the Board of Engineers, to whom the bill had been submitted, reported that its passage was an emergency; that unless it should pass in some form, so as to authorize the Secretary of War to change the plans heretofore adopted and under which the contract had been let for the erection of one of the dams, the work would be indefinitely delayed; and that if it should be prosecuted under the contract, a very valuable water power would be permanently destroyed.

I want to say to the Senate that I have no interest whatever in this power proposition, except that I should regret very much to see that work prosecuted under the plan now being carried forward, the result of which would be the permanent destruction of this power.

I will say to the Senator from Wisconsin and to the Senate that if the bill shall go to conference, it is agreed that all reference to power in the bill will be stricken out and only the first three sections of the bill will be reported to the Senate.

The first three sections of the bill only authorize the Secretary of War, in his discretion, to change the plans that have

been formally adopted for the improvement of the river. The last river and harbor act contained a provision authorizing the Secretary of War to construct three dams and appropriating the money therefor. Under that act one of the dams was let to contract and the contractor is at work upon it, and unless this bill is passed he must necessarily go forward under that contract and under the law to the completion of the dam, to the utter destruction of the power at that point.

Another reason, Mr. President, why the Secretary of War and the engineers recommend this change is, that it is a great saving to the Government. Instead of building three locks and dams at the estimated cost, they propose to build one lock and dam at what is known as No. 17. Instead of building a low dam there for the purpose of navigation only, and building the other low dams for the purpose of navigation only, they report that, if they had authority to change their plans and to make a supplemental contract for the construction of a 63-foot dam at Lock 17, that would supersede the necessity of these other two locks. Not only that, but they would supersede the necessity of two other locks in the forks of this river, which must follow and which have been recommended by the engineers.

So it is, Mr. President, that if the first three sections of the bill, which make no reference to water power whatever, shall pass, this one dam and lock—it will require two locks—will supersede four other dams; in other words, instead of building five dams, three of which have been authorized and the money appropriated for them, the other two having been recommended by the engineers and will be appropriated for, this one dam completes that whole project to its final conclusion and saves to the Government, according to the estimate of the engineers, two hundred and fifty or three hundred thousand dollars and about four and one-half or five years of time, for the Senate will at once understand that they can build this one dam much quicker than they can build five dams, because a foundation would be required for each of these dams.

Not only that, Mr. President, but we get rid of a very large annual expense in the way of maintenance. Instead of having five lockages on this river to complete it, we shall have only one, thereby avoiding the necessity of keeping employees and all of the other necessary attachments at this dam for lockage purposes.

As I have said, I do not believe, if the Senator from Wisconsin will read the first two sections of this bill, he can have any objection to it. It is purely a navigation proposition. This dam is to be constructed according to plans that will make it possible in the future at some time—I do not know when—to develop and utilize this water power. That is all there is to the bill.

We have been hearing much, Mr. President, about the conservation of natural resources. Here is an opportunity to do that; here is an opportunity to complete this river within two years, and to complete the system at a much less cost than the original plan, simply by authorizing the Secretary of War to construct this one dam 63 feet high, with a view hereafter, if deemed advisable, to develop this water power. I hope, under these circumstances, the proposition will be acceded to.

I assure the Senator from Wisconsin that when the conference report comes back to the Senate, if this proposition for the development of water power will be eliminated, we shall have a simple proposition here for navigation, with the possibility retained at some future time to develop the water power, instead of going along now with the present plan and utterly destroying the water power for all future time. I hope the bill may go to conference.

Mr. BORAH. Mr. President——

The VICE PRESIDENT. Does the Senator from Alabama yield to the Senator from Idaho?

Mr. BANKHEAD. Certainly, I yield.

Mr. BORAH. As I understand, this bill was so amended by the other House as to provide a leasing system, as it were, for power which is to be created.

Mr. BANKHEAD. That is true, I think.

Mr. BORAH. And the fixing of rates, and so forth.

Mr. BANKHEAD. Yes.

Mr. BORAH. I understand that the bill as it passed the Senate, if I remember correctly, did not provide for any such thing.

Mr. BANKHEAD. Oh, yes; it did.

Mr. BORAH. Did the bill, as it passed the Senate, provide for the leasing of power?

Mr. BANKHEAD. Yes.

Mr. BORAH. Well, Mr. President, if the proposition for the National Government to lease these power sites and to fix rates within the States is going to be settled, it ought to be opened at the beginning of a session and not at the close, for it will take a long time to pass that kind of a bill.

Mr. BANKHEAD. I will say to the Senator from Idaho that is exactly my purpose in eliminating everything from this bill that has reference to power. The bill would come back here with every provision in it to provide for the leasing of power and the regulation of power, and all questions pertaining to power eliminated.

I think I understand, Mr. President, the importance of this great question, and I now concede that it is of the highest importance that Congress should, at an early day, take up this question and work out some systematic plan for the improvement of navigable rivers, so that water powers may be developed and that it should be uniform in its character. For that reason I shall insist, and those who have been instrumental in bringing this bill forward agree, that all reference to power shall be stricken from it. We propose to leave it purely as a navigation proposition, looking to the completion of navigation on that river. I hope the conferees may have an opportunity to present that question as I have indicated it to the Senate.

Mr. JOHNSTON of Alabama. Mr. President, I only want to add to what my colleague has so well said, that there was no debate in the House of Representatives on the navigation features of this bill. That part of the bill was accepted practically as the Senate passed it. It involved the authority conferred upon the Secretary of War to change the plans there, which would save about seven or eight years' time in completing the work of improving navigation on the river, and would save the Government some $250,000 or $300,000 in the cost of its completion. Instead of four dams, one high dam is to be built to back the water up the river for 45 miles, with a depth of 7 feet. It backs it up into a territory where coal mines have been developed, from which the engineers now report that there have been taken out 6,000,000 tons of coal a year, and that the supply is available at that rate for 850 years.

We are very anxious to complete the improvement of navigation on the river. It would be of immense benefit to the coal fields and to the iron and other manufacturing industries in the Birmingham district. When the work is completed as contemplated in the first three sections of the amendment, it will back the water up to the railroad where it passes over the river, so that freight from Birmingham can be lowered into barges and carried to the Gulf at a very small cost. It will reduce the cost of transportation of coal to Mobile nearly $1 a ton, and about the same to New Orleans—more than half the value of the transportation.

It is our purpose, in order to avoid the debate that will necessarily arise over the matter of water powers, the compensation to be paid therefor, and the right of the Government to take any compensation, to eliminate in conference those provisions from this bill and to leave only the navigation features. It will be a great benefit to our State and to our district and to other States.

Mr. BORAH rose.

Mr. JOHNSTON of Alabama. Does the Senator desire to ask any question?

Mr. BORAH. Mr. President, if it is to be understood that the conference report is to eliminate all questions except that of navigation, I should not object to the bill going to conference, but if these other questions are to arise——

Mr. JOHNSTON of Alabama. It is our purpose, I want to say to the Senator from Idaho, to eliminate those features.

Mr. BORAH. If the interests of private corporations and the question of leasing power generally are to be incorporated in this bill, I should prefer to have it go to a committee. If it is, however, to be confined in its terms as it shall be reported by the conference committee, so that it will operate with reference to the one question alone of navigation, I should be perfectly willing to see it go to conference; but I would want it understood that these other questions are to be eliminated.

Mr. JOHNSTON of Alabama. They are to be eliminated.

Mr. BANKHEAD. Mr. President, I can assure the Senator from Idaho that if this bill goes to conference it will never come back here with anything in it except the first three sections, which provide solely for navigation. The remainder of the bill will be eliminated in conference.

Mr. KERN. Mr. President, will the Senator yield for a question?

The VICE PRESIDENT. Does the Senator from Alabama yield to the Senator from Indiana?

Mr. BANKHEAD. Certainly.

Mr. KERN. Does the Senator refer to the three sections as contained in the original bill?

Mr. BANKHEAD. No, sir; the first three sections as contained in the amendment of the House of Representatives. I should like to have the Secretary read them for the information of the Senate. They are very short.

The VICE PRESIDENT. The Secretary will read as requested.

The Secretary read as follows:

That the Secretary of War is hereby authorized, in his discretion, to change the detailed plans and specifications for the construction of Lock and Dam 17, on the Black Warrior River, Ala., so as to increase the height of the pool level over the dam crest of Lock 17 to a height of 63 feet above the pool level of Lock 16, so as to render unnecessary the building of Locks 18 and 19, as now authorized, and so as to provide for the extension of slack water up the Mulberry and Locust Forks of the Black Warrior River to Sanders Shoals and Nichols Shoals, respectively, and for the development of water power.

SEC. 2. That the Secretary of War is hereby authorized and directed to have prepared such detailed plans and estimates as may be necessary to carry into effect the purposes of this act, and he is further authorized, in its discretion, to suspend operations during his investigations and to enter into supplemental agreements with the present contractors for Lock and Dam 17, providing for the annulment of existing contracts or for their modification so as to cover the work required for the construction of the higher lock and dam, as he may deem most advantageous for the interests of the United States.

SEC. 3. Should the construction of the higher dam at site 17 be found advisable, the appropriations and authorizations heretofore made for the cost of locks and dams on the Black Warrior, Warrior, and Tombigbee Rivers, Ala., shall be available for the construction of Dam 17 and such locks as may be necessary to overcome the lift between the pools created by Dams 16 and 17.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Wisconsin.

Mr. LA FOLLETTE. Mr. President, I have been endeavoring, as best I could at my desk, to examine the report of the Secretary of War, the original bill, and the various amendments. It appears that this bill, as introduced in the Senate, proposed in its first section to change the plans for improving the Black Warrior River and at the same time to develop water power "in cooperation with the Birmingham Water, Light & Power Co." As originally introduced it did not propose an open leasing plan, where different electric lighting companies could bid for the power created incidentally by the improvement of the river, but that it was proposed to open the way for the Birmingham Water, Light & Power Co. to get the contract from the Government.

As originally introduced there were some 10 sections in the bill. The first three sections provided for changing the plan of construction, but the great bulk of that bill and the manifest purpose that lay back of it was serving the interests of this electric light and power company by enabling them to get favorable terms from the Government, to the exclusion of all competitors, in acquiring the control of this power.

Mr. President, I have a memorandum, which has been given me by Mr. KENT, a Member of the House of Representatives, who has examined the bills and the papers and who followed the debate; and I am led to conclude, from a very hasty reading of this memorandum at my desk this morning, that there is perhaps no reason to oppose changing of the plan of improving the Black Warrior River. I want to ask the Senator from Alabama whether the Secretary of War has recommended this change in the plan——

Mr. BANKHEAD. He has.

Mr. LA FOLLETTE. And whether it is stated by the Secretary that it will work a substantial saving to the Government to construct the one dam at Lock No. 17 instead of constructing the several dams provided for in the earlier plan?

Mr. BANKHEAD. That is their report. They make that statement.

Mr. LA FOLLETTE. On all the information I have up to the present time I can see no objection to the passing of the first three sections of the bill as it came from the House, and upon the assurance of those in charge of the bill, who expect to be on the conference committee, that the Senate conferees will not agree to report in favor of enacting more than the three first sections of the bill, I will withdraw my motion and consent that it may go to conference.

Mr. NELSON. That is the purpose. I shall ask the Chair to appoint the Senator from Ohio [Mr. BURTON] and the Senator from Alabama [Mr. BANKHEAD] and myself on the committee. I feel about the question just as the Senator from Alabama does. I concur in his views on that subject.

Mr. BURTON. Will the Senator from Wisconsin yield to me?

The VICE PRESIDENT. Does the Senator from Wisconsin yield to the Senator from Ohio?

Mr. LA FOLLETTE. Yes.

Mr. BURTON. I am strongly in favor of establishing some general rule in regard to all these grants of water power. The usual custom has been to specify a particular company and grant to it the right to use the power developed in a stream. That has been regarded as necessary, because there was such a degree of detail, and the grantee would necessarily expend large sums of money in connection with the amount expended by the Government. Whenever a case arises, however, in which it can be submitted to competitive bids, I think it should be done.

Mr. President, I regard it as out of the question at this stage in the session to do more than to consider the first three sections. I think we should give very careful consideration to the other propositions coming from the House, and I do not think it possible to conclude our deliberations upon them before adjournment.

Another question arises. I should most decidedly take issue with the Senator from Idaho [Mr. BORAH] in regard to the right of the Government to charge a rental wherever power is created by Government dams constructed for the purpose of navigation. If the Government constructs dams in a river, whatever the original object be, whether it be for navigation or any other reason, the power created ought not to be given away; a fair compensation should be paid for it. That has been the custom for a number of years. I want to say in this connection that I think in some instances the compensation has been altogether inadequate.

Mr. BORAH. The Senator from Idaho has not yet defined his position upon that proposition.

Mr. BURTON. I am glad to hear that.

Mr. BORAH. I will say it is one of great importance, and before a proposition is adopted providing for a general leasing system, which has been promulgated by some people who have studied this question, I want it discussed pretty thoroughly.

Mr. BAILEY. Would the Senator from Idaho or the Senator from Ohio, either, oblige me by telling me how the Federal Government has acquired the power to lease these waters within a State unless and except so far as they relate to navigation?

Mr. BORAH. I think no one who is familiar with the Constitution contends for anything other than what the Senator from Texas does.

Mr. BAILEY. I am very glad to know that the Senator from Idaho does not, because, without having examined it carefully, I should distrust my own opinion if he differed with me. But the learned Senator from Ohio seems to assume that power in the Federal Government.

However, I do not desire to delay this bill which, under the statement of the Senator from Alabama [Mr. BANKHEAD]—and that is enough for all of us—does not involve that question; but I think it will take a long time to settle it as the Senator from Ohio suggests. I hope he will bring it in in the first part of some long session.

Mr. BORAH. I did not understand that the Senator from Ohio took that position.

Mr. BAILEY. He did say, as I understood him, that there ought to be a system under which the Government should make these leases and under which it should have a larger revenue than it has heretofore derived from it.

Mr. BURTON. Does the Senator from Texas deny the right of the General Government, when it has constructed dams for the purpose of aiding navigation, and those dams create a water power, to lease that water power and to charge for it?

Mr. BAILEY. I do, unqualifiedly. I deny that the Federal Government has any right over or concerning any stream in any State of this Union further than is necessary to remove obstructions to interstate and foreign commerce, and probably we must now go so far as to say that it has the jurisdiction to create facilities for interstate and foreign commerce. But it has no more title to the water that flows through these States than I have, and if it acquire the land on which it constructs a dam, that probably raises a different question. It then may possess a proprietor's right, but it certainly does not even then possess a sovereign right.

How far the Government, owning the dam or the water, succeeding to the riparian owner's rights, may then dispose of it, probably is another question. But that question, I take it, is not involved in all these cases.

Mr. BURTON. Mr. President——

Mr. BAILEY. I beg pardon of the Senator from Alabama and the Senators from Idaho and Ohio.

I merely did not want to see that question passed as if it were not contested, and I was unfortunate enough not to exactly understand that the Senator from Idaho did question it. If I had understood his position, I would not have even interposed with this inquiry.

Mr. BURTON. The question of the right to construct dams for the creation of water power as an independent proposition is not involved here.

Mr. BAILEY. No. We ought to pass this.

Mr. BURTON. But if, when that water power is created as an incident in the construction of navigation works, anyone denies the right to make a charge for such power, he denies the existence of a right which the Government in numerous places has been exercising for years.

Mr. BAILEY. It has no more right to do it than I have.

Mr. BURTON. It is a right which has been exercised in many of the States and which has been sanctioned by the Supreme Court of the United States. I am quite well satisfied I can convince the Senator from Texas that this view is correct.

Mr. BAILEY. The Supreme Court of the United States itself could not convince me of that, if it should decide it and repeat the decision, because I know perfectly well that the power of the General Government over the streams is a commerce power and that commerce power relates only to the right of navigation.

Mr. BORAH. When the Senator from Ohio says it has been sanctioned by the Supreme Court of the United States, he does not mean to say that the Supreme Court has decided that question?

Mr. BURTON. The Supreme Court has decided that where, as an incident in the exercise of another right, water power is created, that water power may be sold and charged for.

Mr. BAILEY. This Republic will have to be older and there will have to be several successions to the Supreme Court before I would ever believe that that ought to be the law. But I have never had occasion to examine it; I do not live where these questions arise, and my interest in it is merely general or, it might be said, a theoretical one.

I shall ask the Senator from Ohio, not on the floor, because that might assume he could not produce the decisions—and I am sure he thinks he can—but after this matter is disposed of I shall ask him for the decisions that hold that the Government of the United States, which possesses a mere easement in these waters, may sell what belongs to the States or to the riparian owners.

Mr. LA FOLLETTE. Mr. President, upon the assurance which has been made to the Senate that the limit of this legislation, as reported from conference, will not extend beyond the first three sections of the House bill, I withdraw the motion I made to commit it to the committee again.

The VICE PRESIDENT. The Senator from Wisconsin withdraws his motion.

Mr. KERN. I should like to inquire of the Senator from Alabama whether this abandonment of the matters referred to in the sections succeeding section 3 is a mere temporary abandonment, or whether this scheme, which is outlined in the sections succeeding section 3, is to be renewed at some future time.

Mr. BANKHEAD. I could not answer that question. My idea is that the Congress will take up this question generally very soon, and we ought to work out some plan, some policy that is uniform. I could not say that Congress will not at some future time undertake to legislate with reference to the development of this power. I believe it will, some time in the future. I believe it ought to. But I do not believe it ought to do it now.

Therefore I assure the Senate that, as far as I can control it, if this bill goes to conference, only the first three sections of the bill will come back to the Senate, and we will leave open the question as to what Congress may do in the future.

Mr. HITCHCOCK. I should like to make an inquiry of the Senator from Alabama. In case the Congress later takes up this matter of disposing of the power created by this dam, is there any other company except the company named heretofore in this bill which can become a bidder for that power?

Mr. BANKHEAD. Oh, I think anybody can take it up, perhaps. Of course that whole question is eliminated here. There is no bidding: there is no leasing; there is no attempt in any way in this bill to control that power or to dispose of it. That is left for the future.

Mr. HITCHCOCK. The question of the Senator from Indiana was directed to ascertaining whether this bill now, as proposed, confining it to three sections, might be possibly a preliminary step to another attempt to transfer to this company the power which the Government proposes to create; and what I wanted to learn was whether, if the power is to be disposed of as the Senator indicates, it must necessarily be disposed of to this company——

Mr. BANKHEAD. Oh, no.

Mr. HITCHCOCK. Or whether other companies might be in the market to secure it.

Mr. BANKHEAD. Of course, when Congress comes to deal with this question, as the House has already indicated, it will be put up to the highest bidder, or there will have to be compliance with any other arrangement or any other condition that may be imposed by Congress, which, of course, will be ample.

Mr. HITCHCOCK. I think that was one of the vices of this bill, that it did not give other companies an opportunity to secure the power.

Mr. BANKHEAD. Our anxiety is to have this improvement completed as a navigation proposition, and our idea is to save four or five years, and to save considerable sums in money.

The money for this has already been appropriated. The purpose is to get these three sections out of conference. The Board of Engineers and the Chief of Engineers are in perfect accord and recommend these three sections, in order to facilitate this work; and then whatever Congress may do in the future with reference to power will be as applicable to this bill as to any other bill.

I anticipate that the importance of this question in the near future, and the public demand will compel Congress to take up seriously and undertake to reach some conclusion with reference to this great question.

Mr. LA FOLLETTE. It is beyond question that this subject will again appear in Congress.

Mr. BANKHEAD. I hope so.

Mr. LA FOLLETTE. In anticipation of that, if it is found to be within the rules, I suggest that the conferees attach to the bill as perfected in conference a direction or request to the Secretary of War to report what electricity will be generated by this improvement, or report an estimate of the amount of electricity that will be generated and the selling value of that electricity.

Mr. BANKHEAD. We already have a report from the Secretary of War as to the amount of current to be developed here. That is in the report—the horsepower.

Mr. LA FOLLETTE. The amount that would be developed by the erection of this particular dam at Lock No. 17?

Mr. BANKHEAD. Yes; Locks Nos. 17 and 16. It is a very small amount. The power to be created here, if there is to be power, is to be produced by the storage dam at the head of navigation, with which the Government has nothing to do except to supervise it. There is where the power is to come from.

They propose at the head of navigation of this river or above navigation, to erect at their own expense a dam 100 feet high, and there to impound the waters in a reservoir covering 30,000 acres perhaps, and from that reservoir they propose to get their power mainly. There is very little power to be created at these dams.

Mr. LA FOLLETTE. How much power is it estimated by the Secretary of War will be created by the improvements which it is proposed to make?

Mr. BANKHEAD. Under these three sections?

Mr. LA FOLLETTE. Under these three sections of this bill.

Mr. BANKHEAD. They report that perhaps 5,000 horsepower may be produced. That is doubtful—5,000 horsepower. It is very small.

Mr. LA FOLLETTE. My recollection, from a hasty reading of the bill, was that it was something like three times that.

Mr. BANKHEAD. No. If the Senator from Wisconsin will examine the report and the arguments in the House he will find that that mainly is to be created from the reservoir dam, not from the dams at all.

Mr. LA FOLLETTE. I have not had an opportunity to read the entire bill.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Minnesota.

The motion was agreed to; and the Vice President appointed as the conferees on the part of the Senate Mr. NELSON, Mr. BURTON, and Mr. BANKHEAD.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by J. C. South, its Chief Clerk, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 2958) providing for publication of contributions made for the purpose of influencing elections at which Representatives in Congress are elected.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills and joint resolution, and they were thereupon signed by the Vice President:

H. R. 2958. An act to amend an act entitled "An act providing for publicity of contributions made for the purpose of influencing elections at which Representatives in Congress are elected," and extending the same to candidates for nomination and election to the offices of Representative and Senator in the Congress of the United States and limiting the amount of campaign expenses;

H. R. 13277. An act to increase the limit of cost of the public building authorized to be constructed at Gettysburg, Pa.; and

H. J. Res. 146. Joint resolution for appointment of a member of the Board of Managers of the National Home for Disabled Volunteer Soldiers.

PETITIONS AND MEMORIALS.

Mr. JONES presented memorials of Custer Post, No. 6; General U. S. Grant Post, No. 116; and D. A. Russell Post, No. 35, all of the Department of Washington, Grand Army of the Republic, in the State of Washington, remonstrating against an appropriation of $100,000 being made for the erection of a Confederate naval monument in the Vicksburg National Military Park, which were ordered to lie on the table.

Mr. SHIVELY presented a memorial of District Grand Lodge, No. 2, Independent Order of B'nai B'rith, of Denver, Colo., remonstrating against the treatment of certain American citizens by the Russian Government, which was referred to the Committee on Foreign Relations.

He also presented a petition of the congregation of the High Street Methodist Episcopal Church, of Muncie, Ind., and a petition of the congregation of the Mennonite Church, of Berne, Ind., praying for the ratification of the proposed treaties of arbitration between the United States, Great Britain, and France, which were ordered to lie on the table.

Mr. PERKINS presented a petition of the Board of Supervisors of Tulare County, Cal., praying that an appropriation be made for the extermination of ground squirrels and other rodents, which was referred to the Committee on Agriculture and Forestry.

Mr. GAMBLE presented the petition of Howard Babcock, of Sisseton, S. Dak., praying for the adoption of certain amendments to the proposed treaty between the United States and Nicaragua, which was referred to the Committee on Foreign Relations.

He also presented a petition of the congregation of the First Congregational Church, of Bonesteel, S. Dak., praying for the ratification of the proposed treaties of arbitration between the United States, Great Britain, and France, which was ordered to lie on the table.

Mr. BURTON presented a petition of sundry citizens of Damascus, Ohio, praying for the ratification of the treaty of arbitration between the United States and Great Britain, which was ordered to lie on the table.

Mr. WETMORE presented a memorial of the First Regiment Rhode Island Detached Militia and First Battery Veteran Association of Rhode Island, remonstrating against an appropriation of $100,000 being made for the erection of a Confederate naval monument in the Vicksburg National Military Park, which was ordered to lie on the table.

FUNERAL EXPENSES OF THE LATE SENATOR FRYE.

Mr. BRIGGS, from the Committee to Audit and Control the Contingent Expenses of the Senate, to which was referred the following resolution (S. Res. 138), submitted by Mr. JOHNSON of Maine on the 15th instant, reported it without amendment, and it was considered by unanimous consent and agreed to:

Resolved, That the Secretary of the Senate be, and he hereby is, authorized and directed to pay from the miscellaneous items of the contingent fund of the Senate the actual and necessary expenses incurred by the committee appointed by the Vice President in arranging for and attending the funeral of the late Senator WILLIAM P. FRYE, from the State of Maine, vouchers for the same to be approved by the Committee to Audit and Control the Contingent Expenses of the Senate.

ASSISTANT CLERK TO COMMITTEE ON THE JUDICIARY.

Mr. BRIGGS, from the Committee to Audit and Control the Contingent Expenses of the Senate, to which was referred the following resolution (S. Res. 103), submitted by Mr. CLARK of Wyoming July 13, 1911, reported it without amendment, and it was considered by unanimous consent and agreed to:

Resolved, That the Committee on the Judiciary is hereby authorized to employ an assistant clerk, at a salary of $1,800 per annum, to be paid from the contingent fund of the Senate until otherwise provided by law.

BILLS INTRODUCED.

Bills were introduced, read the first time and, by unanimous consent, the second time, and referred as follows:

By Mr. TAYLOR:

A bill (S. 3263) for the relief of Calhoun Lodge, No. 26, Independent Order of Odd Fellows, of Fayetteville, Tenn.; to the Committee on Claims.

By Mr. WETMORE:

A bill (S. 3264) to correct the naval record of Henry L. Slade, deceased; to the Committee on Naval Affairs.

By Mr. BORAH:

A bill (S. 3265) to amend section 5 of an act to authorize advances to the reclamation fund and for the use and disposition of certificates of indebtedness in reimbursement therefor, and for other purposes, approved June 25, 1910; to the Committee on Public Lands.

M. H. BUMPHREY.

Mr. SMITH of Michigan submitted the following resolution (S. Res. 141), which was read, and, with the accompanying papers, referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That the Sergeant at Arms of the Senate is hereby authorized and directed to place upon the roll of messengers in the employ of the Senate the name of M. H. Bumphrey, to be borne thereon in accordance with the provisions of Senate resolution No. 72, agreed to on July 14, 1911, at a compensation at the rate of $1,440 per annum, such compensation to be paid from the contingent fund of the Senate until otherwise provided for by law.

WITHDRAWAL OF PAPERS—EUGENE E. SCHERRER.

On motion of Mr. CULLOM, it was

Ordered, That the papers in the case of Eugene E. Scherrer, S. 6090, second session Sixty-first Congress, be withdrawn from the files of the Senate, no adverse report having been made thereon.

COTTON CROP STATISTICS.

Mr. SMITH of South Carolina. Mr. President, a few days ago I introduced a resolution (S. Res. 135) asking the Secretary of Agriculture to give some detailed information as to the methods of gathering the report on the condition of the cotton crop and the preliminary estimate made upon this report as to the probable yield. There was some objection raised in the Senate to the immediate consideration of it, and on account of some further objections from other soruces I allowed it to lie on the table.

I have prepared a resolution (S. Res. 140) this morning based upon some facts which I have obtained, and which I desire to have read, in order to explain the necessity for some immediate action along this line. I wish to notice a paragraph from the report emanating from the Agriculture Department.

It states that the condition of the growing cotton crop was, on June 25, 88.2 per cent, against a 10-years' average of 80 per cent, and that there were 34,000,000 acres this year that would probably be harvested, against about 32,000,000 acres last year, and they estimate, on June 25, that the probable yield of cotton would be 14,500,000 bales, at least 3,000,000 bales more than were made the year previous, and certainly 2,000,000 bales more than have ever been made in the history of the cotton belt.

On account of the condition of weather that has prevailed throughout the South and on account of the wide protest which has come in against the Government issuing any preliminary statement as to the yield until the crop has been practically ginned I introduced the resolution not for the purpose of discrediting the Agricultural Department, but for the purpose of giving that department the opportunity of showing to the public plainly and above board just the methods employed and the persons employed in arriving at this conclusion.

In order to fortify myself thoroughly as to whether the Government should be given an opportunity to explain the statement regarding this great industry, affecting 11 of the States of this Union and upon which depends the balance of trade in America, I got a Senator from each of the cotton-growing States to wire to the commissioner of agriculture of his State as to the condition and prospective yield. I wish to have the attention of the Senator from Ohio [Mr. BURTON] just here, because I want him to understand it thoroughly, as he is the one who made the objection to the resolution, together with the chairman of the Committee on Agriculture and Forestry.

As I said, I got a Senator from each of the cotton-growing States to wire his commissioner of agriculture to suggest what were the conditions obtaining in the cotton crop in the several States.

Mr. President, I am not going to bring an accusation against the Agricultural Department, but every man on this floor who is interested in the development of the South and in its development through the making and marketing of the cotton crop knows that upon the price obtained for this crop largely depends the welfare of every institution in those States.

It is also a notorious fact that in the two years preceding this there have been abnormally short crops. In 1910 the manufacturers, spinners, and weavers of the world met in convention in Brussels, and in that convention the American spinners, the English spinners, the India spinners, the European spinners and weavers declared that we were face to face with a cotton famine, and unless they curtailed 33⅓ per cent of the time, cotton was inevitably bound to rise to a price far beyond that now obtaining. It was further stated in their meeting in Vienna that the Agricultural Department of the United States of America was

heartily cooperating with them in gathering such data as referred to the condition and supply of cotton and increasing the amount of yield to supply the spinners of the world.

Taking into account the fact that we are face to face to-day with a cotton famine, with the amount of raw material practically exhausted on account of two short years and an increase of spindles, it was peculiarly disastrous that on June 25, before a large per cent of the cotton crop of the South was up, the Agricultural Department should issue a statement that the percentage of conditions was higher than it had been in years, and that the probable outcome would be 3,000,000 bales above the year preceding. What was the result? In less than eight weeks the cotton market broke $20 on the bale, sweeping out of the South all the profits which might accrue to the grower.

We stood here and argued when reciprocity was before this body that the farmers of the West in growing wheat were not only entitled to a profit on their wheat, but the Senate attempted to pledge them the support of the Government against Canadian competition endangering that profit on wheat. In this, before the cotton crop of the South is out of the ground, the Agricultural Department issued a statement the practical effect of which was that if the mills and the weavers of the world would but wait from 60 to 90 days and run short time the markets would be flooded with an overabundance of cotton produced in the South.

Therefore, in order to counteract the influence of this report and to stay this disaster to my section, not asking for protection from the Government in reference to cotton, but asking that nothing should emanate from any of our departments under the law which shall injure them, I had a Senator from each cotton-growing State to send a telegram to the commissioners of agriculture, men elected by each one of these States to superintend the agricultural interests of those States, asking them what were the conditions obtaining as to the cotton crop and to give an estimate as to the probable yield in their States, as compared with the year previous.

Last year we made 11,423,000 bales. By the estimate of the Agricultural Department this year we will make, according to their August report, 14,700,000 bales. These are the telegrams received, which I send to the desk and ask that the Secretary may read. I wish to have them incorporated in the RECORD.

The VICE PRESIDENT. The Secretary will read the telegrams, without objection.

Mr. SMITH of South Carolina. Understand, Mr. President, before the Secretary reads, I did not send to private individuals, nor did I send a telegram myself. I got a Senator from each cotton-growing State to wire his commissioner of agriculture to give a statement as to the deterioration, if any, and what was the probable yield as compared with last year. I wish to have those telegrams read before I go further.

The Secretary read as follows:

MONTGOMERY, ALA., *August 15, 1911.*

Hon. J. H. BANKHEAD,
Senate Chamber, Washington, D. C.:

Deterioration since July 25 is at least 15 per cent. I estimate the yield, as compared with last year, 5 per cent greater.

I. F. KOLB, *Commissioner.*

ATLANTA, GA., *August 15, 1911.*

Hon. A. O. BACON, *Washington, D. C.:*

Deterioration of cotton since July 25 is at least 20 per cent. The yield, in comparison with last year, about the same.

T. G. HUDSON.

Mr. BURTON. Mr. President, will the Senator from South Carolina yield for a question?

Mr. SMITH of South Carolina. Certainly.

Mr. BURTON. When was the latest bulletin issued by the Agricultural Department relating to the condition of the cotton crop?

Mr. SMITH of South Carolina. The condition was taken July 25 and issued August 2.

Mr. BURTON. And these telegrams seek to show——

Mr. SMITH of South Carolina. The telegrams came in August 15.

Mr. BURTON. Showing the condition of the crop July 25.

Mr. SMITH of South Carolina. On July 25. I did that in justice to the Agricultural Department, to see if there was any deterioration since then so marked as to warrant the resolution which I introduced.

Mr. BURTON. Will the Senator yield for another question? How frequently are these bulletins issued by the Agricultural Department?

Mr. SMITH of South Carolina. Once a month. They are gotten up on the 25th of each month and issued on the 2d of the succeeding month.

The Secretary continued the reading of the telegrams, as follows:

AUSTIN, TEX., *August 15, 1911.*

Hon. C. A. CULBERSON,
Washington, D. C.:

I have your wire of the 15th. There is slight deterioration in the cotton crop since July 25. The prospects are for a very slight increase, if any, in the yield in this State as compared with last year.

ED. R. KONE.

LITTLE ROCK, ARK., *August 15, 1911.*

Senator JAMES P. CLARKE,
Washington, D. C.:

The cotton crop shows slight depreciation since July 25, caused by rain falling into the white bloom. Inferior fruitage and lateness of plant will not give us a crop exceeding last year, notwithstanding fine appearance of stalk at this time.

CLAY SLOAN,
Commissioner of Agriculture.

JACKSON, MISS., *August 15, 1911.*

Hon. JOHN SHARP WILLIAMS,
Washington, D. C.:

Deterioration 20 per cent. Excessive rains, overflow, boll weevil, and worms. Outlook not encouraging.

H. E. BLAKESLEE.

BATON ROUGE, LA., *August 15, 1911.*

Hon. MURPHY J. FOSTER,
Washington, D. C.:

No reports of deterioration received since date mentioned, though the continued rains now prevailing might prove disastrous. The present outlook indicates a third more cotton than last year.

E. O. BRUNER, *Commissioner.*

OKLAHOMA, OKLA., *August 16, 1911.*

Hon. ROBERT L. OWEN,
Senate Chamber, Washington, D. C.:

Practically no change in condition of cotton since July 25. Estimated yield for this year 1,000,000 bales.

G. T. BRYAN.

SUMTER, S. C., *August 14, 1911.*

Hon. E. D. SMITH,
Senate, Washington, D. C.:

Joint meeting Sumter Farmers' Union and Chamber of Commerce. Cotton situation discussed. From information cotton yield greatly overestimated. Drought unbroken. Deterioration rapid and general. Request you urge Department of Agriculture make immediate investigation and publish results. Your actions crop reports commended.

E. W. DABBS,
President Farmers' Union.
A. W. SNELL,
Secretary Chamber of Commerce.
R. I. MANNING,
Acting Chairman.

COLUMBIA, S. C., *August 15, 1911.*

Senator E. D. SMITH,
United States Senate, Washington, D. C.:

Yours even date. Our crop now in the midst of crucial period. In certain sections deterioration rapid and heavy, in many others none. Condition not as good as on July 25. Until end of August would not care venture predictions as to total production. If no adverse conditions in three weeks this State's crop will be about an average crop.

E. J. WATSON, *Commissioner.*

RALEIGH, N. C., *August 15, 1911.*

Hon. LEE S. OVERMAN,
Washington, D. C.:

Commissioner absent. No deterioration in cotton crop. Outlook for better yield than last year.

ELIAS CARR, *Secretary.*

Mr. SMITH of South Carolina. Mr. President, according to the reports from the commissioners of agriculture on the ground in these several States there are but three States indicating an increased yield, to wit, Louisiana last year made two hundred and fifty thousand and some odd hundred bales. The commissioner of agriculture of that State claims that the increase will be about one-third. In Alabama about one-fifth greater than last year, while he declares that the deterioration is going on now. In North Carolina the commissioner was not present, and his secretary said that the yield will probably be greater than last year; and North Carolina makes something over 700,000 bales. But in the States of Texas, Georgia, South Carolina, Mississippi, and Arkansas, producing nine-tenths of the cotton crop, the reports indicate very slight deteriorations since July 25 and that the probable outcome will not exceed last year.

Now, in view of these facts, I think that the Agricultural Department, which was created for the purpose of serving the interests of the farmer and not to become the master of the farmer, might investigate thoroughly and, if it will not give the process by which they arrive at these estimates, might take the occasion now upon the request of these parties interested and make the investigation. Because one of two things is true—either the commissioners of agriculture in these cotton-growing States, familiar with all the processes of cultivation, were misinformed and did not know what they were talking

about, or the Agricultural Department is wrong in its deduction that there will be a record-breaking crop.

We are interested, the United States is interested, in view of the fact that last year out of $868,000,000 sold in the raw state from this country abroad, cotton alone produced $470,000,000 of that amount. Every increase in the price of raw material means that much more European money for America. Yet this report, coming on the 25th day of June, has emasculated the cotton market and depressed the price nearly 30 per cent. Therefore, the growers of this cotton are entitled to know from the Agricultural Department what are the actual conditions existing in the face of what I have had read. And now, with the permission of the Senate, I ask to have read and incorporated also the following——

The PRESIDING OFFICER (Mr. HEYBURN in the chair). In the absence of objection it will be read.

Mr. SIMMONS. Mr. President, with the permission of the Senator from South Carolina, I should like to inquire if the same climatic conditions that affect adversely the cotton crop in the South do not as a rule affect in the same way the corn crop in the South?

Mr. SMITH of South Carolina. Almost identically, Mr. President.

Mr. SIMMONS. That being so, I want to call attention——

The PRESIDING OFFICER. Will the Senator from North Carolina first allow the Secretary to read the paper that was ordered to be read?

Mr. SMITH of South Carolina. In order not to break the question the Senator from North Carolina is asking, I yield before the paper is read.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. SIMMONS. I want to call attention, in view of the statement of the Senator from South Carolina, to the very remarkable statement contained in the Government report on the condition of the cotton crop issued August 2, 1911, and the Government report on the condition of the corn crop August 9, 1911, in the States of Texas and Oklahoma. Texas and Oklahoma are both corn-growing and cotton-growing States. The Senator, as I understand, states that the same climatic conditions which injuriously affect the cotton crop affect in the same way the corn crop. In those two States this report is made: The condition of corn in Texas is reported to be 40, against 45 last month and 78 last year. That is a falling off of 38 points. The condition of cotton in Texas is reported to be 86, against 85 last month and 82 last year—that is, the condition of the cotton crop in that State is 4 points higher than it was last year. In Oklahoma the condition of corn is reported at 33, against 40 last month and 57 last year. The condition of cotton in Oklahoma is reported to be 88, against 87 last month and 87 last year; in other words, in Texas and Oklahoma, both corn and cotton growing States, the corn report shows one of the lowest records in the history of corn growing in those States, while the cotton report for the same year shows one of the highest records. Can the Senator reconcile those two reports?

Mr. SMITH of South Carolina. Mr. President, I should certainly dislike in the Senate of the United States to draw what conclusion I feel could be drawn from that very remarkable report. According to what the Senator has read in reference to Oklahoma and to Texas, the report shows a like condition in all the cotton-growing States; but in order not to inveigh against the Agricultural Department and to give it a clear field in which to make a clear, honest, straightforward report as to actual conditions, I call attention once again to the telegrams that I have sent to the desk and had read. I said that in Louisiana they only made 250,000 bales and that the reported increase would bring it up to less than a half a million bales. In Oklahoma they claim they will make probably a million bales. Last year they made 955,921 bales. Therefore, taking the indicated increase in Alabama, Oklahoma, and Louisiana, the cotton crop for this year can not exceed the crop of last year by more than 1,000,000 bales.

So startling was the fact that the Agricultural Department did issue a preliminary report, based on the condition of June 25, and so remarkable was the drop in the market that I myself went to the Secretary of Agriculture, interviewed him, and asked him by what authority did they issue a preliminary report when the law requires that a condition report only should be issued. His reply to me, in effect, was that it had not been issued. When I called his attention to the fact that it had been issued, he said it was without his knowledge or consent and would not be repeated. On August 2 another report was issued based upon the condition existing on July 25, which raised it practically 1 per cent higher in condition than that which existed on June 25 and stated the estimate at this time at 14,700,000 bales, but did take occasion to mark the report "unofficial."

Mr. President, the result of that was a still further depression in the cotton market, while still some of the cotton was not up in the field.

To ascertain by what process this remarkable issuance of the Agricultural Department was arrived at was the cause of my introducing the first resolution. I should like to have the Secretary now read the letter which I send to the desk.

The PRESIDING OFFICER. The Secretary will read as requested.

The Secretary read as follows.

CHAMBER OF COMMERCE,
Sumter, S. C., August 15, 1911.

GENTLEMEN: At a joint meeting of the chamber of commerce and of the Farmers' Union of this county, held August 14, the present condition of the cotton crop was discussed. It was the consensus of opinion that the crop had greatly deteriorated since the Government report. The drought in this section is unbroken and the prospects of anything more than an average crop are not bright. Similar reports have been noted throughout the South.

In view of this situation and because of the general feeling of depression of the cotton planters as to future prices raised by the Government report, which is believed to be exaggerated, this chamber was requested to immediately correspond with the various commercial bodies in the cotton States and to invite their cooperation in allaying, so far as possible, this feeling of depression and to request their aid in securing the actual facts as to the condition of the cotton crop. The Farmers' Union of the South will cooperate in this effort.

We desire, therefore, to submit the following suggestions:

First. That each commercial body immediately telegraph its national Representatives requesting the Department of Agriculture to obtain the latest reliable information of the true condition of the cotton crop.

Second. That each body immediately ascertain the present condition of the cotton crop in its vicinity and communicate the result of this investigation to this chamber. These reports will be tabulated and published.

Third. That each body, through the local press and the direct influence of its membership, encourage the farmers to adopt the plan of a gradual marketing of their cotton, in order to avoid flooding the market by precipitately selling and thus losing a large part of their just earnings.

We are confident that concerted action at this time is of great importance to the entire South.

Very truly, yours,

SUMTER CHAMBER OF COMMERCE,
By A. V. SNELL, *Secretary.*

Request of Mr. R. I. Manning.

Mr. SMITH of South Carolina. Mr. President, the last article that I should like to have read and incorporated in my remarks is very short. After it is read I shall then introduce the resolution which I have prepared.

The PRESIDING OFFICER. The Secretary will read as requested.

The Secretary read as follows:

[An Associated Press dispatch clipped from the News and Courier, Charleston, S. C.]

THINKS CROP REPORTS COLORED—CONDITIONS EXAGGERATED, SAYS GEORGIA AGRICULTURE COMMISSIONER.

ATLANTA, *August 16.*

Alleging that southern crop conditions have been grossly exaggerated, T. G. Hudson, commissioner of agriculture of Georgia, has written to all similar officials in all the Southern States asking that they meet and devise plans to correct what he calls "wrong impressions of the outlook."

He asks that all farmers' organizations cooperate with the State commissioners. It is declared that crops, especially cotton, will not have as large yields as have been reported, and that such alleged false reports will tend to hurt prices.

Mr. SMITH of South Carolina. Mr. President, it is useless for me to extend this discussion further. Here are the cotton growers of the South saying that conditions—mark, now, closely—even where there is no deterioration reported, antedating June 25 or July 25, were such as to indicate that there will not be any greater yield this year than last year. Therefore it must be evident that there has been a radical mistake made somewhere. Those who are to suffer from it have a right to be heard, and I introduce the resolution I send to the desk, for which I ask immediate consideration.

The PRESIDING OFFICER. The Senator from South Carolina asks unanimous consent for the present consideration of a resolution offered by him, which the Secretary will read.

The Secretary read the resolution (S. Res. 140), as follows:

Resolved, That, if feasible, the Secretary of Agriculture be, and he is hereby, requested to investigate immediately the condition of the cotton crop, and to make public the same at the earliest date possible.

Mr. BURNHAM. Mr. President, this seems to be an important matter, and I believe it should be fully considered. I therefore move that the resolution be referred to the Committee on Agriculture and Forestry.

Mr. SMITH of South Carolina. Mr. President, I will say to the Senator, before he takes his seat, that I interviewed the Agricultural Department before introducing the resolution and asked if, in view of the request that comes from the parties affected and interested, it were not possible for them to get out an emergency report. The department said that they had been considering doing that, but they did not know whether or not it was now feasible. It will be the 2d of September before

any correction can be made if the regular course is pursued. The resolution simply asks the Secretary of Agriculture—it does not command him to make the investigation, but simply, upon the request of the cotton growers, asks him, if feasible, to make this report. Every day's delay means that much loss. I do not see how the Senator can object. I am quite sure, if you can come in here and ask that laws be passed artificially to protect the interests of the agriculturists of the West, we can make a simple request like this.

The PRESIDING OFFICER. The Chair desires to inquire of the Senator from South Carolina whether or not the resolution which he now sends to the desk is in lieu of the resolution he has heretofore presented?

Mr. SMITH of South Carolina. No; it is an independent resolution. It has no reference whatever to the other resolution.

The PRESIDING OFFICER. The Chair will state the question. The Senator from South Carolina asks unanimous consent for the present consideration of the resolution he has presented.

Mr. SMITH of South Carolina. I should like to have the resolution again read, so that the chairman of the Agricultural Committee may fully understand it.

Mr. BURNHAM. I move that the resolution be referred to the Committee on Agriculture and Forestry.

The PRESIDING OFFICER. The Secretary will read the resolution.

The Secretary again read the resolution.

The PRESIDING OFFICER. The Senator from New Hampshire moves that the resolution be referred to the Committee on Agriculture and Forestry.

Mr. SMITH of South Carolina. Mr. President, I should like to state that, in case that is done, it may be impossible to secure the relief sought and afford the Agricultural Department the opportunity to investigate fairly and to make report, so that the feeling which has caused the protests against this alleged report shall be allayed. The department have their correspondents, and a wire this afternoon would reach them all.

I was informed by the Agricultural Department that they were considering the advisability of getting out an intermonthly report under unusual conditions. They interposed no objection to a resolution of the kind I have presented; and I do not think it fair to the cotton growers, to the Agricultural Department, and to the vast interests affected by this great fiber that any delay should be made; in view of the fact that the gamblers have taken advantage of this report from the Agricultural Department to practically emasculate and ruin the price of cotton, and reduce the people of the South to almost a condition of panic. I think it nothing but fair that as mild a resolution as that which I have offered should be passed. I do not want to be forced to go into some things that I might feel disposed to say.

Mr. BURNHAM. Mr. President, the Senator from South Carolina is a member of the Committee on Agriculture, and it seems to me that something more than an answer to these inquiries should be gone into by the committee. The method of collecting this information should be considered, and there should be a further and fuller investigation of the whole question.

Mr. SMITH of South Carolina. The resolution leaves it optional with the Secretary of Agriculture whether or not he will accede. It provides that, if feasible, he shall immediately ascertain the condition of the cotton crop at the present time. I hope the Senator will withdraw his motion.

Mr. WARREN. Will the Senator permit me a moment?

The PRESIDING OFFICER. Does the Senator from South Carolina yield to the Senator from Wyoming?

Mr. SMITH of South Carolina. I do.

Mr. WARREN. I will say to the Senator that, of course, an objection will carry the resolution over.

Mr. SMITH of South Carolina. I understand that.

Mr. WARREN. And if the Senator, being a member of the Committee on Agriculture, will let the matter go to the committee to-day, I think he will make time, rather than to have it objected to and have it hung up.

Mr. SMITH of South Carolina. If the chairman of the Committee on Agriculture and Forestry will indicate that he will call the committee together to-day to consider the resolution, I certainly will let it take that course.

Mr. BURNHAM. In reply to the Senator from South Carolina, I will say that I will call a meeting of the committee at once.

Mr. SMITH of South Carolina. That is satisfactory to me, if we can have an immediate report.

The PRESIDING OFFICER. The resolution will be referred to the Committee on Agriculture and Forestry.

RAILROADS AND COAL DEPOSITS IN ALASKA—A BILL FOR OPENING THE COAL MINES, ESTABLISHING MARINE AND RAILROAD TRANSPORTATION, AND DEVELOPING A PUBLIC HARBOR AT CONTROLLER BAY, IN ALASKA.

Mr. SMITH of Michigan. Mr. President, I inquire if morning business is closed?

The PRESIDING OFFICER. Morning business is not closed. Concurrent and other resolutions are in order. If there be no further concurrent or other resolutions, morning business is closed.

Mr. SMITH of Michigan and Mr. POINDEXTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. SMITH of Michigan. I move to take up Calendar No. 122, being Senate joint resolution 57.

Mr. POINDEXTER. Mr. President, if the Senator will pardon me a moment, I think there has been no opportunity for introducing bills.

The PRESIDING OFFICER. That order of business has been passed, but by unanimous consent bills may be introduced.

Mr. POINDEXTER. I understood that the introduction of bills came after the call of petitions and memorials. I have been here constantly——

The PRESIDING OFFICER. That order of business comes after the reports of committees. That order has been passed, but, in the absence of objection, the bill will be received.

Mr. POINDEXTER. And reports of committees likewise come after petitions and memorials. Out of order I ask unanimous consent to introduce the bill which I send to the desk.

Mr. SMITH of Michigan. Mr. President, a parliamentary inquiry. Will that interefere with the motion I have made?

The PRESIDING OFFICER. Not at all.

The bill (S. 3262) extending the jurisdiction of the Interstate Commerce Commission over railroads in Alaska, and for other purposes, was read twice by its title.

The PRESIDING OFFICER. In the absence of objection, the bill will be referred to the Committee on Interstate Commerce.

Mr. POINDEXTER. Mr. President, I desire to say briefly in reference to the bill which has just been introduced that it deals with the question stated in the title, which is a very important one, of extending the jurisdiction of the Interstate Commerce Commission to railroads in Alaska, which are now without such regulation, the importance of which I will not discuss, because it is obvious.

Another matter which is dealt with in this bill is one of extremely pressing importance to all the people of the Pacific coast, and particularly to the States of Washington and Oregon; that is, the need for the development and use of deposits of coal in Alaska. This bill provides for the immediate opening up at the most available point of the coal in Alaska in the Bering River coal fields by the Government, particularly for the use of the United States Navy on the Pacific coast, for the Revenue-Cutter Service, for the coaling stations on the Pacific coast, and for other Government needs on the Pacific coast; and also that it shall be supplied, when it is opened up with the facilities provided for in this bill, for commercial purposes to private persons at the cost of mining, with a reasonable profit, stated in the bill. That for the purpose of accomplishing this the Secretary of War, under the direction of the President, shall construct a railroad from Controller Bay to these coal fields. The feasibility of such a road has been demonstrated by surveys that have already been made. Of course, additional surveys by the Government will be required.

It also provides for the procuring and operating of a sufficient number of ships of sufficient tonnage from Controller Bay to ports on Puget Sound.

It also provides that the title of the public coal lands in the Bering River coal fields shall be reserved by the Government, and that the title to the harbor of Controller Bay, the shore lines, tidelands, shore lands, and franchises and easements in the harbor and upon the shores shall be retained by the Government, and that a harbor shall be developed there by the Government. That it shall be open to the public on such terms and regulations as may be established by the Secretary of War.

I will not detain the Senate at this time, although I will at some future time ask permission to state in more detail and at greater length the conditions which, in my judgment, require this legislation. One of those conditions, in addition to what I have already mentioned, being what has been demonstrated, I think, by the proceedings and the course of events with reference to Alaska, that this is the only recourse of the people of the United States to avoid the control of coal and transportation in Alaska by a monopoly.

The effort to establish a monopoly there has been disclosed by sworn testimony in a number of proceedings, both seeking to establish a monopoly by the acquirement of title to land, and where that fails by the acquirement of exclusive privileges to control the only harbor which furnishes access to these natural resources, the use of which at a reasonable price is absolutely essential not only to the people of Washington, but in a lesser degree, perhaps, to the people of the entire country.

Mr. NELSON. Mr. President——

The PRESIDING OFFICER. Does the Senator from Michigan yield to the Senator from Minnesota?

Mr. SMITH of Michigan. For what purpose?

Mr. NELSON. I should like to be heard for a moment on the bill which has just been introduced.

The PRESIDING OFFICER. The Senator from Washington was proceeding by unanimous consent on the reference of the bill; so that it is not before the Senate in any sense.

Mr. POINDEXTER. I hope there will be no objection to hearing the Senator from Minnesota.

Mr. NELSON. I do not ask for any hearing. It is simply relating to the question of the reference of the bill to a committee. I do not want to say anything on the bill.

Mr. POINDEXTER. I am firmly of the impression——

Mr. NELSON. What I desire to say was simply this: The bill appears to relate mainly to public lands in Alaska, and it seems to me it ought to go either to the Committee on Public Lands or to the Committee on Territories, and that it does not belong to the Committee on Interstate Commerce. It relates to harbor lands and coal lands; in other words, the public lands of Alaska, and therefore it ought to go either to the Committee on Public Lands or to the Committee on Territories; certainly not to the Committee on Interstate Commerce.

Mr. POINDEXTER. Mr. President——

The VICE PRESIDENT. Does the Senator from Michigan further yield to the Senator from Washington?

Mr. SMITH of Michigan. I yield.

Mr. POINDEXTER. I only——

Mr. NELSON. I ask that it be referred to the Committee on Public Lands.

The VICE PRESIDENT. Is there objection?

Mr. POINDEXTER. I object for the reason and make the point of order that it has already been referred to the Committee on Interstate Commerce.

Mr. NELSON. I tried to be heard when that reference——

The VICE PRESIDENT. The Chair thinks it is not too late for a Senator to make a motion for reference if he desires.

Mr. POINDEXTER. Certainly; I do not object to a motion.

The VICE PRESIDENT. No.

Mr. POINDEXTER. I do not object to the Senator from Minnesota making a motion to that effect. But I desire to say in this connection that while perhaps it would be proper in the case of this bill, as it is in a great many other bills, to refer it to either one of a number of committees, the principal object of this bill, the principal subject with which it deals, is transportation in Alaska.

It provides for the construction of a railroad and the operation of a railroad, the establishment of a line of vessels, and the operation of a line of vessels, and for the conferring of jurisdiction upon the Interstate Commerce Commission over the railroads of Alaska. It also is true, as said by the Senator from Minnesota, that it provides for reserving from sale certain public lands of Alaska. The principal question it deals with is transportation, which properly, unquestionably, is peculiarly within the province of the Committee on Interstate Commerce.

The VICE PRESIDENT. It seems to the Chair, from a casual reading of the bill, a hurried glance over the bill, that it properly belongs to the Committee on Territories.

Mr. SMOOT. Mr. President——

The VICE PRESIDENT. Does the Senator from Michigan further yield?

Mr. SMITH of Michigan. Yes.

Mr. SMOOT. I wish to say that a similar bill has been before the Committee on Public Lands, perhaps not the same in wording, and all bills affecting public lands in Territories have always been referred to the Committee on Public Lands. It seems to me this bill ought to go to the Committee on Public Lands.

The VICE PRESIDENT. Objection has been made to such reference.

Mr. NELSON. I made a motion that it be referred to the Committee on Public Lands.

The VICE PRESIDENT. The Senator from Minnesota moves that the bill be referred to the Committee on Public Lands.

Mr. POINDEXTER. I desire to say in that connection that I have no objection to the suggestion of the Chair, which I think is eminently pertinent, that the bill should be referred to the Committee on Territories. I think that that committee obviously is constituted for dealing with such purposes as this bill provides for.

I do object to its being referred to the Committee on Public Lands, because the public-lands feature of the bill is merely incidental to the purpose of the bill.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Minnesota that the bill be referred to the Committee on Public Lands. [Putting the question.] By the sound the "ayes" appear to have it.

Mr. POINDEXTER. I ask for the yeas and nays.

The yeas and nays were not ordered.

Mr. POINDEXTER. I ask for a division.

The VICE PRESIDENT. There is no such thing as a division after the yeas and nays are refused. The Senator asked for the yeas and nays, which were refused. The ayes have it, and the bill is referred to the Committee on Public Lands.

NEW MEXICO AND ARIZONA.

Mr. SMITH of Michigan. I move that the Senate proceed to the consideration of the joint resolution (S. J. Res. 57) to enable the people of New Mexico to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of Arizona to form a constitution and a State government and be admitted into the Union on an equal footing with the original States.

Mr. BAILEY. Is this matter before the Senate for consideration?

The VICE PRESIDENT. The motion is that the Senate now proceed to its consideration.

Mr. BAILEY. Is it a request for unanimous consent?

The VICE PRESIDENT. It is a motion. Morning business is closed, and the motion is in order.

Mr. BAILEY. That motion is not debatable, I believe.

The VICE PRESIDENT. No; it is not, nor amendable. The question is on agreeing to the motion of the Senator from Michigan that the Senate proceed to the consideration of the joint resolution.

Mr. BAILEY. I desire to ask when the joint resolution was reported to the Senate.

The VICE PRESIDENT. It was reported yesterday.

Mr. BAILEY. Is the joint resolution on the calendar?

Mr. SMITH of Michigan. The joint resolution was reported yesterday from the Committee on Territories and is on the calendar.

I will say to the Senator from Texas that it is identical in form with the joint resolution presented by the House committee to-day.

Mr. BAILEY. That does not help it.

Mr. SMITH of Michigan. That was for the information of the Senator.

Mr. BAILEY. If both Houses have made a mistake, it does not relieve either House——

Mr. SMITH of Michigan. I object to debate on the motion.

The VICE PRESIDENT. The Senator from Michigan himself is indulging in it.

Mr. SMITH of Michigan. I object.

Mr. BAILEY. I am rising to a parliamentary inquiry.

The VICE PRESIDENT. The Chair so assumed, although the Senator has not so stated.

Mr. BAILEY. I had not reached that point. The fact was I was trying to examine the calendar, and I was going to raise the question whether or not it is in order to make the motion to proceed with this joint resolution until we reach it on the calendar.

The VICE PRESIDENT. It is in order. The joint resolution was reported on a previous day and is on the calendar, and the motion is in order.

Mr. BAILEY. Then I submit the question of order, that it is not in order to pass over matters on the calendar and give precedence by a motion of this kind to matters at the foot of the calendar.

The VICE PRESIDENT. The Chair overrules the point of order.

Mr. BAILEY. I appeal from the decision of the Chair.

The VICE PRESIDENT. The Senator from Texas appeals from the decision of the Chair. The question is, Shall the decision of the Chair stand as the judgment of the Senate? [Putting the question.] The "ayes" appear to have it. The "ayes" have it.

Mr. BAILEY. I make the point of no quorum.

The VICE PRESIDENT. The Senator from Texas raises the point of no quorum. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Bacon	Foster	Martine, N. J.	Shively
Borah	Gamble	Myers	Smith, Mich.
Brandegee	Guggenheim	Nelson	Smith, S. C.
Bristow	Heyburn	Nixon	Smoot
Burnham	Hitchcock	Oliver	Swanson
Burton	Johnson, Me.	Overman	Taylor
Chamberlain	Johnston, Ala.	Owen	Thornton
Clapp	Jones	Page	Townsend
Clarke, Ark.	Kenyon	Paynter	Warren
Crawford	Lea	Percy	Watson
Cullom	Lippitt	Perkins	Wetmore
Cummins	Lorimer	Poindexter	Williams
Curtis	McLean	Pomerene	Works
Dillingham	Martin, Va.	Root	

Mr. CLAPP. I desire to state for the day that the Senator from North Dakota [Mr. GRONNA] is unavoidably detained from the city.

Mr. DILLINGHAM. I want to announce that the Senator from Massachusetts [Mr. CRANE] is not only detained for the day on account of illness, but has been for several days past.

Mr. SMOOT. I desire to announce for the day that my colleague [Mr. SUTHERLAND] is out of the city and is paired with the senior Senator from Maryland [Mr. RAYNER].

Mr. NELSON. I desire to say that the senior Senator from North Dakota [Mr. MCCUMBER] is detained from the Chamber by illness, and that he has a general pair with the senior Senator from Mississippi [Mr. PERCY].

The VICE PRESIDENT. Fifty-five Senators have answered to their names. A quorum of the Senate is present.

The question is on agreeing to the motion of the Senator from Michigan that the Senate proceed to the consideration of the joint resolution indicated by him.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the joint resolution.

Mr. SMITH of Michigan. I think the joint resolution should be read.

Mr. BAILEY. I should like to ask the Senator from Michigan what has become of the President's veto message?

Mr. SMITH of Michigan. The Senator will have to ask his own colleagues in the House. I do not know anything about it officially.

Mr. BAILEY. I thought the Senator had been in consultation——

Mr. SMITH of Michigan. The statehood resolution originated in the House and the veto message went there first under the rule.

Mr. BAILEY. I perfectly understand.

Mr. SMITH of Michigan. I understand it is in the hands of the Committee on the Territories of the House of Representatives.

Mr. BAILEY. I perfectly understand that; but the Senator was so swift to say that the joint resolution is identical with the House resolution I suspected he had been in consultation with them.

Mr. SMITH of Michigan. I was not only quick to say it, but glad to say it. I think it rather significant——

Mr. BAILEY. I am rather delighted myself to see the Senator from Michigan accepting the judgment of a Democratic House of Representatives.

Mr. SMITH of Michigan. Yes; Mr. President——

Mr. BAILEY. I think it denotes a degree of progress I had not hoped for in his case.

Mr. SMITH of Michigan. I am not at all surprised to see the Senator from Texas rejecting the advice of the House of Representatives.

Mr. BAILEY. I not only reject it, but I intend before the debate is over to expose the lack of wisdom in it; and in doing that I regret to say I will be impelled to include the Senator from Michigan in the list of unwise statesmen.

Mr. SMITH of Michigan. I shall be very happy to be embraced in that very numerous company of men whom the Senator from Texas frequently disagrees with.

Mr. BAILEY. Yes; I have differed with nearly everybody, and everybody has been wrong when I differed with them, too.

Mr. SMITH of Michigan. It may turn that way now.

Mr. BAILEY. They frequently tell me they were wrong when they did differ with me.

The VICE PRESIDENT. The Senator from Michigan has the floor.

Mr. SMITH of Michigan. I think the joint resolution ought to be read for the information of the Senate.

The VICE PRESIDENT. The joint resolution will be read.

The Secretary read the joint resolution.

Mr. SMITH of Michigan. I desire to amend the joint resolution. I send the following committee amendment to the desk to be inserted after the word "of," in line 5, page 1.

The SECRETARY. On page 1, line 5, after the word "of," insert:

An act entitled "An act to enable the people of New Mexico to form a constitution and State government and be admitted into 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 into the Union on an equal footing with the original States, commonly called."

Mr. SMITH of Michigan. Mr. President, I simply desire to say that it was intended that that amendment should go in after the word "of," and in printing the joint resolution it got transposed with the title.

The VICE PRESIDENT. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. SMITH of Michigan. In section 4, page 7, line 5, I move to strike out the letter "s," so as to read "ballot" instead of "ballots."

The VICE PRESIDENT. Without objection, the amendment is agreed to. Are there other amendments?

Mr. SMITH of Michigan. There are no other amendments.

Mr. BORAH. Mr. President——

Mr. CHAMBERLAIN. There was one other amendment.

The VICE PRESIDENT. The Senator from Oregon calls the attention of the Senator from Michigan to the fact that there is another committee amendment.

Mr. SMITH of Michigan. What is the amendment?

Mr. CHAMBERLAIN. In printing the title is not as it ought to appear.

Mr. SMITH of Michigan. The title will be amended after the bill is passed. I will keep in mind the suggestion of the Senator from Oregon.

Mr. BORAH. I wish to ask a question of the Senator in charge of the joint resolution. I understand the joint resolution now before the Senate, so far as the question of Arizona is concerned, attempts to work a change of article 8, section 1, of their constitution with reference to the recall of the judiciary?

Mr. SMITH of Michigan. It does.

Mr. BORAH. The change which it is sought to effect is accomplished by requiring them to change their constitution before they can become a State?

Mr. SMITH of Michigan. That is the intention of this provision, and in the present parliamentary situation it seems necessary.

Mr. BORAH. The effect of the joint resolution, then, as distinguished from the joint resolution which was passed the other day, is that they shall at least eliminate the recall during the time they are coming into the Union.

Mr. SMITH of Michigan. That they shall eliminate the recall, so far as it applies to the judiciary, before the proclamation of the President can be made. That has been done by changing the House joint resolution, at the top of page 10, by adding, in line 1, after the words "vote upon," the words "and ratify and adopt," before the words "the following proposed amendment," and by another amendment further on, near the end of the bill, to which I will call the attention of Senators.

Mr. BORAH. The joint resolution which we passed the other day provided that the electors of Arizona should vote again upon the question of the recall as a separate proposition. Now, the only difference between that joint resolution and this joint resolution is that by the latter you require them to positively take it out of their constitution during the time that they are being admitted into the Union.

Mr. SMITH of Michigan. We require them to take it out of the constitution.

Mr. BORAH. But there is no way to prevent them from putting it in immediately after they are admitted into the Union.

Mr. SMITH of Michigan. I will be perfectly frank with the Senator. We are quite in accord as to the right of the new State to amend and change its constitution in such manner as the people may desire after they become a State, just as the right exists in all other States.

Mr. BORAH. Does the Senator think that there is any considerable progress made toward settling finally the question of the recall of the judiciary by eliminating it from the constitution of Arizona for the period of six months?

Mr. SMITH of Michigan. I think it will prove very helpful in getting the State into the Union, which I very much desire. Beyond that we are powerless to enjoin the new State, and have made no attempt to do so.

Mr. BORAH. I was trying to work out in my own mind what we were accomplishing by this change. It has always seemed to me that if we wanted to make permanent progress with reference to eliminating the recall it would have to be finally submitted in argument and in reason to the voters of that State and that we gain nothing by throwing into the balance the great

desire to be admitted into the Union, because undoubtedly the effect of this will be that they will eliminate it and come into the Union, and when they are rid of the supervisory power of the Congress will reinsert it when they desire to do so; and they will do so under the resentment of having been compelled to come into the Union in this way.

Mr. President, I am just as much opposed to the recall as the committee or as anyone else, but I have thought, and I still think, that the only way to make permanent progress in this matter is to submit it in fairness and in candor to the people of the State of Arizona as a separate proposition. If a majority of them are not in favor of this proposition that will settle it and settle it permanently. The effect of settling it in that way would be much more to the advantage of those who are opposed to it than to settle it temporarily by throwing into the balance the price of statehood.

While I suppose that the committee, in view of the situation, has worked out the proposition the best way possible, I want to go on record as saying that in my judgment this ought to have been submitted as it was proposed to be submitted. It is my opinion that if the people of Arizona had been given an opportunity to vote upon it singly and alone they would have rejected the proposition, but if they would not have done so, then the work we are doing now is wholly in vain, because we will not be able to control them after they come into the Union. It may satisfy some personal pride about the matter, but I do not believe that it will in the end serve any good purpose in finally settling the question of the recall of the judiciary.

Mr. BAILEY. Mr. President, if it is competent for a State to provide for the recall of judges, then it is not now and it never was the province of the Congress of the United States to deny it admission into the Union because it has included such a provision in its constitution. Of course, we have the power for any reason, good or bad, or for no reason at all, to turn these Territories from our doors; but, sir, it is a gross abuse of our power to do so if they have sufficient population and have tendered us a constitution republican in form and not repugnant to the Constitution of the United States.

But, Mr. President, this resolution is not only objectionable in so far as it seeks to compel Arizona to reject the recall which her people have adopted. It is also objectionable because it attempts to coerce New Mexico into changing her constitution with respect to the amendment clause of it. New Mexico adopted a constitution which renders an amendment of it well nigh impossible. The pending resolution—and I would not criticize the committee harshly, since my amiable friend, the Senator from Michigan [Mr. SMITH], is the chairman of it and responsible for this measure—completely reverses the process of New Mexico, and prescribes a form which makes the constitution of that State almost as easily amendable as a statute. In other words, the people of New Mexico, when speaking for themselves, made it extremely difficult to amend their organic law, while the Congress of the United States, speaking for the people of New Mexico, have solemnly provided that a mere majority of the legislature can submit an amendment, and a mere majority of the people may adopt it. Neither extreme is a wise one. A constitution ought not to be like "the law of the Medes and Persians, which altereth not," nor should it be like a statute, subject to the will of a bare majority. Between these two extremes lies the path of safety. If the committee were not satisfied with the provision of New Mexico on this subject they ought not to have fallen into the other extreme, but they ought to have provided that an amendment to the constitution of that new State could only be submitted by a vote of two-thirds of the legislature.

Mr. SMITH of Michigan. Mr. President——

The VICE PRESIDENT. Does the Senator from Texas yield to the Senator from Michigan?

Mr. BAILEY. I do.

Mr. SMITH of Michigan. If my friend from Texas will permit me, I desire to call his attention to article 19 of the constitution of New Mexico, which provides—

SECTION 1. Any amendment or amendments to this constitution may be proposed in either house of the legislature at any regular session thereof, and if two-thirds of all members elected to each of the two houses, voting separately, shall vote in favor thereof, such proposed amendment or amendments shall be entered on their respective journals with the yeas and nays thereon; or any amendment or amendments to this constitution may be proposed at the first regular session of the legislature held after the expiration of two years from the time this constitution goes into effect, or at the regular session of the legislature convening each eighth year thereafter, and if a majority of all the members elected to each of the two houses voting separately at said sessions shall vote in favor thereof——

The amendment shall be submitted. I have simply read this for the purpose of calling the attention of my friend from Texas to the fact that we have only anticipated that which may be done two years after they are admitted into the Union, namely, that a majority of the legislature may propose amendments if they so desire.

Mr. BAILEY. Why did you change it, then?

Mr. SMITH of Michigan. We changed it to meet an emergency.

Mr. BAILEY. Why did you not let the people of New Mexico meet their own emergency?

Mr. SMITH of Michigan. I have no hesitation in saying that we changed it to meet an emergency, and the change, in my opinion, is not such as will be disappointing. It is not radical, and makes the first clause in the constitution with reference to amendment harmonize entirely with what they themselves have declared they shall have a right to do after two years.

Mr. BAILEY. The Senator from Michigan does not seem to thoroughly apprehend the provision which he has read. It does not provide that a majority may submit an amendment every two years, but it expressly confines the power of the mere majority to the first regular session held after the expiration of the first two years under the constitution, and thereafter to a regular session each eighth year. Not only so, but an amendment proposed by a majority of the legislature under that restriction is made still further and even more difficult by special regulations as to the popular vote. This amendment recommended by the committee, however, completely removes the restrictions on the legislative power of proposing, and destroys the limitations on the popular vote by which the people of New Mexico may adopt an amendment.

The Senator from Michigan will permit me, with all due respect, to say that, while we are acting here under a constitution which requires two-thirds of each House to propose an amendment and three-fourths of all the States to ratify it before it can become a part of our Constitution, it is a curious course of political reasoning that leads us to adopt this easy method of amending the organic law of a newly admitted State.

I am not, Mr. President, a disciple of that school of American thought which believes that it is the sum of all wisdom to make legislation easy. I am willing for the deliberate and well-matured judgment of the people to be written into the law of the land; and I am willing for the well-matured and deliberate judgment of the people to be incorporated into the organic law of this Republic or of any State; but I want to be certain before we either amend the Constitution or enact a law that we are executing the deliberate and matured judgment of the people. I think no greater mistake can be made than the modern tendency to substitute the law-making method for the constitution-making method.

But, Mr. President, I fear that we are approaching a time when the constitutions of our States and the Constitution of the United States are to be superseded by the initiative and the referendum. If we have it, sir, in the States, we will ultimately have it in the Nation. Let no man deceive himself into thinking that a system of legislation can be applied to these States without, in time, being applied to this Nation. When you do apply it to the Nation, the wonderful system established by our fathers—this Government, which in the first and greatest commentary ever written upon it, was described as a wholly novel system of government—must perish. Under the initiative the laws of the United States will be made by a majority of the people, and the equality of the States, as represented in this Chamber, will become a relic of the ages which have passed and gone. When the laws of Congress must be referred to the people, that referendum shall be decided according to the vote of all the people, and the equality of the States in the Senate, which we are wont to describe as the greatest legislative assembly in the world, can not survive.

Mr. President, when I say that I fear the ultimate establishment of the initiative and referendum I must not be understood as thinking that they will triumph by reason of the arguments in their favor. The danger of their acceptance, sir, arises out of the fact that the men who advocate them are striving constantly to promote their cause, while the men who are opposed to them seem afraid to declare their opposition. This halting fear has been manifest throughout this debate. Read this RECORD, sir. There is not an advocate of the initiative and referendum in this body who has not pronounced in favor of it during the course of this discussion, and I honor them for their courage as much as I think they are mistaken in their principles. On the other hand, except myself alone, no Democratic opponent of the initiative and referendum has dared to assail it. It will not do to say that it is not an issue. It is as much an issue as the recall of judges, but you have sought to evade it because you are afraid of it. You are skulking and hiding from it, but you may just as well come out into the open and face it. These men intend to press it until you must meet it. If you think it a wise and just system of legislation you ought to say

so; and if it is not you ought to have the courage to oppose it. Will you vote for this joint resolution which denounces that provision of the New Mexico constitution with respect to its amendment and which denounces the provision of the Arizona constitution with respect to its recall of the judiciary, without saying one word against the initiative and referendum?

Mr. President, there are, in my opinion, 20 Members of this Senate to-day who openly, courageously, and intelligently—if intelligence can ever be properly employed in such a propaganda—advocate this doctrine, and the remainder of us sit here as silent as the grave. I can take that band of aggressive, courageous, intelligent advocates of the initiative and referendum, and I can finally adopt it against an overwhelming majority that fears to say a word in opposition to it. The men who advocate a measure will always finally defeat the men who temporize with it; and this is as it ought to be, because if men will not stand up and oppose it, they must have a doubt, at least, about whether it is wise or not, or else they must be arrant cowards. The people will finally accept any proposition that nobody opposes and many men advocate. That is exactly what will happen in this case unless men can summon courage enough to discuss the initiative and referendum. Let us discuss it, and, if it is right, it will prevail; but unless we do discuss it, it will prevail, whether it is right or wrong.

This is the first time in the history of this Republic that the initiative and referendum system of legislation has been presented for the consideration of Congress, and shall this distinct departure from the fundamental principles of a representative government pass unchallenged? So far as I know, I am the only man on this side of the Chamber who has declared his opposition to them, and only two or three on the other side have done so. That is another instance where the Senator from Michigan [Mr. SMITH] will find that I differ with many of my associates.

The Senator from Michigan is opposed to the recall. He is opposed to the initiative; he is opposed to the referendum; but he leaves me to say so for him. He has not put that declaration in the RECORD for himself.

Mr. SMITH of Michigan. Mr. President——

The VICE PRESIDENT. Does the Senator from Texas yield to the Senator from Michigan?

Mr. BAILEY. I do.

Mr. SMITH of Michigan. Yes; and as usual—no; not as usual, but as is frequently the case—the Senator from Texas has put it in wrong.

Mr. BAILEY. I understand how impossible it would be for an old-fashioned Democrat to speak with authority about the opinions of a new-fashioned Republican, but in order that I may have the benefit of it, because I might desire to submit some observations on it, I should like for the Senator from Michigan to inform me wherein I am wrong.

Mr. SMITH of Michigan. Wrong in attempting to quote my attitude on the initiative and referendum, and recall.

Mr. BAILEY. I know, but in what particular? Is the Senator in favor of the referendum and opposed to the initiative? Or is he in favor of the initiative and referendum and opposed to the recall? Or is he in favor of the initiative, referendum, and recall of all officers except judges?

Mr. SMITH of Michigan. The Senator from Texas, seemingly a little shy of arguments in his own cause, has drafted me as a living example of what he desires to prove, and I will enlighten him. The initiative and referendum, so far as it concerns the people of the State in which I live and where I exercise the right of suffrage, is a matter of their concern. If the proposition were submitted to a vote, and I as a private citizen or as a public man, voting in my private capacity as a citizen, were called to vote upon the question of the adoption of the initiative and referendum, I would distinguish between what was radical and what was conservative. If a conservative initiative and referendum were proposed I might consent to it; if a radical one were proposed I might oppose it. From my present point of view I would oppose both.

Mr. BAILEY. That is the most explicit declaration. It reminds me of a story which I have heard of a Tennessee campaign, when "Jimmie" Jones, as he was familiarly and affectionately called, was a candidate against James K. Polk. Jones was a remarkable man, without much education or information, while Polk was a man with a good deal of education and still more information. Polk knew something about every public question and knew all about some of them, while Jones did not know all about any public question and knew nothing about some of them, but he was a wonderful man on the stump before the people. One of the questions about which Polk knew everything and Jones knew nothing was the tariff, and Polk continually challenged Jones for a debate on it.

Finally Jones announced that if nothing would do Mr. Polk except a discussion of the tariff question, he would state his position and then let Mr. Polk discuss it; and he said that his position was this: If the tariff was too high, he was in favor of lowering it, and if it was too low, he was in favor of "highering" it. [Laughter.] To my mind that is about as definite as the position of the Senator from Michigan on the initiative and referendum and recall as he has stated it for himself. If it is wrong, he is opposed to it, and if it is right, he is in favor of it. [Laughter.]

Whenever I reach the point where I hesitate to stand up and combat the initiative and referendum, I will be ready to embrace it. If I can not successfully assail it, it must be because I am either deficient in intellect or it is right in principle, and all of us may as well make up our minds now to take one side or the other of that question. It transcends in its importance even the great economic question which we have debated for the past two months, because it goes to the very foundation of this Republic. If this can not be made a government of the people and for the people and by the people except through the initiative and referendum, then as surely as God lives and rules this universe the adoption of that system is certain to come. On the other hand, if it be true, as I believe it is, that a representative democracy, a democracy in which the representatives of the people chosen by them, and responsible, as Jefferson said, to them at short intervals, is the best system of government, then it is our duty to vindicate it before the world. Surely, sir, whatever may be our view, with this question pressing itself upon the public attention, we ought to stand out in the open and argue it, and let the people choose between us and our adversaries.

There are to-day three organizations promoting the adoption of the initiative and referendum. Two of those organizations have for their conspicuous leaders, Senators, one on the one side and another on the other side of this Chamber. The third organization has a man who is skilled, I understand, in these matters of publicity. With men of character, intellect, and unswerving courage advocating them, do you expect to defeat them by sitting idly by, allowing those men to advocate them while you utter never a word in opposition to them?

Mr. President, I shall not occupy the time of the Senate now in discussing the initiative and referendum; but I want to say to my Democratic associates that in every State in this Union to-day there is a systematic and an aggressive campaign to incorporate a declaration in favor of them in the Democratic platform next year. What are you going to do? Are you going to oppose it, or are you going to tell the people that you have not made up your minds about it? There is not a Democrat on this floor from a Southern State who has not denounced the initiative and referendum as a supreme folly. We did that 20 years ago when the old Populist Party was advocating it. Every Democrat from the South from every stump that he could find surrounded by an audience to hear him, ridiculed and denounced it. Where are your clarion voices now? I do not hear them. I denounced the initiative and referendum then, not because it was proposed by the Populist Party, but because I believed then, and I denounce it now because I believe, that it is a departure from the settled and fundamental principles of a republican form of government. But a future occasion for that.

I come to the point at issue—the recall of judges. We passed a bill allowing Arizona to vote on that question. I do not know officially what has become of it. Why shall we pass another bill substantially the same as that? We have no information officially that it has not been approved, and certainly we have none that it has been disapproved. Do our friends on the other side seek to save the President from a test of strength? I do not mean on the other side of the Chamber; I mean on the other side as to party, because I realize that it has not reached here yet, and I realize furthermore that I must not criticize the other House of Congress because they have not acted on it. It was for them, if they did not choose to take issue with the President, to introduce and pass a resolution and send it here, rather than for us to anticipate their action; but whether the President was right or wrong we ought to have fought it out with him. I will vote to sustain him, while the Senator from Michigan would be compelled to vote to overrule his veto. Would the Senator from Michigan so vote?

Mr. SMITH of Michigan. Mr. President, I am not in the habit of responding to a categorical cross-examination from the other side of the Chamber upon any subject, but I do not hesitate to say to the Senator from Texas that I should have voted to sustain him.

Mr. BAILEY. Then the President's veto message has changed the Senator's mind.

Mr. SMITH of Michigan. No; I voted for the Nelson amendment.

Mr. BAILEY. But the Senator voted for the bill.

Mr. SMITH of Michigan. I voted for the Nelson amendment because I thought it would facilitate the prompt admission of these Territories, and I would have voted to sustain the President, because I think the same course would have facilitated their admission.

Mr. BAILEY. Did the Senator from Michigan vote for the bill on its final passage?

Mr. SMITH of Michigan. I did, and reported it from the committee.

Mr. BAILEY. Then, if the Senator voted to pass it in the first instance, why would he vote against passing it in the second instance? The same vote by which the resolution was sent to the President will make it the law, notwithstanding his disapproval.

Mr. SMITH of Michigan. Mr. President, I realize, as does the Senator from Texas, that we are in the last days of this legislative session.

Mr. BAILEY. We have not yet adopted a resolution to adjourn.

Mr. SMITH of Michigan. No; but the Senator from Texas knows very well that we are about to dissolve.

Mr. BAILEY. Not until we have done our full duty, I hope.

Mr. SMITH of Michigan. I do not want this Congress to adjourn without redeeming a promise which your party made in its last national platform and which our party made, to welcome the Territories of Arizona and New Mexico into the Union of States. I do not propose that that promise shall be broken if I can prevent it, and I hope sincerely that the eminent ability and the splendid character of the Senator from Texas, of which I have long been an admirer, will not now be interposed for the purpose of preventing the execution of a solemn promise made by his party in the last national convention.

Mr. BAILEY. Mr. President, the Senator may be sure I intend no filibuster. I was cured of that habit last year. I am going to finish what I have to say about it and permit a vote upon it. Unwise as I think the majority often are, I submit always to their decision; and unwise, as I am sure they are in this instance, I shall submit, not with good grace, because I have lost that art in these latter days; but still I will submit with such grace as I can command.

But, Mr. President, I come back to the proposition that the Senator, who voted to pass that bill as the President vetoed it, must now change his vote if he sustains the President's veto; and I think no Senator ought ever to change his vote unless he has changed his mind. I would not hesitate a moment to change my vote if I had changed my mind. I think every honest man ought to do that, and I had almost said that every honest man must do it. Consistency, sir, is the virtue of fools, and no man ought to be a slave to it. I am frank to say that I love to be consistent, because every time I find that I have been inconsistent I am compelled to acknowledge to myself, and I do not hesitate to acknowledge it to others, that I have been wrong one time or the other. If I am consistent, I may have been wrong both times, but I have at least had a chance to be right both times. Whenever I am inconsistent, I must have been wrong one time or the other. I commend that suggestion to the Senator from Michigan, for whom I have quite as much respect as he has for me. Indeed, I have so much respect for him, Mr. President, that, if I were tempted to resort to an undue delay of this bill, he could dissuade me from it.

Now, Mr. President, let us be candid with each other. The effort—and I say it with all due respect to the President, who has written a very excellent message attempting to distinguish between the recall as applied to judges and as applied to other officers of the Government; I say it with deference not only because I respect his great office, but I say it because I respect the man who at present occupies it—to distinguish between the recall as applied to judicial officers and as applied to legislative and executive officers has proceeded upon a mere sentiment, sir, and has not been rested upon any substantial principle.

There is a distinction, and a vital distinction, between recalling judges and recalling legislators; but I have not heard it advanced in this debate. That distinction was not suggested in the veto message which I have unofficially read, nor have I heard it even intimated on the floor of the Senate. Why was this? Was it because it would raise the question of the initiative and referendum? That difference is this, Mr. President: If, under the initiative, the people should pass a law and a court should hold that law unconstitutional, the people would promptly recall that court. With the initiative and referendum system of legislation, supplemented by the recall of the judiciary, you might as well make a bonfire of your Constitution, for it would not even be the thing of shreds and patches, which a Greek philosopher once said all written constitutions were destined to become. Outside of that one distinction, the recall as applied to judges is not more serious than the recall as applied to the legislative and the executive officers of the Government.

Why do you object to the recall of judges? Because they say, sir, that the judge will bend the supple hinges of the knee in the presence of political agitators. Let us grant that; but if, sir, the recall will make a coward of the judge, it will make a coward of the sheriff and in the face of his sworn duty to protect the lives of those under his jurisdiction, he will hand over to the infuriated mob the victim of its prejudice. If the recall will make a coward of the judge, will it not make a coward of the prosecuting attorney? And I would rather have an ignorant or a servile judge, who must occupy a seat in the presence of all the people, than to have a district attorney of his kind, because that district attorney goes into the secrecy of the grand-jury room, and there, moved by passion and prejudice, servility or cowardice, he can blast the reputation of the best man or the purest woman in his community. Oh, no, Mr. President, if the recall will make cowards of judges it will make cowards out of all the men to whom it can be applied, and we trifle, sir, with the greater question when we except the judiciary and still leave it applicable to all other officers.

I want to go further, Mr. President, and say—and when I have done that I shall have said all I intend to say this afternoon upon this subject—as surely as cause produces effect, or as surely as effect follows cause, if you adopt the recall and apply it to all your other officers, you will finally apply it to your judges. When I talk with Senators—no, I will not say when I talk with Senators—I will say when I go outside of the Chamber and talk with the average citizen, he says he is opposed to the recall as applied to everybody, but that the public mind can be more easily arrested and concentrated on the judiciary. That is not the way to deal with the public, sir. If this is right, the public is entitled to have it; and if it is wrong, the public is entitled to have your reasons for thinking it is wrong. If it is right, my confidence in the ultimate wisdom and patriotism of the people is such as to believe that it will be finally adopted; if it is wrong, I have every confidence that it will be finally rejected if only our public men have the courage and the wisdom to properly discuss it.

Mr. CLAPP. Mr. President, I shall not take any time to-day in discussing the initiative, referendum, and recall. I do not consider that they are directly involved in the pending joint resolution. But I desire to say this: I have listened to the Senator from Texas [Mr. BAILEY], as I always do, with pleasure. I am not much given to paying compliments, but I admire him for his wonderful ability and for his fearlessness. He was absolutely right when he declared that, rising above the mere question whether calico cloth shall have a tariff of 3 cents or 3¼ cents, towers the question that is involved in this joint resolution. The Senator is right. If we are wrong in our contention for the more direct participation of the people in government, then the progress of our movement is not to the best interest of this Republic. On the other hand, if we are right, then to delay it is to oppose that progress which bears upon its bosom the welfare of this Republic.

It has been my privilege during the last few months to discuss this question in many of the various States, and I would be glad, advocating as I do this movement, if more men like the Senator from Texas would come out and take their position and make such arguments as they can in opposition to our movement. The movement is progressing largely upon the assumption upon our part that we are right, and without any reasons being given in opposition to our views. If we are right, we will win; and if the Senator from Texas is right, it would be better if more men like him would come out and, like him, boldly and candidly give their side of this question—men like him who believe that the initiative lies at the foundation, and that once you have the initiative there is no stop this side of the recall, for as sure as water flows downhill that is the law of this movement. While we believe we are right, it is far better that both sides of the question be discussed.

We do say, on this floor, believing that we are right, that we are dealing with fundamentals, that nothing can stop this movement half way. Eighteen Senators and a President, backed by the lure of patronage, may delay it; they may divert it. We claim that in the last analysis our movement means that in every department and at every point the American people shall control and govern this Republic.

Mr. President, a word in regard to the joint resolution which is pending before this body. I can not understand the necessity for this joint resolution at this point, because when the former

joint resolution was before this body there were 58 votes for it and only 18 votes against it. It is urged by the Senator from Michigan that he desires to expedite the admission of Arizona and New Mexico. If there are men in this Chamber who sincerely want to expedite the admission of Arizona and New Mexico, all they have to do is to stand by their convictions as expressed upon that former vote. We have already passed a resolution for their admission. The President has vetoed that resolution. All that is necessary to expedite their admission is to refuse to sustain that veto. I can not, save as now and then a Senator may stand here and admit it for himself, charge that Senators who, after the long debate upon this question, voted for the joint resolution upon the former occasion will now change their votes when no additional reason has been given for making that change.

I therefore, Mr. President, view with some little suspicion the claim that this is done to expedite the admission of Arizona. It is in the power of the Senate to-day, the moment the joint resolution passes the House, if it should pass the House over the President's veto, to expedite the admission of Arizona by voting to override the President's veto. So there is nothing to my mind in that claim.

Now, look at the position in which the Senate is placed. We have already said to the people of Arizona—or some of us, for I must be somewhat particular in that respect, believing, as I do, in the recall—we have said to the people of Arizona, "You take one more vote on this question, but you vote with the independence and the freedom of American free men; and if you vote for the recall you can come into this Union, or if you vote against it you can come into this Union"; leaving it entirely to the voters of Arizona. That is the resolution the President has vetoed. Without waiting to see whether the veto can be sustained, it is now proposed to force them to reject the recall as the price of admission. That is the provision of the pending resolution. Now let us see where the electorate of Arizona is placed by this pending joint resolution. We have the solemn verdict of an overwhelming majority, almost four to one, of the electorate of Arizona that they believe in the recall of judges.

But we say to the people of Arizona, "You can only come into the American Union upon one price, and that is that you surrender your judgment, that you play the rôle of the hypocrite and vote temporarily against the recall, and then when you are admitted to this Union, you can go back again and vote for the recall."

Mr. President, last winter, I think it was, this country was astonished by the tale of debauchery that came, I think, from the State of Ohio in a certain locality in that State and other localities in this country which betrayed a want of fidelity and of integrity on the part of the American voter, and yet the Senate proposes to initiate a new electorate into the art of self-government by telling them, "You can come in here only at the sacrifice of your convictions temporarily." In other words, you who exercise a right that has caused this old earth to reel under the tread of armies that you might vote as an American citizen, have to vote once without the exercise of your own judgment and your own conviction. Ah, that is a fine lesson to put before the electorate of this country—a plain effort and a plain purpose and the plain effect of debauching the electorate of a proposed State as the price of admission to this Union.

Mr. President, for almost two years I have been in constant touch and harmony with the people of Arizona. I pity those people. I know what they had to face down there in their effort to pass that constitution against the power of the administration. I know something of the combination of power of political and commercial plunderers that invaded that Territory to override the will of that people. I know something of the sacrifice they have made down there; and if I could, without violating my oath as an American Senator, I would say, "Come in on any terms that will admit you." But as a Senator, under my oath, I can not say that. I do not mean that the American Constitution is a moral code, but I do mean that the American Constitution was framed for a people who recognize a broad moral law, and I can not, even at the risk of offending those with whom I have worked during these two years, be a party to the putting up to a people the proposition that the price of admission to the Union is the integrity of citizenship, that they must vote against their convictions in order to gain admission.

But, Mr. President, that is not all, nor is it the end. We talk about party pledges. We pledged the people of Arizona and we pledged the people of New Mexico statehood; but did that pledge involve as the price of their admission that they must sacrifice their honor, that they must submit to debauchery at the hand of the allied force, political and commercial, which is seeking to dominate this country?

Talk about party pledges! It is another of those broken pledges that will yet rise to confront our party. It is not the fulfillment of a pledge. The pledge was that those men would be treated like citizens of this Republic, and admitted as free men into the ranks of American citizenship; and to force them to vote against their convictions as the price of admission is no more the fulfillment of our party pledge than was the passage of the tariff bill two years ago the performance of a party pledge upon that question. The loss of control of the House and the narrow margin left in the Senate ought to be a warning to our party that the people demand a just fulfillment of party pledges, not miserable makeshifts.

I stated a few days ago that I did not worry as to the progress of this movement. I do not. Nor does this movement depend upon the advocacy of my gifted friend the Senator from Oklahoma [Mr. OWEN], the advocacy of the Senator from Oregon [Mr. BOURNE], or the advocacy of any Senator. It makes its progress by the force of its truth, and, like the truth, always by the faults, the follies, the blunders, and the injustices of its opponents; and all the speeches that have been made, the millions of copies of which have been circulated, all told, will not so tell for the progress of popular government in this country as the attempt of the Executive, backed by 18 Senators, to defy the will of the people of a prospective State, and the attempt to force them to surrender their convictions as the price of statehood. Well has it been said, "Whom the gods would destroy they first make mad."

Bourbonism has always stood in its own way. It never sees progress till it has been run over by it, and then too late to avail itself of the vision of that which struck it. It was true in France and Spain. It is as true in the two great political parties here to-day as it was then. It has always been a law of human nature. Bourbonism, by its blindness and injustice, has contributed to progress.

I want to say to my friend, the Senator from Oklahoma [Mr. OWEN], I want to say to my friends here who believe in popular government, that nothing has ever happened that will so accelerate the movement as this outrage upon the free electorate of a prospective State—this effort to tempt a people to surrender their right of conviction.

So, while I deplore it, while I regret it on account of the people of Arizona, I hail it as one of the instruments that will bring the American people to a realization that we need some change in our method of government, when a President and 18 Senators can defy the will of 12,000 American citizens, even though they have not yet been admitted to statehood.

Mr. HEYBURN. Mr. President, I was wondering what is the outrage about which the Senator is declaiming and against which he is protesting.

Mr. BAILEY. Will the Senator from Idaho let me tell him?

Mr. HEYBURN. Yes. I should like the Senator to tell.

Mr. BAILEY. It is a palpable coercion. It is saying to these people "You may come in if you will adopt this amendment. You can not come in unless you do." And would a vote, taken under those circumstances, be a fair expression of the popular will?

I beg pardon of the Senator from Minnesota for answering the question, but I happened to be on my feet.

Mr. HEYBURN. That is, it is an outrage to say to a man, "If you will come in on the same basis as the other people of the United States came in you may, but if you want to come in as wild Indians, you can not."

Mr. CLAPP. Mr. President——

The VICE PRESIDENT. Does the Senator from Idaho yield to the Senator from Minnesota

Mr. HEYBURN. Yes; I yield.

Mr. CLAPP. I want to call the attention of the Senator to this difference. If it were possible to-day for Congress itself to make the constitution, eliminating the recall as a matter of hastening the admission of Arizona, we might well support it. But that is not the proposition. We said that those people must first vote to renounce what they have already solemnly declared was their will and purpose, knowing, as every Senator in this Chamber knows, that in six months they will repudiate that decision. That may not startle some people; we may have become so used to those things; but I confess that it does somewhat astonish me that it can be seriously considered even by the Senator from Idaho.

Mr. HEYBURN. This talk about we, the people, coming from less than 25 per cent of the population of New Mexico is rather astonishing and needs some explanation. You might imagine that the vote on the adoption of the constitution represents

about 99 per cent of the people, and that the other 1 per cent was sick and could not get to the election. Now, let us look at this, not in a sense of declamation, but in the sense of reason.

I have here the figures giving the population and the number of electors who might have voted on this question, and the vote; and it is interesting, in view of the remarks just made by the Senator from Minnesota [Mr. CLAPP], because he has pictured an outrage that carries one's mind back to the Kongo, and you might imagine that an entire race of people had been disregarded and swept away from their political moorings.

There were 31,742 votes cast for this constitution, the charter of their liberties that is in such danger. There might have been 80,000 votes cast, but there were not. Why not? Why did not the other three-fourths of the people of New Mexico announce themselves upon this subject when they had the opportunity and the legal right? No; I suspect that the outrage which was perpetrated, if one was perpetrated, was against the 75 per cent rather than against the 25 per cent.

This is exactly in keeping with the situation, as I stated the other day, of the demand of all this school of politicians and political agitators that the minority shall rule, and their whole protest is based upon that demand. They may not be conscious of it. It is not the first time that men did not see the full scope and to the end of their proposed political changes. Too often they are merely absorbed in the idea of a change.

Mr. President, I should like to hear from the 75 per cent of the lawful voters of New Mexico as to what they think about it. Twenty-five per cent said they were in favor of the initiative and referendum. I presume the 75 per cent did not vote because they were not in favor of it and would not vote for the constitution. I suspect that is the situation.

Mr. CLAPP. Will the Senator from Idaho pardon me?

Mr. HEYBURN. Yes.

Mr. CLAPP. I do not know anything about the other percentage, except I know they did not take enough interest in the question to vote one way or the other.

Mr. HEYBURN. That may not be the reason.

Mr. CLAPP. I am more interested in the 12,000 in Arizona who went out and did vote for this than in any percentage that remained at home.

Mr. HEYBURN. I think it is a perfectly legitimate conclusion that they did not approve of the constitution.

Mr. CLAPP. Why did they not express themselves as disapproving it when they had the opportunity?

Mr. HEYBURN. Probably they might have been influenced to some extent by their anxiety to become a State. They certainly did not give their affirmative judgment in favor of the constitution. They were unwilling to do it. The presumption is that when men have an opportunity to express themselves under responsible conditions they will do it.

Now, this question was not new to them. They had been, to my knowledge, more than 20 years trying to erect a State, and they have not yet succeeded in qualifying for statehood. So that is the situation as to New Mexico.

As to Arizona, the votes cast on the adoption of the constitution were 16,000, and that is a little less proportion of the vote. I have the figures here and can give them accurately. The returns of the Thirteenth Census give Arizona in 1910 a total population of 204,354, of which 155,550 are native born and 48,804 foreign born. Of this population 118,576 are males and 85,778 are females. The total number of white males over 21 years of age is 65,133, of which number 39,427 are native born and 5,896 are naturalized citizens. So the total voting population is 45,323. There were cast for the constitution 12,187 votes and against it 3,822 votes, or a total vote of 16,009—that is, about 35 per cent of the vote. Now, I should like to hear as well from the 65 per cent who did not vote on this constitution in Arizona.

Mr. REED. Mr. President——

The VICE PRESIDENT. Does the Senator from Idaho yield to the Senator from Missouri?

Mr. HEYBURN. Yes.

Mr. REED. If the Senator desires to hear from the 65 per cent in Arizona, I can tell him how he can hear from them. The joint resolution which was passed and vetoed by the President did resubmit to all the people of Arizona the question of the recall of judges. If, therefore, the Senator will vote with some of the rest of us, if we ever have the opportunity to vote, to override the President's veto, he will give to that 65 per cent a chance to express themselves.

Mr. HEYBURN. Mr. President, why should they bother about expressing themselves under that joint resolution when there is no penal clause in it? It does not provide that if they do not adopt it they shall not come in.

Mr. REED. Does the Senator maintain that an American citizen can not be trusted to express his opinion unless he has a penal clause that lashes him to the polls and coerces him to the performance of his duty?

Mr. HEYBURN. Mr. President, that is a rather interesting question. If I were on the Chautauqua I would take up the subject whether or not some such condition as that might be brought about; but I am not.

Mr. President, I do not think any improvement has been made in either of these measures by the attempted changes. In the case of New Mexico they place the constitution on a par with the acts of the legislature. There would be no stability about a constitution of that kind. This joint resolution proposes that the amendments may be proposed by a majority of all the members elected to the legislature, and that they may be adopted upon reference to the people. So it is really a referendum. All it amounts to is a referendum of constitutional provisions.

In regard to the Arizona constitution it still contains the clause authorizing the recall of members of the legislature. I discussed that question on a former occasion in discussing the joint resolution that is now somewhere. It contains a recall of the members of the legislature. As I said on that occasion, you could defeat the election of a United States Senator, unless the constitutional amendment, that is also somewhere, were adopted, when the legislature would have nothing to do with it.

But so long as the legislature is the medium through which membership in this body is determined, if you can recall 5 days after their election and the campaign is 30 days long—that is, not less than 20 nor more than 30—the whole legislature would be out campaigning to know whether or not the recall should stand, during which time, of course, there would be no election of Senators or anything else; there would be no legislation. Then the provision would allow an immediate recall of those who were elected in their stead and they would have to go campaigning.

O Mr. President, I have thought of this question night and day. It has appeared in so many phases, all of which were ugly, that it is not worth while to attempt in a brief period even to present them. It is an attempt, unwittingly, I think—I do not want to be harsh; I am not going to be personal—but it is an attempt to destroy this Government that is like the attempt of a child to pull over a statue. The child does not intend to destroy the statue; it does not know, perhaps, that it will be injured by being pulled over; but nevertheless the result follows. Now, here are a lot of carpenters undertaking to tamper with the work of trained builders. They do not know the result that will flow from their act.

Under this recall system or under the initiative and referendum there would not be time to put in any wheat; there would not be time for anything but politics. Elections would be the order of the day, and all of the great economic questions that we have been discussing would become of minor importance, because nobody would have time for anything except holding elections—elections for the purpose of nominating somebody for office, elections for the purpose of electing officers, elections for the purpose of determining whether they should be recalled, only a few days to elapse between, and then elections to determine whether or not the successors should be recalled; then elections to determine whether or not the legislature should pass a law; then elections to determine whether or not, after a legislature had enacted it, it should be a law; and so on. There would not be days enough in the year; the saints' calendar would not be comparable with it.

Mr. President, are men going mad? Are we going to substitute the functions of citizenship as applied to government for the functions of citizenship as applied to the great civil, personal business of the country, substituted so that our whole time will be occupied in these questions?

Every sane man is in favor of a reasonably long tenure of office. Every sane man realizes that the agitation of these questions disturbs business that is to be affected by the proposed change and that is affected by the agitation.

To-day the great enterprises of the country, personal and collective, are almost at a standstill. Inquire of any man acquainted with business conditions and see what he has to say about it. The question is what condition will confront them tomorrow, and they marking time in the business world to-day. Just read the markets of industrial stocks, commercial stocks, from day to day. As I said the other day, from figures given me by one capable of making figures accurately, in that week $90,000,000 had been clipped off of the value in the market of those securities and debentures that represent investment of capital. I asked a man capable of knowing why. He said, "Just adjourn Congress and go home and let us know what

the law is going to be for one year; we will settle down and do business; but," he said, "we do not know whether if we buy to-day some other man will buy to-morrow on more favorable conditions and wreck us or not. We do not know if we enter into a contract to-day whether we will be able to keep it six months from now, because of this discriminatory legislation that is sought to raise one man and lower another and play seesaw with the business conditions of the country."

We are confronting that, and things are, as they say, "in the air" in a business way. I am talking about business as affected by the menace of wild propositions, some of which go to the extent of threatening the Government itself, attacking the courts, so that men do not know whether to-morrow they will have a court of a fixed tenure, established procedure, and determined power to protect them in their contractual and business rights or whether they will have a court that can be removed or recalled at the whim of a mob. We read a few days ago a lesson on impulse, the impulse that carries people temporarily away from their moorings and where they forget country, and law, and friendship, and humanity, and God. They forget them all. Ordinarily, many of them are average citizens.

Mr. PENROSE. Composite?

Mr. HEYBURN. They are good average citizens ordinarily, many of them. In such periods time is not always measured by hours. We had three or four years of political hysteria and insanity that appalled the sensible thinking people of this country. I do not know that it made much impression upon the minds of those who were engaged in the mischief. They were so overjoyed with the fact that for the first time they were being taken notice of that those who survived it perhaps did not realize what they were doing.

The Senator from Minnesota [Mr. CLAPP] talks about the American people. I have seen a mountebank in the days of free silver and in the days of greenbackism stand on the street corner and talk about the American people, and you would think that he was the whole American people in composite. He would talk about the wrongs of the American people and the injustice, when all the wrongs that fell upon him were because of his laziness and his desire to run some one else's business, having none of his own. The American people will never all become insane. Some of them are.

The Senator spoke about the wrongs that we were inflicting upon a sovereign State. I repeat what I said the other day, there is no sovereignty in New Mexico or Arizona except that of the United States Government. The people are not sovereign in those Territories.

The Government could say to them: "Move out of there; we are going to make a forest reserve of you." I am surprised that it has not already done so.

Mr. President, there is no sovereignty being attacked by those who oppose this legislation. If those people want to assume the duties of sovereign citizenship, let them give Congress, where the responsibility rests, evidence of their capacity to exercise the rights and perform the duties that belong to sovereign citizenship. They have not mentioned their duties. All of the utterances that have gone out from them have been about their rights. That is the creed of the Socialist. No one ever heard a Socialist talk about his duty. There never was anything written in a Socialist platform or spoken by a Socialist speaker about the duty the citizen owes to anybody or anything; it is all a question of his rights.

No man in this world has a right that does not owe a duty. They are one the counterpart of the other. The right of citizenship in these Territories is to be conferred upon them, if they ever have it. The duties of citizenship must be performed by them by maintaining a republican form of government.

The Senator from Minnesota said, as I understood him, that he would care nothing for their principles or creed; he would take them in without inquiry. Now, I do not want to state the Senator too strongly.

Mr. CLAPP. Mr. President, I do not object to the Senator ever getting hysterical about the country going to the bow-wows and expatiating every two or three days on that subject, but I insist he shall quote a Senator correctly. I never used any expression of that kind and never thought of such an expression.

Mr. HEYBURN. Mr. President, the Senator talks about getting hysterical. I had, when I took the floor, some difficulty in getting down from the heights where the Senator had carried me. It reminded me of something. I was in a court room once and heard one of the most eloquent and able lawyers at that bar I have ever known. He was a great speaker. He could go up higher and stay there with firmer wings than any man I have ever listened to. He left his case upon this high plane and sat down. There was a young lawyer of lesser experience who had been following him and going breathless up this elevation. He tried to start where the other one left off, and his waxen wings melted. So I took that as a lesson. All through life I have tried to avoid being tempted to start up where the other one left off.

Mr. CLAPP. Mr. President, the Senator may not have essayed very lofty flights, but certainly he has essayed some very lengthy ones here. [Laughter.]

Mr. HEYBURN. That is funny, and there are a lot of people who think it is funny. I do not suppose they expended very much gray matter before they laughed. They laugh first and think afterwards. Well, that is all right. It is the doctrine of some people. I am performing what I conceive to be a duty. I am pointing out for those who are intelligent enough, and have common sense enough to understand it, some reasons why this measure should not be enacted into law; and I care nothing for the silly cackle of those who will laugh at some man's attempted jest and forget the argument against which the jest is directed. Now they can laugh again.

Mr. President, I do not want to see this proposed law enacted, but it is not because I do not want these people to become citizens of States. I have always been in favor of admitting them if they were sane enough to come in as other States and maintain a government as other States. We want no freak States; we want no children that think they are wiser and smarter than their parents. We want them to come in on an equal footing, and not on a superior footing, with other States. We do not want them to have a license to disregard the principles of our Government that another State does not have and does not want. The thing they are clamoring for is a license, not rights. They want the license to be unpatriotic. They want the license to disregard the duties of citizenship. They want the license to disregard stable government. They want the license to be different from those principles that have made this country great.

Do you suppose we would have had a Government to-day had the original 13 States adopted such a constitution as this? We would have had no Government to talk about. I can not even picture what the result would have been. You get an initiative and referendum in the United States and it will be the end of our Government. All this talk about being afraid of the people is done for the purpose of distracting the mind of the unthinking or little thinking from the real question. I am not afraid of the people.

I understood the Senator from Texas [Mr. BAILEY] to suggest that no Senator had stood in his responsible capacity in this body and stated that he was opposed to the initiative and the referendum and the recall. If I have overlooked that I am surprised. I think I have stated it. I will state is now. I am unqualifiedly opposed to the initiative and to the referendum, singly, each, or double. I am unqualifiedly opposed to the recall under any circumstances, except through the medium of impeachment under the laws that govern trials for impeachment. I have been always opposed to them, and I will be always opposed to them.

If it was intended to suggest that Senators had their ear to the ground to determine from the tread of the people the direction they were moving, I disclaim it. It is utterly immaterial to me whether the people of my State send me back here or not. They can do just as they please about it. I told them the same thing the last time they sent me back. They send me here as their representative. I did not come here of my own volition. It may be that is plain enough.

This direct primary is the beginning of what I will not call a trinity, because it has so many heads and wings and branches that I will call it a composite political figure. They start out proposing to change something because they could not reach their ambition unless there was some change in stable, strong government. They must first break down the conditions. It is like a man crying fire in order to distract the attention while he picks somebody's pocket. That is the spirit behind the direct primary. They could not get the confidence of the assembled intelligence of a party in a State, so they say, "Well, we will go around the back way and we will be seekers for office rather than men selected by the intelligence of a State or a county for the position." To-day it is the man seeking the office. He says he is a candidate. He does not wait for somebody else to say, "Will you accept the responsibility of this office and perform the duties as a public-spirited citizen?" He does not wait for that. He says to the people, "I am going to take this office if I can get it, by a scheme or otherwise."

Now, that is the direct primary for nominations. It makes two elections. It doubles the expense. Men can spend $200,000 in one primary election. Yet it was to be a poor man's manner of getting into office. They said that only the rich and influential got in through the conventions. There is a great

show for a poor man to get nominated in these days at the direct primary! Instead of going to the men who are charged with the responsibility of the hour to nominate a candidate, he makes a campaign in a State and spends all the money he can dig up. Then when he is nominated he is not nominated by any party or to represent any principle. After he is nominated he goes into what they call a platform convention, and half a dozen men get together and make a platform. The men who voted for him do not know whether he is for or against this or that. He is for or against it according to the geography that happens to be his environment at the time when he is asked the question.

Now, when any other Senator charges that no Senator on this floor has expressed himself on that question, he can read back in the RECORD and find out what one Senator thinks about it.

That is the direct primary. The initiative proposes that 5 per cent, generally, of the people may say to the legislature, "You have got to spend the time that the people are paying you for in considering the will of 5 per cent of the people"; and that 5 per cent will probably be the cranks in the community. That is where the initiative comes from—it comes from the cranks.

Intelligent men and strong men, men strong enough to be in the legislature or to know what constitutes intelligent legislation, do not need any initiative. The people will select them under normal conditions to initiate legislation. But no; they must send up this measure. Then the legislature must stop everything else and they must deal with the suggestion of the 5 per cent of cranks. Then, if the legislature submits it to the people, you have got to have an election on it.

I introduced here the other day a ballot 7 feet long and 14 inches wide, and it is printed as a public document. That was the actual ballot used in one of our great sovereign States at the last election. No man can read it; the clerk, with all his skill, at the desk can not read that ballot in less than 45 minutes. Yet, the elector goes into the box under the austerity of the system and must determine a law there that probably if you would submit it to five lawyers and give them an hour to consider it, no two of them would agree as to its effect or as to its wisdom.

They do not leave it to the legislature to send it to a committee, to have the committee consider it deliberately and then to bring it onto the floor of the legislature and have it discussed, but they send it out to be voted for down in the river wards, up on the mountain sides, or wherever it may be. Men must vote upon that, and if they adopt it as a law, all the people are bound by it. That kind of legislation belongs to the disorganization of government and not to its organization.

In the first place, there is no occasion for it, and, in the second place, it is affirmatively dangerous. So many of my acquaintances and friends have seemed to concede it that I feel some hesitancy about expressing myself as strongly and as plainly as I feel upon the subject. I used to doubt the sanity of a man who talked greenbackism, and I do yet; I have not changed my mind. I doubt the wisdom—that is, the conservative wisdom—of men who favor the initiative, the referendum, and the recall. This joint resolution provides for the recall of all State officers except judges.

Mr. BRANDEGEE. All public officers.

Mr. HEYBURN. Of the State.

Mr. BRANDEGEE. Of the State.

Mr. HEYBURN. Yes; of all public officers. It provides for their recall by about the same proportion of the citizenship as voted for these constitutions—about 25 per cent. They could find 25 per cent of the people of New Mexico and Arizona who did not care or who did not know any better than to vote for these proposed constitutions. They could find about that same per cent to vote for the recall of the best man who ever occupied a public office.

I will say to the Senator from Michigan that I do not regard this joint resolution as an improvement upon the other, because it contains the same evils as existed in the original constitutions which were sent up by those Territories. I can not support it, glad as I would be to see those Territories come into the Union. I spent some part of my life down in that country about 30 years ago; I know something of the frontier and of the character of men who settled it, but this was not sent up here by the stalwart, sensible frontiersmen. It was sent up here by that class of men whom we denominate on the frontier as "Johnny Come-latelies." They came down there, some of them, so as to be on hand when the band wagon came along. That is the reason they went to those Territories.

Mr. President, I have expressed my disapproval of this measure so far as speech is concerned, and I shall continue it when the roll is called.

Mr. BRISTOW. Mr. President, I regret very much that the joint resolution as it was passed some days since has not been acted on in the other House, where almost three-fourths of the body were in favor of its passage originally, so that the Senate might have voted and admitted these Territories to the Union under the joint resolution as it was sent to the President. The legal number of votes in the other House to pass the joint resolution over the President's veto were cast for it when it passed that body, and the legal number of votes were cast in the Senate when it passed the Senate to pass it over the President's veto, so that more than two-thirds of both branches of Congress are in favor of passing the joint resolution in the form in which it passed Congress a few days since. Why the other House has not acted on the veto message, which was sent to that body, I am unable to say.

I do not think I can vote for any resolution admitting these Territories until action has been taken by the other House and by the Senate upon the veto message of the President. There is a very radical difference between that joint resolution and this one. That joint resolution provided that the recall of the judiciary should be again submitted to the people of Arizona for their judgment. The purpose was that that policy alone, unincumbered by any other provisions, should be submitted to the people of the Territory, in order that they might determine whether they desired to incorporate it in their constitution. They were to exercise their rights and their judgment unhampered by any restriction, and if they saw fit to adopt or reject the proposition it was for them to determine, as it related wholly and exclusively to their local affairs. The President has seen fit to refuse his approval to that proposition, and has declared that, so far as he can prevent it by the exercise of his constitutional prerogative, the Territories shall not be admitted as States unless the people conform to his notion as to what they ought to do in regard to the tenure of office of their judges. To my mind it is an arrogant presumption upon the part of the President of the United States.

It is admitted by all that, after either of these Territories has been admitted as a State, the people have the right to incorporate into their constitution the exact provision which the President demands shall be stricken out, and for any man, regardless of his great power or authority, to undertake to impose his preconceived notions in regard to the term of office of a local officer, be he judge, prosecuting attorney, sheriff, or governor, is a new proposition in American politics. If my memory serves me aright, it is the first time in the history of this country when such a restriction has been imposed upon a Territory that was seeking admission as one of the States of the Union.

I want to read the requirement which this joint resolution proposes, but before doing that I want to suggest that I fear there is a hesitancy on the part of the other House, as I believe there is on the part of many Senators, to vote to pass this joint resolution over the Executive veto.

Why should we hesitate to express our opinions any more than the President should hesitate to express his? Why should a Senator, occupying the independent position that he does, hesitate to express his views, contrary though they may be to the opinions of the Chief Executive of the land? Has the President any superior authority over us that we should bow to his will any more than that he should bow to ours? We have the same constitutional rights, only it takes a larger majority to pass a measure over the veto than it does to pass an original proposition.

I have been anxious for the joint resolution which has been vetoed to be submitted to Congress. I want to see the roll called and see the men who have changed their views, if there are any such, because of an adverse opinion expressed by the President. It seems to me, however, that this joint resolution has been interjected here and is being pressed, I fear, for the purpose of avoiding that disagreeable experience upon the part of some of the Members of the other House and some of the Senators.

I want merely to read what we are imposing upon the people of Arizona. They voted for their constitution and they passed it by a vote of almost three to one, containing a provision for the recall of all officers, including judges. We proposed in the original joint resolution that they should vote again upon the recall of judges, so that it would be clearly understood whether or not they were in favor of that specific thing. Now we propose this:

If a majority of the legal votes cast—

I should like to have the Senate pay close attention to this, because it contains an important provision.

If a majority of the legal votes cast at said election—

That is, the election at which this recall provision of their constitution eliminating the judges is submitted.

If a majority of the legal votes cast at said election upon said amendment shall be in favor thereof—

We are saying this to a people three-fourths of whom, approximately, have declared that they are in favor of the recall of their judges—

the said canvassing board shall forthwith certify said result to the governor of the Territory, together with the statement of votes cast upon the question of the ratification or rejection of said amendment; whereupon the governor of said Territory shall, by proclamation, declare the said amendment a part of the constitution of the proposed State of Arizona, and thereupon the same shall become and be a part of said constitution; and if the said proposed amendment to section 1 of article 8 of the constitution of Arizona is not adopted and ratified as aforesaid then, and in that case, the Territory of Arizona shall not be admitted into the Union as a State, under the provisions of this act.

That is, it is proposed to coerce the people of this Territory and say to them, "You have got to vote this provision out of your constitution or you can not come into the Union." Anyone who is acquainted with the practical result of such an election, in view of the tremendous inducements that are offered these men to vote against their convictions in order to secure statehood, knows that they will bow to the inevitable, that they will eliminate the recall provision from their constitution, regardless of their conscience or their judgment, that they may come into the Union. It is a system of coercion in regard to a local matter that serves no great moral purpose.

The provision objected to fixes the tenure of office of the judges of the State according to the judgment of a majority of people of the State. For one I can not see how I can vote to impose such a restriction upon the free will and judgment of a people in regard to their own local affairs.

Mr. BORAH. Mr. President, I shall detain the Senate a moment only. I presume that the committee has dealt with this matter in the most practicable and the best way possible under the circumstances, and that the only practical way of securing the admission of these Territories at this time is the method adopted by the committee. I do not, therefore, criticize the action of the committee. I want, however, to make a few remarks before I cast my vote, in view of the joint resolution as it now stands.

The joint resolution that we passed some days ago provided for the submission of the question of the recall of judges as a separate proposition to the people of Arizona, and they were to be permitted to vote upon that question without the embarrassment of having their admission into the Union depend upon whether they voted one way or the other; in other words, the resolution as passed a few days ago gave them the right to vote upon this as a separate and distinct proposition, but the right of admission to the Union did not depend upon the result of the vote. I was not afraid then, and I am not afraid now, to submit this question, after thorough discussion, to the people of Arizona.

I stated in the remarks which I made at that time that I was voting for that resolution for the reason that I believed that that was the fairest way in which to test the question of whether or not the people of Arizona were truly in favor of the recall of judges, for it is evident, Mr. President, that if the majority of the people of Arizona are in favor of the recall, the method which we are now adopting will only serve to admit them into the Union, and then and thereupon they will resubmit the question and adopt it.

The difference between the two propositions, to my mind, is that of imposing, as it were, an element of duress upon the voter and that of leaving an election entirely free and clear of all questions, except the one question of whether the people of Arizona are in favor of the recall of judges.

Mr. President, while I propose to vote for this resolution, as it is the only thing, I presume, that can be done now in the way of assisting these Territories into the Union, I have not changed my mind as to the better course, which I believe is to submit the question to the people as a separate proposition. I would like to test it in the tribunal of final appeal. I sincerely regret that we are not permitted to do so.

I have always felt, and I feel still, that had it been submitted in a fair and intelligent way, reposing confidence in the intelligence and in the judgment of the people, after thorough discussion they would have eliminated it themselves from their constitution. I have always found, both from reading and from observation, that in the settlement of great fundamental, governmental, nonpartisan questions the best way is to take the people into your confidence, discuss the matter with them, and depend upon them to decide the questions in a proper way. That in the tribunal which must at last determine all such questions.

One of the objections to the present course, to my mind—and it is one which presented itself at that time—is that there will be added to the situation after they come into the Union, the impetus which is given by reason of the resentment, which must necessarily to some extent arise because of the manner in which they are compelled to deal with the subject. I regret, to some extent, while I am anxious to see the recall provision eliminated, that it was not submitted under such conditions as it could be said that it was trusted to the intelligence and to the judgment of the people of Arizona to settle it, because, Mr. President, no question like this, involving the thought and the consideration of earnest men in all parts of the country, and involving, as it does, a most serious proposition of government, can possibly be settled other than by a thorough presentation of the matter, upon argument and upon reason, to those who must ultimately settle it, namely the voters of this country.

There was another proposition which, to my mind, was equally controlling, and one which induced me to vote against the amendment at that time proposed by the Senator from Minnesota [Mr. NELSON], and that is that, to my mind, it violated the most fundamental principle of this Government, namely, the right of local self-government. I know it has been said here repeatedly, and only a few moments ago, that the right of local self-government does not obtain as to these people, because they are yet within a Territory.

But, Mr. President, when we passed an enabling act and authorized these people to meet in convention for the purpose of forming a fundamental law under which they should live, the principle of local self-government obtained from the time that they met in that convention. They were just as much entitled to the protection of that principle and to be guided by its healthy and wholesome rules from the time they met and formed that constitution as they would be if they should meet next year after they are a State to re-form and recast that constitution. They were then engaged in forming for themselves, at our suggestion and at our request, a constitution under which they should live, a constitution which should guide them as a State, and from the moment they met in constitutional convention every principle of the right of local self-government obtained as to those people.

The only way known to our system of government by which to eliminate from the constitution of a State an objectionable provision is by an appeal to the judgment and to the intelligence of the people who are to live under it. It is my opinion that if this question could have been submitted after arguments pro and con upon this matter and after the presentation of the views of those who have given it consideration, it would have prevailed unquestionably with the people of Arizona, and the recall provision would have been eliminated from their constitution.

Mr. President, if it had been eliminated in that way, if the intelligence and judgment and patriotism of the people of Arizona had said, after a fair consideration, "we do not want this in the constitution," I ask the Senate, What would have been the difference in the effect upon the country, what would have been the difference as to principle as compared with the effect which it will have to have them vote to take it out in order to get into the Union as a State? There is no one who will doubt for a moment, let the judgment of Arizona be what it will, let the convictions of those people be what they may, when the price of statehood is put upon the one side and the right to regulate their affairs upon the other, knowing that they may adopt such a provision hereafter—no one will doubt, I say, that it is no test whatever that it is eliminated from the constitution under such circumstances. We have made no progress in the settlement of this great question, and we will make no great progress in the settlement of these questions so long as we settle them under such form of settlement as to prevent a fair and intelligent and unbiased judgment upon the part of those who are to determine them. As was said by the Senator from Texas [Mr. BAILEY] this afternoon, none of these questions are ever settled until they are settled right; and though we may postpone judgment for a time, the proposition will be finally settled after a thorough discussion and presentation to the people.

It is a wholesome thought, Mr. President, to reflect that in the history of our Government almost every, if not every, great question of government which has ever been submitted to the people, after a thorough discussion and presentation, has been settled in accordance with the best interests and according to the truest principles of representative government. Perhaps

the most inspiring and assuring incident was the adoption of the Constitution of the Federal Government itself. When the convention which framed it adjourned it is safe to say the majority of the people were against it; but after months of discussion they adopted it. There have been times when passion and prejudice for an hour prevailed; there have been times when calmness and deliberation were prohibited by reason of temporary conditions, but those questions that have come up and through the course of months or years have been submitted to discussion and finally to decision, have been settled in accordance with the best interests of the Republic. There, Mr. President, is where all these questions will finally have to go. That is the tribunal to which we will have to finally appeal, and there is no use for the Congress of the United States to undertake to settle questions of local government, because the final tribunal, the one to which the appeal will be made, is another tribunal, and that is the tribunal in the respective States where the votes are to be counted for or against the proposition.

It was for this reason that I was in favor of submitting it as a single proposition, unembarrassed and unencumbered by the price of statehood, for when the price of statehood goes into the controversy, the result of that election amounts to nothing as to the settlement of the questions in which we are primarily concerned. I realize, however, that under present conditions this is the only way by which we can carry out our pledge to admit these Territories as States into the Union, and I shall therefore vote for this resolution.

Mr. OWEN. Mr. President, I wish to place in the RECORD two telegrams, one from J. P. Dillon and J. H. Robinson, and another by M. G. Cunniff and H. R. Wood, of the Yavapai County Statehood League, of Arizona, in which they ask for the passage of this measure substantially as it is before the Senate.

The VICE PRESIDENT. Without objection, the telegrams will be printed in the RECORD.

The telegrams are as follows:

PRESCOTT, ARIZ., *August 16, 1911.*

Hon. R. L. OWEN,
United States Senate, Washington, D. C.:

The Democratic Party of Arizona is eternally grateful for the statesmanlike action of the Democrats of House and Senate in passing the Flood resolution. The responsibility for nullifying it is now on the President alone. We now earnestly beg you, if the bill can not pass both Houses over his veto, to amend the Flood resolution in the single particular of making the elimination of the judiciary recall mandatory, and pass it again before the special session ends. The President's action, following the stand the Democrats took for Arizona, relieves the Democratic Party of any responsibility for the coercion, and Arizona will go overwhelmingly Democratic. The people of Arizona and the Democratic Party earnestly petition you thus to give us statehood.

J. P. DILLON,
Chairman Territorial Democratic Central Committee.

Attest: J. H. ROBINSON,
Secretary.

PRESCOTT, ARIZ., *August 16, 1911.*

Hon. ROBT. L. OWEN,
United States Senate, Washington, D. C.:

If Congress can not pass Flood resolution over President's veto, the people of Yavapai County ask you most earnestly to give us statehood, but through the Flood resolution, amended only in the judiciary recall feature, and in no other. We pray you to take this action during this special session. The people of Arizona thank you heartily for standing by the Flood resolution, which was what they desired.

THE YAVAPAI COUNTY STATEHOOD LEAGUE,
By M. G. CUNNIFF, *Chairman.*
H. R. WOOD, *Secretary.*

Mr. OWEN. I do not wish to detain the Senate any longer than possible at this late hour.

In discussing the initiative and referendum several days ago, the Senator from Minnesota [Mr. CLAPP] pointed out that in his State plate matter was being sent out free of cost to the country newspapers containing an argument against the initiative and referendum. I received his morning from Michigan an editorial of like purport, which I desire to place in the RECORD.

The VICE PRESIDENT. Without objection, the editorial will be printed in the RECORD.

The editorial is as follows:

[From the Evening Press, Thursday, Aug. 3, 1911.]

TAINTED NEWS AGAIN.

When one is offered something for nothing it is justifiable to seek the motive. The smaller newspapers of this country are being offered something for nothing. The donor is a Chicago newspaper syndicate service, and it is offering a page of plate matter containing Senator SUTHERLAND'S speech delivered in the Senate July 11 against the initiative, referendum, and recall. SUTHERLAND, of course, is a reactionary, and the special interests' friends are his friends.

Now, one would be very simple, indeed, to suppose that the syndicate, a business institution which exists for the sole purpose of making money, is being so generous with its own cash. Some one else is paying for this plate, some one who is interested in the discrediting of progressive measures that are intended to restore government to the people, and in the choking off of "agitation" against excessive tariff rates. It is not costing any small sum to print this plate and distribute it throughout the country. The "some one" concerned hopes to get a definite return for this generosity. Just leaving the tariff alone is worth millions to the interests concerned.

Who is paying the bill? Not SUTHERLAND. But it doesn't matter much so long as the public that has this tainted news thrust on it by editors easy enough to "bite" on this bait realizes that it is being paid. The trouble is that the general public is not aware of how crooked and devious are the tricks of privilege.

Every newspaper editor of Michigan who receives this very generous offer not only should refuse it, but he should lose no time in telling his readers what he thinks of it.

Mr. OWEN. I also offer an article on Why courts become unpopular, and which illustrates the reasoning of the people which has led to this demand for the recall of judges, which I should like to have go into the RECORD.

The VICE PRESIDENT. Without objection, the article will be printed in the RECORD.

Mr. MARTINE of New Jersey. Let the article be read.

Mr. OWEN. I should like to have the article read from the desk. Several Senators would like to hear it.

The VICE PRESIDENT. Without objection, the last article will be read by the Secretary.

The Secretary read the article, as follows:

WHY COURTS BECOME UNPOPULAR.

The other day a Federal judge holding court in New York City fined a lawyer $45,000 for organizing wire pools. The district attorney begged for a jail sentence because the lawyer was, in his estimation, a dangerous criminal. He had dragged into illegal combinations honorable men who had no intention of doing an illegal act. When they became suspicious he told them he had consulted the Department of Justice and it had approved. Nevertheless the judge let the man go with a fine.

Not long ago he did send a man to jail for three months. He was an importer, on a small scale, of dates, figs, and cheese from Greece. He tried to cheat the customs, as others have done, and got caught at it. Probably he deserved what he got. But when this same judge had to pass on the same day on the case of a millionaire importer of millinery and dress goods mixed up in frauds which had cost the Government a million and a half, he was let go with a $25,000 fine, though a jail sentence was asked for.

The man was the less deserving of leniency because he had jumped his bail, fled to Europe, and remained away for months.

Earlier in the year another Federal judge sitting in New York City refused to send to prison a wealthy art importer who had swindled the Government out of millions, on the ground that he was in ill health, and imprisonment might kill him.

When the people see men who have stolen a few hundreds of dollars or less sent to prison, even when they are in ill health, while wealthy malefactors who have stolen millions escape, they begin to doubt the existence of "even-handed justice." It occurs to them that judges might have a better sense of proportion in awarding punishments if they were subject to some degree of popular control. They commence talking about the recall to rid themselves of judges who know not justice. For that talk and the new-fangled judicial recall device some judges are responsible.

Mr. OWEN. Mr. President, stripped of all verbiage, the meaning of the veto of the President because of the "judicial recall" in the Arizona constitution is a declaration on the part of the Chief Executive that he is unwilling to admit Arizona and New Mexico to enjoy the rights of self-government on an equal footing with the other States of the Union as guaranteed by the Constitution, because Arizona proposes to exercise this right in a manner the Chief Executive does not approve.

It is not pretended that the "judicial recall" is in violation of the Constitution of the United States, of the Declaration of Independence, or of the enabling act.

The President thinks the judicial recall is not wise "governmental policy," and therefore he refuses to allow a sovereign State to exercise its own right of self-government, because, in the proposed exercise of this right, the people do not yield to his views. He thinks Arizona should be denied statehood because, under its constitutional right of self-government, they favor the judicial recall. His sole justification for denying Arizona its right to statehood on an equal footing with the other States of the Union is because, in the exercise of such right, they adopt the judicial recall by the vote of the people. He does not approve this. He says that, in his opinion, it "is destructive of free government." The fact is such a veto is "destructive of free government." To deny the right of free government to a sovereign State by veto as a condition of its admission on an equal footing with the other States is a grave wrong done to "free government."

It is an unwarrantable attack on the fundamental right of self-government, which I deeply regret.

Arizona proposes the freest government in the United States, giving the majority of the people of the State the right to amend their constitution at will; to nominate, elect, and recall their own officials. If they find the judicial recall inexpedient, under the free government of Arizona they can amend it at any time. Thirty-two States of the Union provide in their constitutions for the recall of judges by the address of the legislature. Forty-three States provide the automatic recall by short tenure, but the recall by popular vote, although conceded to be a right which other States have, which Oregon has long enjoyed, and which California is about to adopt, is to be denied Arizona, and her people are to be denied the right of self-government because they have dared to adopt it.

With profound respect for our Chief Executive, I deem it my duty to say that the veto is not justified, for the simple rea-

son that the people of Arizona, under the right to be admitted on an equal footing with the other States in the Union, have a right to govern themselves in their own way without the interference or coercion of the Chief Executive of the United States.

The power of the Executive is so great, since a minority of the Senate can sustain the veto, that he is able to coerce Arizona by his veto, to coerce Congress by his veto, into requiring Arizona to strike out the judicial recall or remain out of the Union.

It is not denied that Arizona will have the right legally to provide the judicial recall immediately after admission, nor is it doubtful that Arizona will immediately adopt it when admitted.

It seems to be the idea of the President merely to emphasize before the country his disapproval of the judicial recall by vote of the people, and I feel it my duty as an advocate of popular government to place on the records of the country an answer to the reasoning offered by the President in justification of the veto.

But, first, I think it proper to say that the presidential veto is not justified, even if he were right in disapproving the judicial recall. The President is in grave error to deny the people of Arizona the free and full right of self-government merely because in the exercise of their acknowledged right of self-government they do not yield to his personal views. The President is in grave error in coercing them, as a condition of admission to statehood, to submit to his will, and he does a wrong to all those who believe in the judicial recall by this abuse of the veto power, by using the powers of the Presidency and the prestige of that high office to put the seal of his condemnation on this policy of government. He does a wrong to both California and Oregon in such an unjustified veto.

The first reason offered by the President is that the majority of the people of Arizona can not be trusted to deal justly with the State judges, if they are subject to recall. He suggests that the "unbridled expression of the majority, converted hastily into law or action, would sometimes make a government tyrannical and cruel;" that the majority should be subject to checks to prevent the abuse of their power on the minority. The President says:

> Constitutions are checks upon the hasty actions of the majority. They are the self-imposed restraints of the whole people upon a majority of them to secure sober action and a respect for the rights of the minority.

The President does not trust the majority of the people unless they are obstructed in the exercise of their will by various checks and devices. This is the vital point of difference between the progressives and those who oppose the progressive movement. The progressives believe in the integrity, honesty, and wisdom of the majority. They believe that the majority is conservative. The majority well knows that it consists of individuals, of groups of individuals, and of minorities, and that the safety of the majority absolutely depends upon the protection of the individual and of the minority. It is for this very reason that the majority have always declared in favor of free religion, free speech, and every liberty justified by the rights of others. It is this clear conception of the majority that has all these years given protection to the individual by the voluntary and deliberate act of the majority. I deeply regret that our honored Executive should take the view of those who oppose the progressive movement, and should speak of the "unbridled expression of the majority," "the hasty action of the majority," and suggest that the majority might be swept "by momentary gusts of popular passion," "by hasty anger," or be moved by "firebrands and slanderers" and by "stirrers-up of social hate."

Mr. President, the sober common sense of the majority of the people, exercising its right in the dignity, quiet, and seclusion of the voting booth, is not moved by the mob spirit; it is not turbulent, violent, moved by "hasty anger" or "gusts of popular passion." The views of the majority of the people, under the safeguards of the American ballot box, is the most conservative, thoughtful, and trustworthy power in the United States, and will abundantly safeguard the right of the individual citizen to all of his rights to life, liberty, and the pursuit of happiness. It is only on the majority the citizen can rely. The danger of the citizen is to be found in the craft and corruption of the few, of the minority, who have by indirection and by checks on the majority usurped undue power in the governing business.

The danger of this country lies in the governmental control by minorities and by the agencies through which they operate, including a judiciary nominated by privilege and kept in power by craft.

Our honored Chief Executive suggests that "often an intelligent and respectable electorate may be so roused upon an issue that it will visit with condemnation a decision of a just judge." I emphatically deny it. An "intelligent and respectable electorate" will not visit with condemnation a decision of a just judge at any time, much less with frequency or "often," as our honored Chief Executive imagines. The majority elects and reelects and continues to reelect just judges in our numerous States, and the more just the judge the more certain is his reelection. Not an instance can be given of a judge defeated by the people because of his upright conduct.

The idea that the majority of the people will be moved by "hasty anger" against a faithful judge executing the law laid down by the representatives of the majority has no just foundation in fact. The majority of the people will never be moved by hasty anger to deal unjustly with a faithful public servant. The majority moves only too slowly in dealing with unfaithful public servants, and this is manifested by the experience of the governments of many of the cities of the Republic and of the States where it frequently happens that organized criminal minorities, engaged in the governing business for profit, are permitted for long periods of time to pursue their bad conduct without being called to vigorous account by the justifiable anger of the majority.

The President thinks the judicial recall is "destructive of free government." The people of Arizona, like Oregon and California, familiar with gross judicial abuses and a control of the judiciary in California by the Southern Pacific Railroad, believe the judicial recall an essential part of free government.

But whether the people of Arizona or the President be right, there is no doubt whatever that the people of Arizona have the right to determine this matter for themselves, and that the Chief Executive has no right to coerce them in the matter of their own self-government. The President has raised the issue as to whether or not the people of Arizona should have the right of self-government or whether they should be denied this right, and on this issue, I think, the President is in error to deprive them of the right to govern themselves merely because they do not propose to govern themselves in accordance with his opinion.

The second point which the President makes is that the judges, under the judicial recall by a vote of a majority of the people, would be so intimidated that they would become "timeservers and trimmers." The President says:

> The character of the judges would deteriorate to that of trimmers and timeservers, and independent judicial action would be a thing of the past.

Mr. President, the character of our State judges, who are elected by the people for short terms and who are subject to automatic recall and who are subject to recall by the legislatures without impeachment and without assigning cause for recall, shows that the President's anticipations are not justified. Our State judiciary is well deserving of the commendation which even the President generously gives.

The people ordinarily select good men for judges, and the judges in the very great majority of cases, under the system of popular election and short tenure, have not become "trimmers and timeservers." The recall of State judges is so rare I do not remember a single case in recent years. Undoubtedly they are subject to the influence of sound, matured public opinion, and it is only right that they should be. All men, whether judges or not, are subject to the influences that surround them, and it is this very fact, which the President so strongly emphasizes—that the judges are subject to influence—that makes it of the greatest importance that the influences which do environ the judge should be good influences and not bad influences.

The very reason the people of Arizona demanded the judicial recall by popular vote grew out of the experience in California, where the judges were under the influence of the Southern Pacific Railroad. Privilege can exercise its influence in a great variety of ways. For example, it can skillfully bring about, by machine methods, the nomination of a man and the election or appointment of a judge whose previous predilection is altogether favorable to privilege, though not understood by the people.

Privilege can, by the hypnotic influences of skilled social and personal agencies, lead the mind of a man away from the people and into the service of privilege, and since judges are equally subject to the crafty occult influences of privilege, as well as to the influences of public opinion, we must choose which of the two influences shall prevail. Those who believe in the progressive movement prefer the influence of the people to the influence of privilege. I believe that the American people, when they have considered this question, will decide that since the judges are more or less subject to influence, it is better to have them subject to the conservative, honorable, wise, and just influence of public opinion rather than

to have them subject to the crafty or corrupt influence of privilege without any power in the people of a direct remedy. Between the influence of privilege and the influence of the people, I stand firmly for the influence of the people, and this I regard to be the vital issue in dealing with the control of the judiciary, whether in the State or in the Nation.

It is this difference in the POINT OF VIEW BETWEEN THE PROGRESSIVES AND THEIR OPPONENTS THE PEOPLE OF THE UNITED STATES MUST SETTLE.

Mr. President, I ask to have printed as a Senate document an abstract of the argument on the recall of judges which I delivered some days ago.

The VICE PRESIDENT. Without objection, an order for the printing thereof will be entered. [S. Doc. No. 99.]

Mr. WILLIAMS. Mr. President, I think the wisest and most beautiful part of our governmental scheme is the fact that we are a Republic of Lesser Republics and that all sorts of governmental experiments can be tried out on a limited field without affecting the welfare of the entire Nation.

I am perfectly willing to see Arizona try any governmental experiment that she desires to try, provided only that it is not an experiment in its nature violative of the Constitution of the United States and that it does not involve in its nature the destruction of a republican form of government in the States.

I do not believe, Mr. President, that the President of the United States in his veto message, unofficially received, has made any argument that is germane to the case under consideration.

The question before us is not the wisdom or the folly of the recall of judges. It is the wisdom or the folly of permitting and not interfering with the right of local self-government upon the part of the people of Arizona. In my opinion the most sacred thing in the world next to personal, individual self-government is community self-government, especially under our scheme of Government.

I do not believe that the President ought to have predicated his attack upon the sovereign rights of the people of Arizona, if Arizona is to become a sovereign in the Union, upon the nongermane ground of his opposition to the judicial recall. As far as my individual opinion is concerned, so that I may not be misunderstood, I do not believe in the recall of judges. I sometimes suspect that there must be a form of popular brain storm and that that must be one of the results of it. Some of these days in the future when the common sense of mankind has been improved to such an extent, far beyond what it is now, as that the commonalty itself may be a fair judge of judicial ability and judicial capacity, it may be well to have something of that sort, but I do not believe that we have yet reached the stage in the progress of average human intelligence when it is safe to go that far.

But that is not the question at all. The question is whether the United States Government, through its Congress and its President, has a right to fix as limitation upon a new State entering the Union anything which a State already existing in the Union is free from as a limitation. If New York to-morrow wanted to pass a statute or a constitutional provision for the recall of judges New York could do it. Massachusetts could do it, Kansas could do it, Mississippi could do it, and Missouri could do it; and there is no moral or civic right on our part to admit into this "indestructible Union of equal and indestructible States" a State upon conditions that render her powers of sovereignty even apparently inferior to the powers of sovereignty of any State in the Union already admitted.

Here, at any rate, "equality is equity," and inequality is injustice.

The Congress of the United States tried that in the case of the State of Mississippi back in reconstruction days, and so far as I know inaugurated the idea of putting into enabling acts some sort of pretended or assumed limitation upon the power of equal States. It said that Mississippi should not be readmitted to the Union except under the provisions of a reenabling act, and that enabling act provided, among other things, that Mississippi should never at any time adopt an educational qualification for suffrage. The time came when Mississippi in her majesty and power and intelligence chose to do what the Congress of the United States said she could not do, and she did it, and the Supreme Court of the United States upheld her right to do it, because, the Supreme Court said, Massachusetts has an educational qualification, Connecticut has it, California has it, and it is not given to the Congress of the United States to deny to any State any power which any other State has.

Mr. President, that was an act of tyranny in the case of the State of Mississippi, partisan tyranny, to perpetuate negro rule and Republican ascendancy, and in my opinion this limitation upon Arizona is an act of Federal tyranny and Federal usurpation of authority.

I am well aware, of course, of the familiar argument that since we have to pass upon the act admitting a State, we have a right to pass upon its wisdom; and that the *power* rests with us I have no doubt; but to exercise a power which is in itself powerlessly exercised is folly. If Arizona wants recall of judges or any other form of governmental insanity, if you consider it such, she has a right to have it, provided it is not violative of the Constitution of the United States, and provided that it safeguards a republican form of government, which this undoubtedly does. She can do it five minutes after she is admitted. If that be, as it is, her right after entering the Union, it is her right on and while entering the Union.

I shall vote for this joint resolution because it emancipates Arizona from all except constitutional limitations by making her a State, and I hope that when she is emancipated and becomes a State she will not adopt the recall of judges; but if she does choose to do it, in her right of self-government, it is her affair. The most sacred thing in the world is the right of self-government, and it is accompanied, necessarily, by the risk of self-misgovernment, which is itself a quasi right.

Mr. ROOT. Mr. President, I fully agree with the view expressed by the Senator from Mississippi [Mr. WILLIAMS] as to the character of the provision for the recall of judges. I can not, however, go with him in his view of our duty in regard to the admission of the Territory of Arizona as a State with a provision in her constitution for such a recall.

I do not think that the joint resolution now before the Senate requiring Arizona to eliminate from her proposed constitution the provision for the recall of judges is any interference with any right of local self-government. Arizona is not now a State. When she becomes a State, she will have a right, I agree with the Senator from Mississippi [Mr. WILLIAMS], to adopt a provision for the recall of judges. It will be no concern of ours. She will have a right to be as wise or as foolish as she can and as she wishes. We not only will have no right to interfere, but we will have no power to interfere with her in the making of such provisions when she has become a State and has acquired the right of local self-government as a State.

Mr. WILLIAMS. Mr. President——

The VICE PRESIDENT. Does the Senator from New York yield to the Senator from Mississippi?

Mr. ROOT. Certainly.

Mr. WILLIAMS. Does the Senator from New York think that the Congress of the United States could be justified morally in fixing any limitation upon the power of a new State which could not be fixed upon the power of an old State?

Mr. ROOT. Morally? No. I think the Congress of the United States is bound to accept in good faith and in accordance with the spirit, as well as the letter, the provision that all States shall be equal, with equal rights and equal powers; and the instant that Arizona has become a State she is emancipated from all control in respect of all that vast field of local self-government which belongs to the oldest and the most powerful State in the Union.

But, sir, Arizona is now a Territory. She has not the right of local self-government. We are engaged in determining the conditions upon which we shall give her that right. We are engaged in determining the conditions upon which that 200,000 people, who at her election cast 16,000 votes upon the adoption of her constitution, shall send to this Senate as many Senators with as great a voice and as effective a vote as the 9,000,000 people of the State of New York, the 7,000,000 people of the State of Pennsylvania, the 5,000,000 people of the State of Illinois, and the 4,000,000 people of the State of Ohio. She has not local self-government to-day. She is subject to our Government. We have said by solemn statute that "we will admit the Territory of Arizona when emancipated from our control, provided she adopts and sends to us a constitution which we approve."

Now, sir, I differ with the Senator from Mississippi [Mr. WILLIAMS] in this: It seems clear to me that in the last act which the Congress of the United States performs in the exercise of its plenary control over the Territory of Arizona, acting under the statute which requires us to approve or disapprove the constitution upon which she appears here and asks for her release from our control, we shall act according to our own judgment and our conscience and require that constitution to be one that we really and in truth approve.

When we have done that, when under a constitution that we do approve we have emancipated her from our control and made her a State, the next day, if she chooses, she may begin the process by which she can amend her constitution and include in it any provision whether we approve it or not. But until

that moment comes the responsibility is with us, the power is with us, the duty is with us to say that this Territory shall follow the rules which we believe are essential to the maintenance of a free, orderly, just, civil community. As I believe one of the rules necessary to answer that description is the rule which provides for an independent, impartial, and courageous judiciary, I shall vote for the joint resolution now reported.

Mr. WILLIAMS. Mr. President, just one word, and only one word. The argument of the Senator from New York is substantially this, that while it would be very unjust and very wrong to cut a child's hand off after the child was born, it would be perfectly right to do it immediately before the child was born. It seems to me that the point at which we begin to meet the question of statehood is the point at which we admit a State and not the day after. It seems to me that we owe a respect to the equality of the State that is superior to our own private opinions as to how the State should exercise its power, and that we owe that to the State while it is being born, and not merely after it is born. It seems to me that there is no distinction possible between Arizona and Arizona, between Arizona two minutes before and two minutes after she is born to statehood. Arizona is Arizona. I understand, of course, that as long as the State is under Territorial government it is a Territory, and that it is subject to, or has been claimed to be subject to, the plenary power of Congress, although that "plenary power" over a Territory I have contended is not "plenary"; but call it by that name, if you choose. Even that power is subject in its exercise by Congress to certain general principles, and one of those general principles is that you shall commit no inequality among equal sovereigns or any injustice. When you commit the inequality upon a Territory which is being born as a State, cutting off its wrist or putting manacles upon it in a Union where the other States have preserved their wrists and have no manacles placed upon them, you are carrying "the plenary power" of Congress over a Territory over into the area of its statehood; you have passed the natal threshold.

Mr. ROOT. Mr. President, it appears to me that a more apt illustration would be a guardian who, because his ward immediately after becoming of age and acquiring entire control over his property may squander it, justifies himself in permitting the infant to squander it before he becomes of age. It seems to me that the guardian must perform his duty up to the point where the infant is emancipated. After that point is reached the adult man may work his own will.

Mr. WILLIAMS. Ah, Mr. President, but what would be thought of a guardian who undertook in the writing to emancipate a ward to limit his emancipation, and in the writing of emancipation itself manacled the ordinary individual citizen's right of the allegedly emancipated ward? The Senator from New York seems to forget that this is an act of emancipation. It is not the last act of Territorial government; it is the act of emancipation itself.

Mr. ROOT. It is our last act of government over the Territory. I never knew of a guardian manacling his ward, but the guardian may, under certain proper circumstances, exercise restraint over a ward. If the circumstances justify it, it is proper for the guardian to exercise that restraint. The instant that the guardianship ends and the ward attains his majority he may put an end to the restraint; and that is the case here.

Mr. WILLIAMS. Ah, Mr. President, but the difference is this: The Senator says that the instant the guardianship terminates the restraint terminates. If he were to follow that analogy in this case, assuming ourselves to be guardians for the Territories, there would be no quarrel between us. But he wants to follow his restraint beyond the moment when Arizona becomes a State. He wants to make an enabling act of Congress restrain and manacle Arizona for some time, I do not know how long, beyond her becoming emancipated and becoming a State. Whether it is one hour or five hours or five months or six months it is equally wrong in principle, because Arizona has a right, if she have any right to enter the Union at all, and we have decided that, after the consideration of her population, degree of preparedness, and so forth, then she has a right to enter the Union as the equal of New York, as the equal of Mississippi, as the equal of Missouri, as the equal of Michigan; and it is not right, in the very first moment, to manacle her hands because we are afraid she will misuse her hands, except in so far as the Constitution of the United States already manacles them.

Mr. ROOT. We do not manacle Arizona, Mr. President. Arizona has no right to enter the Union. It is for us to say whether she shall enter it or not.

Mr. WILLIAMS. I admit that.

Mr. ROOT. The very instant that she has entered it her hands are free to make such constitution as she sees fit to make.

Mr. WILLIAMS. Mr. President, Arizona has no right to enter the Union except by our permission. But Arizona, having her right to enter the Union acknowledged by us, must enter it—has a right to enter it—as an equal State, and we have no right to make her entrance, by our limitation, that of an inequality.

Mr. OWEN. Mr. President——

The VICE PRESIDENT. Does the Senator from Mississippi yield to the Senator from Oklahoma?

Mr. WILLIAMS. I do.

Mr. OWEN. I call the attention of the Senator to the treaty of Guadalupe Hidalgo, which gives Arizona the right to be admitted as a State.

Mr. WILLIAMS. I understand the sense in which the Senator from New York used the word "right." Of course, every Territory of the Union has a right under our spirit of free institutions at some time to enter the Union. But I understood him to mean that it is a right which she can not exercise without our permission, which is absolutely true, of course. She has no legal right to enter the Union without an act of ours, but in entering the Union she has the right to enter it equally, which is a totally different proposition.

Mr. ROOT. There is no right to enter the Union equally or in any other way. There is a right upon becoming a member of the Union to be equal, and that we secure to her by this joint resolution.

Mr. WILLIAMS. And there again, Mr. President, I would change the verbiage used by the Senator from New York. I would not say she has that right "upon" becoming, but she has that right "in" becoming, not "after" becoming but "while" becoming.

Mr. REED. Mr. President, the right of the Territory of Arizona to be admitted as a State has been so strongly presented and the provisions of her constitution so ably defended that I would not arise at this late hour of the debate except for the fact that certain arguments advanced against the constitution are, in my opinion, unsound, and various inaccurate statements regarding the terms of that constitution have (of course inadvertently) been made.

The Senator from Minnesota [Mr. NELSON], whom I sought to interrogate yesterday, and who, in substance, declined permission, discussed the constitution of New Mexico and presented the view that it is so complete and perfect an instrument it should be accepted without qualification or amendment. In contrast with the constitution of New Mexico he argued that the constitution of Arizona was unfair, inequitable, and dangerous.

In substantiation of this charge he called attention, if I correctly understood him, among other provisions, to section 8 of the Arizona constitution, and claimed that it unjustly discriminated against the Spanish inhabitants of the Territory. The section referred to reads:

> Eighth. The ability to read, write, speak, and understand the English language sufficiently well to conduct the duties of the office without the aid of an interpreter shall be a necessary qualification of all State officers and members of the State legislature.

This provision of Arizona's constitution is condemned, and in the same breath eulogy is pronounced upon the constitution of New Mexico, it being exploited as of such perfection that any amendment is undesirable. Now, let me read you section 5 of the constitution of New Mexico.

> SEC. 5. It is hereby provided that the ability to read, write, speak, and understand the English language sufficiently well to conduct the duties of the office without the aid of an interpreter shall be a necessary qualification for all State officers and members of the legislature.

Thus we find that the constitution of New Mexico, which was declared to be a perfect instrument, expresses the identical idea in the identical language which we find in section 8 of the Arizona constitution. Yet the Arizona constitution is condemned because it contains this language, while the New Mexico constitution is praised, although its section 5 is identical with section 8 of the constitution of Arizona.

The reason both constitutions employ the same language is easily discovered. We have only to examine the enabling act which was passed by Congress. The people of these Territories had nothing whatever to do with writing the enabling act. Certainly they were not responsible for the language to which I shall call attention. Section 5 of the enabling act expressly provides that the constitution of Arizona and the constitution of New Mexico must contain the following provision:

> SEC. 5. * * * the ability to read, write, speak, and understand the English language sufficiently well to conduct the duties of the office without the aid of an interpreter shall be a necessary qualification for all State officers and members of the legislature.

Thus we find the Congress of the United States initiated this provision. Thus we find Congress imposed upon these Territories the acceptance of this specific language. Thus we find that both Territories, being helpless in the premises, accepted the language which Congress dictated. Yet the prejudice of some Senators on the other side condemns the people of Arizona for placing in their constitution the very thing we compelled them to there place. At the same time the same prejudice enables these same Senators to accept with commendation and praise the constitution of New Mexico, although it embraces the same language used in the constitution of Arizona, and although that language was forced into both constitutions by Congress.

Mr. President, I have referred to these contradictory positions merely to illustrate how far prejudice can run, especially when yoked with partisan interest.

Here is a further example: By its terms the constitution of Arizona provides that it may be amended by the majority of the people at an election duly held, provided, however, that the proposed amendment shall have first been agreed to by a majority of each branch of the legislature, or the submission thereof shall have been demanded by 15 per cent of the voters by petition duly filed.

Is this latter provision an extreme or radical proposition? Does it destroy the stability of the proposed constitution? I think not. It has been charged that if the people are given the right by popular petition to demand the submission of an amendment to their constitution or laws, they will be kept in incessant turmoil, elections will be held every few months, all sorts of fantastic and senseless propositions will be forced upon the electorate, and thus the stability of the constitution and laws will be destroyed. I do not agree with these views. They are in conflict with the experience of those States which have adopted similar provisions. In my own State the people by constitutional amendment reserved to themselves the right to initiate a law. The initiation provision only requires 8 per cent of the legal voters of two-thirds of the congressional districts.

Notwithstanding the fact that this right of the people has existed for nearly three years, it has been exercised but once, when an amendment relating to prohibition was voted on at the time of a general election. That was a question which, of course, has always aroused great public interest.

The reason the initiative has not often been employed, and will not be often employed, lies in the fact that no man or organization of men will take the trouble to secure, or, indeed, be able to secure a petition signed by any considerable per cent of the people of an entire State unless a matter of grave importance, reaching into every home and touching the life of almost every citizen is pressing for attention. Hence I say that all declarations here and elsewhere made to the effect that the people will be kept in constant turmoil and be required to vote at frequent intervals is not sustained by experience. Such declarations are mere vaporing of extremists—the result of exaggerated imagination.

The point I want to emphasize is that the Arizona constitution is so drawn that it can not be amended hastily, thoughtlessly, or without due consideration. On the contrary, care has been taken to insure deliberate judgment and afford the amplest opportunity for the fullest discussion. At the same time the instrument is so constructed as to forever retain in the hands of the people the right to change their fundamental law. Thus they have made the constitution not an unyielding and inflexible chain to bind and circumscribe their liberties, but rather a fortress which protects their rights. This thought runs throughout the instrument and characterizes its every article. Singular it is that such a constitution finds so little favor upon the other side of this Chamber. Even more singular is it that those who oppose Arizona's constitutional magna charta can accept without criticism and swallow without grimace the constitution of New Mexico. It is exactly to their taste. It possesses that particular flavor of repression which delights a standpatter's palate. Yet I declare there has never been an American State, there has never been a free people who have adopted a constitution and placed so many restrictions upon the amendment thereof as you will find in the proposed constitution of New Mexico. That constitution is indeed marvelously well built for those who do not believe the people can be trusted to govern themselves. As one reads the astonishing amendment provision he is forced to conclude that its framers believed that "*all* wisdom, all learning, all gift of prophecy," had descended upon them.

We can not escape the opinion that the members of this convention really thought they had broken the locks of time and ravished the casket of the future of its last jewel of wisdom. Really, these gentlemen must have conceived that no man yet to come upon the earth could possibly produce a single thought which might improve upon their marvelous masterpiece. And so believing that their little constitution fixed the boundaries of human intelligence, entertaining the illusion that they had surveyed and located the horizon of the philosophy of government, these legislative architects sought to make their handiwork eternal. They therefore sought to make it—as the laws of the Medes and Persians—so that it "could not be altered."

Media and Persia, the only countries that ever enacted unalterable laws—swiftly their national race was run. In lust and blood, in cruelty and crime, the ghastly history and tragic end are briefly chronicled. It is a tale of altars erected to superstition, temples dedicated to sensuality, thrones maintained by armed force; government by brutal tyrants over abject slaves—a black page, splashed with blood. The unalterable statutes were chains despotism forged for freedom. The monarch who oppressed and the serf who wore his legal gyves were alike powerless to defend their country against the first vigorous assault. The backs which had bent before authority were so weak they could not sustain the burden of battle; the hearts broken in the mills of tyranny were not stout enough to endure the terrors of war—so Media and Persia fell. The heaven-challenging walls of their mighty cities, their lofty towers, their frowning battlements, the throne of monarch, and the den of slave all disappeared in one vast cataclysm of horror.

Where now are the unalterable laws of Media and Persia; where the civilization that did not admit of change and the government that defied progress and set its iron heel upon the people's liberties? Above them all the dust of time lies thick, the desert sands drift in dismal heaps, and the wild beasts lie in wait for passing prey—the very place where once they were was lost for centuries. Only the curiosity of the antiquary has discovered and deciphered their laws, which serves no purpose save to prove the ignorance and cruelty of those who wrote them thinking their handiwork so divine that it were sacrilege to change a syllable. Cambyses, Cyrus, Darius, Xerxes, Smerdis, and all the bloody tyrants of those unfortunate lands doubtless (like the framers of the constitution of New Mexico) were opposed to the initiative, the referendum, the recall. They were in truth against all amendments whatsoever.

For a moment let us examine the amendment clause of this remarkable New Mexico constitution. If possible, let us discover why Senators upon the other side hold it in such high regard, why they so love an instrument that denies the people of that great Commonwealth the opportunity to ever rectify any mistake now made or to take a new step in advance, if peradventure the march of events shall lead to higher moral ground or loftier intellectual altitudes.

New Mexico's constitution provides that before an amendment can be submitted it must be approved by two-thirds of all the members of each branch of the legislature. Mark you, not a majority, but two-thirds; and notice further, not two-thirds of the members present and voting, but two-thirds of all the members. So that a minority of even less than one-third in either branch of the general assembly, aided by the accidental absence or the illness of a few members, could effectually bar the people from an opportunity to vote upon an amendment, no matter how grievous the emergency nor how universal the demand.

Second. It is provided that once in eight years a majority of both houses can submit amendments, but if the legislature unfortunately neglects to act at that time, or the amendment when submitted fails for any reason, then for the succeeding eight years the people are again relegated to the two-thirds rule.

If this were the end of the restrictions, they would be sufficiently onerous and dangerous. A further examination, however, shows that when once an amendment has run the gauntlet of the legislature and escaped with its life the people are not yet permitted to vitalize it by a majority vote, for the constitution further provides that it must be adopted by—

an affirmative vote equal to at least 40 per cent of all the votes cast at said election in the State.

That restriction, Mr. President, means that in all human probability there never will be a constitutional amendment adopted at any general election held in the domain of New Mexico. I assert this, because it is the experience of States that a constitutional amendment submitted at any general election rarely, if ever, receives the vote of 40 per cent of all the people voting upon the candidate who receives the highest number of votes. This transpires because some voters are indifferent, while many more in the haste of casting their ballots simply forget to vote on the proposed amendment. So here is a second obstacle almost insurmountable.

Mr. OWEN. Mr. President——

The VICE PRESIDENT. Does the Senator from Missouri yield to the Senator from Oklahoma?

Mr. REED. I do.

Mr. OWEN. I wish to call the attention of the Senator from Missouri to the fact that in this case the 40 per cent not only applies to the State, but to a majority of the counties, or to half of the counties.

Mr. REED. I am coming to that. But, Mr. President, we do not end with this remarkable restriction. As suggested by the Senator from Oklahoma, the amendment must be voted on not only by 40 per cent of all of the people of the State who vote for any candidate, and receive a majority of such vote, but it must also have been voted on by 40 per cent of those voting in at least one-half of the counties. Then, and not otherwise, is the amendment adopted. What does that mean? Simply this: That when a constitutional amendment is proposed in New Mexico—

First. If the total vote cast upon that amendment is not equal to 40 per cent of the entire vote cast for the highest candidate, it will fail.

Second. If it is not voted upon by 40 per cent of the vote cast for the candidate receiving the highest vote in one-half of the counties, it will fail.

Third. It must have a majority of all the votes cast.

It will be observed that under this arrangement an amendment might carry in the State at large by an enormous majority and fail because it did not receive a vote equal to 40 per cent of that cast for the candidate receiving the highest number of votes; and even if it did receive such a majority in the State at large, it might fail because it had failed to receive a vote equal to 40 per cent of that cast for the highest candidate in one-half of the counties of the State.

Mr. OWEN. Mr. President——

The VICE PRESIDENT. Does the Senator further yield?

Mr. REED. Certainly.

Mr. OWEN. I wish to point out to the Senator the historical fact that the vote by which the constitution of Texas was adopted was only a little over 4,000; and under this rule the constitution of Texas would not have been adopted.

Mr. REED. I thank the Senator. Every Senator here who has had constitutional provisions submitted in his own State recognizes the fact that it is the rule that less than 40 per cent do vote upon such propositions.

No better illustration of the absolute fatality of such provisions is needed than the vote cast by both New Mexico and Arizona in adopting their present constitutions. The total voting population of New Mexico is 55,878; the total number of votes cast for the constitution was 31,742. The total number of voters in Arizona is 26,367; the total number of votes cast for the constitution was 12,187. This light vote was cast notwithstanding the fact that the people of these Territories had for years groaned under the oppression of Federal carpetbaggers, notwithstanding the fact that the two constitutions had been discussed and every incentive exhausted for a full vote.

But, Mr. President, these are not the only limitations. It is further provided that not more than three amendments shall be submitted at one election. No matter what the emergency, no matter how imperatively necessary, no more than three amendments can be submitted.

Let me make this suggestion to every Senator who has stood and fought the battles of the people, to every Senator who has witnessed the devious processes which can be employed by great interests to obstruct legislation: Here are three propositions essential to the people of the State; here are three propositions upon which the people of the State desire to vote; but only three can be submitted. Interested parties could very easily get through the legislature by some subterfuge or other one or two or three amendments upon immaterial matters, and thus thwart the will of the people and deny them the opportunity to vote upon the essential matters which they desire to have enacted into law.

Then, Mr. President, we find still further restriction in section 2, where it is provided that a constitutional convention can not be called for 25 years unless three-fourths of the members elected to each house, and after the expiration of 25 years two-thirds of the members elected to each house shall deem it necessary. If this almost impossible obstacle is passed, still the convention can not be created unless at a general election a majority of all the electors voting at the election in the State, and also a majority voting in at least one-half of the counties thereof shall vote in favor of calling the convention. Then and only then can the people have a constitutional convention.

But, sir, the amendment must not only receive a majority of the vote cast in the State, but it must receive a majority in 50 per cent of the counties. After all this has been done, after those desiring to re-form the constitution have complied with all these onerous restrictions, you will find it still further provided:

> If this constitution be in any way so amended as to allow laws to be enacted by direct vote of the electors, the laws which may be so enacted shall be only such as might be enacted by the legislature under the provisions of this constitution.

In other words, the wise men who drew this organic law placed the constitution like an iron band around the brain, the ambition, the hopes, the desires of the people of that State. Even when granting them the right of the referendum vote, they did it in a qualified manner and specified "that though you do adopt the right of referendum, you shall not exercise that right save in accordance with the dictates of this instrument which we have this day in our wisdom enacted." And so they wrote the following:

> SEC. 5. The provisions of section 1 of this article shall not be changed, altered, or abrogated in any manner except through a general convention called to revise this constitution as herein provided.

First, they make it almost impossible to call a convention at all; then they make it almost impossible to ratify the act of the convention; then they provide that certain portions of this constitution can only be submitted in that way. The hand that penned that instrument was the hand of a man who would have made an ideal minister for George III of England. It does not belong to a man who lives in the twentieth century and believes in American principles of government; either that, or it was guided by those selfish interests which distrust and despise the people.

Why is it—I put it to the gentlemen upon the other side and to their vacant chairs—why is it that the constitution of New Mexico so well suits in its flavor your legislative palate? Why is it that this instrument which puts bands about the people, that says to the unborn children of New Mexico, "You shall be held in thrall by this instrument" finds "favor in your eyes"? Of course, I except from these strictures the distinguished son of Minnesota, Mr. CLAPP, who has so eloquently spoken and will so eloquently vote in favor of a human constitution, adopted for human beings, calculated to meet human conditions; I except from criticism these Republican Senators who indorse the sentiment expressed by Mr. CLAPP. Such Republican Senators, however, are unfortunately limited in number.

Why is it many Republican Senators so love to tie the hands of the people? Why is it we hear from that side of the Chamber constantly invective delivered against mob rule? Why are we constantly warned by Republican Senators against the unwisdom of the people? Why is it they think the people can not be trusted to enact legislation? Why is it they fear the people will destroy the fundamentals of free government? Why do you upon the other side incessantly cry, "Beware of the people; they will destroy governments; they will substitute the will of the mob for the science of statesmanship; they will tear down the temples of jusice; they will uproot the tree of freedom"? Why are these sentiments constantly and forever upon the tongues of Republican standpatters, always, of course, uttered in covert language and disguised by soft phrases? Do you, in fact, believe the people incapable of self-government?

Why, sirs, how got you here? Every man who honestly sits in this Chamber was sent by the votes of these despised people. Every man who came here honestly and is entitled to retain his seat is here because he received the votes of a legislature elected by the sovereign people of his State. That legislature was only the people's agent, was created by them, and if it acted justly it simply registered the people's will. Sometimes I wonder how it happened in the providence of God that these ignorant people, these people who know so little, these people who are referred to as "the mob," these people you say you can not trust to erect and maintain a free government, these people whom you insist must be bound by the inflexible chains of an inflexible constitution in order that they may not injure themselves, these people whom you treat as lunatics who must be watched, guarded, circumscribed by legislative straitjackets and confined in constitutional padded cells—I often wonder how it happened they were so wise as to pick the illustrious, great, and wonderful men of this body. I am still more astonished to know how this ignorant mob happened to elect members of a constitutional convention who were so wise they could gaze down the path of the future, discern the emergencies hidden in the womb of the oncoming centuries, and provide for them all in one unalterable instrument.

Mr. President, it is constantly asserted here, first, that the people are wise, that they are prudent, that they are patriotic,

and in the next breath we are told they are foolish and that they can not be trusted. Why, sirs, it is argued that the people are so foolish that if they have a recall they will elect a man to-day and to-morrow they will compel that man to run for office again by getting out a petition of recall at the behest of his successful adversary, and that they will have nothing but elections, and nobody will have time to sit in his office and perform its duties. Mr. President, that hypothesis is based upon the assumption that the people are either dishonest or foolish and incapable of self-government. I say there is not a community in any State of this Union where if a man were fairly and honestly and cleanly elected to office, either judicial or otherwise, and his disgruntled antagonist were to circulate a petition to recall him, that would not defeat the man who resorted to such indecent methods by 10 votes to 1, because he had resorted to them.

Assume that this people are wise, assume that this people are patriotic, assume that this people are decent, and you have assumed the impossibility of the dangers depicted.

Mr. President, I have listened to some of these arguments with astonishment. I join with the distinguished Senator from Minnesota [Mr. CLAPP] in saying that no man will go further than I am willing to go in favor of preserving the integrity of our judiciary, in favor of preserving its independence, in favor of keeping the temple of justice always illumed by the light of reason and of law; but that is only possible when you put men upon the bench who are above sinister influences. If you put weak men there, influence will reach them. If you put dishonest men there, corruption will eat into their hearts and taint their decisions. Whenever American manhood sinks so low, whenever it becomes so contemptible that the self-interest of a judge will sway his opinion, you have reached a point when you will have no courts that ought to be respected. When you assume that judges will be intimidated by fear of a recall, you assume they are unfit to hold the office and they ought to be recalled.

Mr. President, let us see where this analysis will lead us. The Senator from New York [Mr. ROOT] pronounced a eulogy upon the bench. I join in that enconium. It has been the patriotism, it has been the intelligence, it has been the sense of justice dwelling in the hearts of American judges that has made American courts places where people resort in the hour of their adversity. It is this superb quality which has made them respected. But is the determining cause to be found in the fact that the judges hold their positions so securely that no one can deprive them thereof? The argument that has been advanced runs something like this: "Judges are wise, judges are prudent, and judges are patriotic, so patriotic, so wise, and so prudent that about them we should draw the veil of sanctity and bow and worship at the judicial shrine." In the next breath these same eulogists in doleful voices exclaim the judges are of such human clay, they are of such poor fiber, of such small capacity, at heart so vicious, in brain so shriveled, that should their personal interests be affected in the slightest degree they would venture from duty and even sacrifice the angel of justice upon the altars of selfishness.

Thus these eulogists of the bench in fact declare when they say that rather than submit to the chance of a vote by the people, the judges would pollute the temple of justice and inflict cruel wrongs upon those who sought the protection of their courts.

Mr. President, no such arraignment of the judiciary of this country has ever before been uttered; an argument so foolish and so self-contradictory has seldom fallen from the lips of man. It is equivalent to saying in one breath that a woman is a paragon of virtue and in the next breath declaring that for a paltry bribe she would sell the jewel of her honor. That sort of argument does not comport with the high ideals that we have always held of the American judiciary.

I take it that this is true of the judges of our courts—not without exception, for there creeps here and there into the very holy of holies that which should not come—but it is true, as a general proposition, of the judges of our courts, that they have been educated in the law, they have learned to reverence its great principles, they know that upon its just interpretation rests the progress and success of their country. So, because they love justice and love their country and love their profession, they sit and do that which they believe is right. In the vast majority of instances they would do justice even at the price of their own degradation in the eyes of the public. The only man who is fit to be a judge is one who will do his duty, regardless of the question of recall, regardless of all questions, as God gives him light.

If judges are so weak that they can not be trusted to stand and do their duty, even though they are likely to be recalled, then the thing we ought to do is never to have an elective judiciary, because the judge might decide cases in order to be reelected. That argument condemns an elective judiciary. They ought to hold for life when appointed or elected, because otherwise, being weak and human, they might decide cases in order to carry political favor to themselves. That has been the argument of every man who has ever stood and demanded a life tenure of office for judges. That argument applies as well to all officeholders. It has been a favorite theme of every tyrant who ever sat upon a throne.

Ah, Mr. President, if you are going to adopt that system, you ought to carry it further; you ought to appoint judges for life, make them unremovable; and you ought to go still further and take away the temptation of promotion, because the temptation to accept reward in the way of promotion is just as powerful a motive in the human breast as the fear of losing office by a recall. Yet we have not constructed even the Federal judicial system upon that basis. There is but one man living in all this land who has reached the altitude of judicial honor, namely, the Chief Justice of the Supreme Court of the United States. All others have the hope of reward by further promotion ahead of them; yet has that condition tainted their decisions? Has that led them to debase their high offices? I think not, sirs; it does not so impress me.

Then, again, if we would remove the judges from all influence we would have to eliminate from their minds, their brains, their souls, that human element which, from the cradle to the grave, goes with every human being—the desire to be thought well of by their fellow men. You can not eliminate that. Should you be able to do so, you would have left a monster bereft of every human attribute. The hardest task ever performed by a judge is to render a just decision which may visit upon him the obloquy or contempt of those men whose opinions he respects. The loss of good will much more affects the honorable man than the loss of a salary. You can not possibly remove judges from all influence. They are the subjects of influence, and to some extent they always will be. They all hear voices. The question to be determined is, What voice shall they hear? Shall their ears be tuned to catch the cry of the people or shall they bend toward the aristocratic and sinister influences which always draw near where power is granted without responsibility?

The Senator from South Dakota [Mr. CRAWFORD], who spoke this morning, well illustrated how it is possible to have judges who are beyond the reach of the people and yet do not, because of that, reach the high altitude of judicial rectitude. I could imagine nothing that would more fit the ideas of the Senator from New York [Mr. ROOT], as he portrayed them here, than to have judges created as they were in Dakota before it came into the Union. There the judge was appointed by the President; he was sent into a distant State where he had never lived; where he never expected to permanently abide; where he did not know anybody; where he had no enemies to punish and no friends to reward. He was a mere judicial carpetbagger, carrying his authority under his hat. He was backed by the Army and Navy of the United States. He neither owed his place to the favor of the people nor did he fear the power of their recall. Such a judge occupied the ideal position of independence, so dear to the heart of the Senator from New York. And yet, sir, from the lips of the Senator from South Dakota came the protest, and from the lips of every Senator who has ever lived in a Territory has come the same protest against the arbitrary and unjust action of many of the judges thus created and circumstanced. The truth of the matter is that in this free country, where we elect men to office to represent and to protect us, there is only one source to which they should ever look. They should look, sir, to the people themselves. He who metes out justice so that it shall conform to the best sentiments of a great community, who administers law so that the weak and the lowly, the rich and the powerful among whom he lives, must say he has done justice and has decided the law, is responding to a sentiment which will not often lead to wrong. The people love justice. The people believe in fair play. The people believe in the enforcement of the law, for public law is but public opinion crystalized into statute.

Mr. President, there are a great many foolish doctrines now being expounded, and none more foolish than the deification of judges. Who are these judges? They were once babes "mewling and puking" in some good mother's arms; they went through all the ills of childhood; they had the measles and the mumps, the same as other mortal children; they went to college, and were mixed up in the scrapes and escapades of the ordinary college student; they became lawyers—just ordinary lawyers—they practiced their profession; they struggled with adversity and aspired to prosperity; they tried to get cases,

and endeavored to conduct them as well as they could. Some day it became necessary to elect a judge. Then the lawyer called on the politician, or had some friend do it for him. Just as other mortals, he solicited political endorsement and support. At last his name was put upon a slate in a convention held by the dominant party; he was nominated; he did not then hesitate to subscribe to the campaign fund; neither was he backward in soliciting the votes of the wicked people; he schemed and worked just as the other ordinary candidates on the ticket schemed and worked in order to attain a victory, and he was tickled to death when he received enough votes to elect him. When this John Smith, the lawyer, went from the bar to the bench did Almighty God suddenly change his nature? Did some wonderful and divine influence, in a moment, in the twinkling of an eye, transform him into a different man, or did he ascend the bench the same human being, with the same human limitations, the same human passions, the same human frailties—the seeds of which existed in his soul at birth and which had accompanied him even to the hour of his election? Let those who have practiced at the courts answer the question at the bar of their own conscience. I want to say this, however, in justice, so that my views may not be misconstrued, nor my language misunderstood: The traditions of the bench are so exalted, the high responsibility of the office of so grave a character, the love of justice innate in a human heart so profound, it has nearly always happened that when John Smith, the lawyer, became John Smith, the judge, he would at the same time become a just and upright judge, following the light of the law and pursuing the path of equity. But it does not follow that, therefore, we should bow before him, play the part of sycophants, and ascribe to him infallibility. Neither does it follow that we should class all judges with John Marshall, which I think has, in effect, been done here to-day. I would not criticize that great man, but yet I feel very sure that at least one of even his decisions wrought incalculable harm to the Republic.

Mr. President, the fact of the matter is that our courts are only human things. They make not only one mistake, but tens of thousands of mistakes and blunders. No man has ever practiced long at the bar who has not arrived at the conclusion that the best lawsuit he ever took into court was, after all, largely a gamble; and no man has ever practiced long who will not say, if he will give his honest judgment, that the opinion of 12 common, ordinary men, drawn from the body of the county and sitting in a jury box, is more likely to be just than the decision of any judge who ever sat upon a bench in any court. That is so much a part of our fundamentals that we wrote into the Constitution of the United States a provision to preserve the right of trial of fact by the common people of this country. The men who wrote the Constitution did not believe that all wisdom and all virtue were wrapped up in the men who happened to be elected or appointed judges.

I say now we might just as well quit talking about the bench of the country as a holy of holies that can neither be contaminated nor led into error. I can take the decisions of any court which has been organized for fourscore years, and I can present to you not tens but hundreds of overruled cases. Every overruled case is a solemn certificate that the court was wrong before or is wrong then.

Mr. President, when you talk, then, of recalling judges, you do not talk of destroying courts. It is one thing, sir, to maintain that the President's office is a sacred thing. It is one thing to go upon the field of battle and die to preserve the Chief Executive office of this Nation. It is one thing when the President has acted within the law to bow to that law which represents the majesty, the soul, and the conscience of our race, and it is quite another thing to treat the occupant of the office as a man who is above criticism. On the contrary, we do criticize. Yet I say that taking the men who have occupied the office of President, one after another, reading the long roll, they will average as high in intellect, as high in morals, as high in the sense of justice, as will the Supreme Court of the United States to-day or at any other period of our country's existence.

How are these judges made? From what holy source do they emanate? I have in mind a recent occurrence—I read it very lately—outlined in a paper published in the State of Kansas by a good Republican, now a Member of Congress. The President was about to appoint a justice of the Supreme Court of the United States. There were several candidates in my part of the country, speaking generally, and this was the item:

> Mr. Jones, of the Santa Fe Railway; Mr. Smith, of the Missouri Pacific Railway; Mr. Jackson, of the Burlington Railway—

And, without taking your time, there was a list of some 15 or 20 general solicitors for railways—

> were at Washington to-day in the interest of the candidacy of the Hon. Mr. Blank for a position upon the Supreme Bench.

And this Kansas editor remarked laconically:

> The railroads seemed to be represented, but in God's name who was there to represent the people.

I do not mean by that to attack the judge who was appointed or to attack the candidate who sought appointment. I do mean to say as practical men we ought to stand and look every situation in the face just as it is. While we respect the courts, we need not at the same time say that the occupant of the bench is above the criticism of the people or the recall of the people.

Mr. President, I am not for the recall of judges as I see it now. I am not discussing the question from that standpoint. If you have judges appointed for life, I would be in favor of their recall, but when you have judges elected for short terms of office, I believe, as a practical question, that is sufficient. That is my individual view upon the question as I see the light now. But when any man undertakes to say that because the people reserve to themselves the right to recall a judge they have thereby destroyed the courts, he has made a statement which is not consistent with the facts in the case.

Let us go back to the original proposition. This is a Government of the people. If we are a bad people, if we are a weak people, if we are a people who can not trust ourselves, then King George was right, every king who ever wore a crown was right, every royal criminal who ever garbed his back with the purple of authority and laid the lash of power across the naked backs of the people was right, in holding that there should be no such thing as government by the people. But if the people are capable of self-government; if they are a wise, temperate, and moderate people; if they are a thoughtful and patriotic people, they will not destroy their courts simply because they have the power to destroy them. They could, sir, for that matter, destroy all government. They have the power. Why do they, then, establish government? Is it not because they love law and justice? Why, then, do you dare say they ever will destroy the temples of justice?

Do you believe, sir, that this people, 90 per cent of whom are ready at any moment, if it is necessary, to die to preserve the country and its institutions, would simply, because they had the power to vote a judge out of office, begin by destroying their courts? Why, sir, the sense of law and order is ingrained in the Saxon's flesh and skin; it is the dominant impulse of his soul. There never yet were a dozen Saxons or Celts together, there never yet was a congregation of a dozen Anglo-Saxons at any place on this earth which was without a government but that they began at once to set up a government of law and order. If you were to transport a thousand American citizens to Mars, and they could live in its climate 24 hours, before the 24 hours was over they would have begun the erection of a government and the establishment of courts of justice.

These people in Arizona are not different from the people of the other States. Let me say to the Senator from New York [Mr. ROOT] they will average as high in intelligence, in morals, in patriotism as the people of the Empire State. Let me say to the Senator from Idaho [Mr. BORAH] they are very much bone of the bone and flesh of the flesh of those pioneers who went into the desert to establish the Commonwealth that is so splendidly represented by that great Senator. Let me tell you these people of Arizona are of the bravest of the American race. Let me tell you that a sponge never immigrates. It lives and dies where it was born. But the game fish finds the headwaters of every creek and river of earth. It is the men who have the courage to leave their homes and go into western countries who constitute the brawn, the brain, the sinew, the heart, and the courage of our race.

These people who have gone to Arizona carried with them the traditions of their childhood, their love of law, of order, of right, and of decency. If you were to deny them a government under the Constitution as part of this Nation, if you were to abolish your Territorial government to-day, if you were to deny them any part in the national life and cast them out to shift for themselves, they would, on to-morrow morning, begin setting up a government that would be a model of republicanism and of democracy. Their self-erected State would be a citadel and harbor of refuge for all liberty-loving people of this earth. The men of Arizona will not destroy their courts simply because they have reserved the right to recall a judge whom they believe should no longer hold office.

These people, of all the United States, are a conservative people. Make no mistake. Occasionally you hear of the mob here, and you learn of a mob yonder. You think only of the mob and of its violence. You forget the 90,000,000 of people who that day went to their peaceful toil. You forget the millions who went to the temples of worship where they could bow before the common God that rules over all of us. You forget that in every home almost they were reading the Bible. You

forget that the Constitution was in the hands of tens and hundreds of thousands of them. You forget that these are the same people who, if our country were assailed, would touch elbows, stand in the crimson line, and with unfaltering souls yield up their lives that their beloved country might live on. And you say to me they would destroy their courts? That is a monstrous and unthinkable proposition. I undertake to say that if you give these people the right to recall their judges, they will never exercise that right unless some judge has done a grievous and undoubted wrong.

Sir, we have the right to elect judges in most of the States; the terms of the judges are short; they must retire or gain a reelection; that is, in effect, almost the same thing as a recall. And yet what is the history of our States? In my State it is the commonest thing to elect and reelect the judges until from youth they grow old and die in office. I have seen them hold when political revolution had swept out of power the party to which they belonged. Yet they were saved by the votes of the people.

I remember one instance in my own town when there was a political upheaval, and the party that ordinarily carried elections by 4,000 majority lost by some 5,000 to 8,000. Yet the judge of the criminal court, who had never catered to public opinion except in the high sense of doing right and justice, was reelected in the face of the tremendous tidal wave which swept over our city. It has been true of my supreme court. Judges have sat there until they have grown old in the service. They have been supported by men of both parties. It is only recently that that condition was changed, and it was changed largely by death.

Mr. President, the people of Arizona can be trusted. Even if the recall of judges be a mistake, this is the argument which prevails with me above all others. If they were mistaken when they provided for the recall of their judges, yet they have kept within their hands the power to rectify that mistake. I say to you, sir, that any intelligent people can be trusted to make their own laws for this reason: That the bad effect of a bad law falls upon them; the good effect of a good law brings its benefit to them; and as long as you will give the people who suffer from a bad law full and ample right to change that law you need not worry one moment about admitting them with a bad law.

No slave ever felt across his back the whip of a master who did not hate the whip and hate the system that made possible the lash should cut his flesh. No people ever yet enacted a law that reached down into their homes and firesides and brought injustice and iniquity upon them and allowed it to long remain, if those same people had at the same time the power to change the law.

If the initiative and the recall of judges was written in the constitution of New Mexico, where the people are practically deprived of the chance to change that instrument, it would be a different question. But, sir, in the Territory of Arizona they have provided for the recall of judges, but at the same time they have provided a means by which they can change that law, if it proves to be a bad thing for them. So I say, we are absolutely safe to grant this request of the people of Arizona.

I say again—and I should like to be answered from the other side; I invoke an answer if it can come—Why is it that this constitution of New Mexico, like a band of steel forged around that young State, practically impossible of removal, finds such favor and no criticism over there, while the constitution of Arizona, that retains these rights in the hands of the people, is subject to venomous attack? Is it a fear that courts will be destroyed, or is it a fear that a political result will be wrought out? Is it a fear that the people will have too much power and abuse themselves, or is it a fear that if you give the people power, they will protect themselves against the interests that menace this land? Do you fear to give the people who own the soil, who till the ground, the people who work at anvil and forge, the power to say how they shall be governed? Do you fear that, or do you fear that they shall be too strong for other influences to overcome them?

Mr. President, to say that the people of any American State will destroy their courts simply because they have the right to recall a judge is to say they are a people incapable of self-government.

Such an opinion, if entertained regarding the people of Arizona, reflects more discredit upon the man who entertains it than his opinion can possibly cast upon the brave and patriotic citizens of the Territory.

Mr. SMITH of Michigan. Mr. President, I will not detain the Senate another minute, except to say that these Territories have been waiting 25 years to come into the Union as States. They are qualified by education, character, and fitness in every way for statehood, and it ought not to be longer delayed.

I am doing simple justice to the occasion when I publicly acknowledge the earnest cooperation of the chairman and members of the Committee on the Territories of the House of Representatives in advancing the possibilities of statehood, as they have aided in every way in the solution of a very vexed question with the hope that we might admit these Territories into the Union now.

Mr. President, the Territories have been kept out long enough, and this bill should be immediately enacted into law and justice long delayed meted out to these deserving people. The platforms of the two great parties have declared for it. The Senate and the House, in my judgment, are ready to bestow that privilege upon these Territories, and I shall not detain the Senate another minute, further than to express the hope that we may admit them now.

Mr. POINDEXTER. Mr. President, not only are the people of Arizona apparently deprived of the ordinary functions that pertain to them properly, but it seems to me that Congress also is deprived of its privileges by the situation which has developed in the course of this proceeding. When a bill of this character has been acted upon by both Houses and by the President of the United States it seems to me—and I admit my inexperience—a peculiar circumstance that it does not continue in its course so that Congress may exercise its constitutional function of determining whether or not it shall pass over the veto of the President. That certainly would be the regular procedure. Certainly it would be the inevitable parliamentary course unless the progress of the bill should, by some power vested in the organization of the one House or the other, be absolutely halted and brought to a standstill.

We find ourselves now in the situation of being confronted with an entirely new bill, cut off from the opportunity of registering our votes, whether they should be effective or not, upon the statehood measure which has occupied the attention of the country for two years.

I only rise to register a protest against that and against whomsoever may be responsible for it, whatever committee, whatever organization. The original bill should have come here for a vote. The end of it is not necessarily reached, not properly reached, when the Executive veto is attached to it. We are confronted, however, in view of being deprived of that opportunity of casting a vote here, with the alternative of keeping Arizona and New Mexico out of the Union for an indefinite period or of voting to admit them, humiliated by having a constitution, under which they must live and conduct their government, that was not adopted by themselves and of which they have expressed their disapproval.

I want again to register my position before casting my vote in favor of this joint resolution, as I shall cast it upon that question. It seems to me the entire confusion of the argument, if there is any confusion, as to the extent to which Congress may legislate its opinion into this constitution, arises from the conception expressed by the most able and distinguished Senator from New York [Mr. ROOT], that in acting upon this constitution Congress is exercising the plenary power which it has over the Territories of the country. I say, I think the confusion of the situation from a legal and constitutional standpoint arises from that false premise. This constitution which we are attempting to model here, which we are modeling and remodeling, is not a constitution for a Territory. It is not a constitution which will ever go into effect in a Territory or govern the people of a Territory. The first vitality that this code of laws, this fundamental code will have, will be when it comes into effect as the fundamental government of a State.

Mr. President, if Congress has plenary power to legislate in regard to the constitution of Arizona, it is certainly not limited to the question of the recall of judges and to the initiative and referendum. It extends to every part and parcel of that constitution, and I assert that if it is the duty and responsibility of Congress to pass upon these sections of that constitution, it is its duty and responsibility to review the entire instrument and exercise its discretion as to every part and parcel of it; and, of course, it has no such power.

But once we begin to enact a constitution for a State, we ought to perform our full duty—if it is our duty—examine each section and each article of the instrument and see that it conforms to the views of Senators from other States.

I was somewhat astonished to hear the declaration made by Senators that Congress is vested with plenary power to legislate in regard to this constitution, and still more in reading in the veto measure of the President of the United States the position which the Chief Executive takes in regard to his power, which is coordinate, within its limitations, with that of Congress, and

if it exists is upon the same plane, subject to the same conditions to which the power of Congress is subject.

The position of the President is this: "I must therefore withhold my approval of this joint resolution if, in fact, I do not approve it as a matter of governmental policy." That is the position the President takes. The President asserts the proposition that he is vested with the duty of determining the governmental policy for a State to be admitted into the Union and has formally expressed it in the solemn form of a veto message.

It is the first time, from what limited reading I have been able to indulge in, in the history of our Government when such a doctrine has ever been expressed; certainly the first time it has ever come from so high a source.

We hear objections made to departing from the rules which govern the Senate and the House of Representatives. How much more dangerous is it when we depart from one of the fundamental principles of our system of government and have it asserted and have it recognized, at least by inaction, that the President of the United States is vested with the power under any circumstances to determine the governmental policy of a State?

It will not do to say it does not relate to a State, but that it relates to a Territory. It does relate to a State. It does not relate to a Territory. As I said before, it never will go into effect over a Territory, but it is made, so far as we have any right to presume, for the permanent government of the people of a State.

Senators say the people can amend it. How do we know they will amend it? We are not to presume they will amend it. They may not, and it may be the fundamental law of that State for years, so far as we can consider. We have not any right to indulge in presumptions that it is not permanent.

Some Senators, I know, object to certain features in this constitution on account of the experiences which they have had with their own constituencies—that is, with the character of the population that inhabits their States, as, for instance, some of the Southern States, certain ones of the Southern States, in which we would all admit that, in view of the condition existing there, it would not be wise or practicable to vest the people with the powers that are vested in this people under the Arizona constitution.

There are certain of the great cities of this country where likewise it would not be feasible or practicable or wise to vest the population of those cities with the power of direct legislation or the power of recall. But it is for the people of those jurisdictions to determine that question for themselves if we are going to have self-government, and the people of Arizona, with their knowledge of the character of their population, have determined that they are capable of exercising these powers; that they have a population of such character that they can safely put into effect the recall and direct legislation; and for the Congress of the United States, representing the power of the Nation, to say to this sovereign State, because that is what it is saying—that is, the community, the polity which is to be affected—that they shall not determine for themselves what capacity their people have, or to what exent they can be trusted with the power of government, I say is undermining the most valuable, the most indispensable fundamental feature of our entire system of government.

The Federal Government could not possibly exist except for the reserved local powers of the States. It is a complex system. It absolutely depends for its existence upon the preservation of the powers of the States to govern themselves, and I, for one, although I shall vote for this joint resolution, do so under compulsion and because I am coerced, as other Senators are coerced, and as it is proposed to coerce the people of Arizona, by being limited to either accepting this proposition or none at all. I shall vote for the admission of the Territories upon these terms, humiliating as it is, as the only alternative of excluding them altogether.

Mr. MYERS. Mr. President, I have a very able and interesting address, delivered by invitation before the Washington State Bar Association at a recent meeting thereof, upon the subject of the recall of the judiciary, by Mr. T. J. Walsh, of Helena, Mont., one of the most profound lawyers, scholars, and students of governmental questions in the Northwest. I ask that it be printed in the RECORD as a part of the debate upon this question.

The VICE PRESIDENT. Is there objection? The Chair hears none, and it will be printed in the RECORD.

The address is as follows:

RECALL OF JUDGES.

[Address delivered by Hon. T. J. Walsh, of Helena, Mont., before the Washington State Bar Association, Spokane, Wash., July 28, 1911.]

The public discussion of the subject of the recall of judges has served again to bring into the limelight how widely men differ in their estimate of the capacity of the people for self-government. Not a little of it has been more or less acrimonious. The Chief Executive of the Nation finds it an innovation of so pestilential a nature as to justify the exclusion from membership in the sisterhood of States of a Territory whose people, preparatory to their entry into the Union, frame a constitution recognizing the principle. It has been even advanced that such a constitution would operate to characterize the government to come into being under it as other than republican, the form which the United States, under their fundamental law, guarantee to every State in the Union. If this view be sound, it follows that it is incumbent upon the Federal Government to interfere in some manner in the case of any existing State that shall adopt this reform, as it is denominated by its friends, until the obnoxious principle is eradicated.

The overwhelming influence of the profession of the law in every department of the Government has often been noted. It monopolizes the judiciary, as a matter of course. Of the 92 Members of the National Senate, 66 have been admitted to the bar. The lower House will show as high a proportion. The President is a lawyer, as were all except two of his predecessors for 50 years. Every member of his Cabinet but one is a trained lawyer. In a less marked degree, perhaps, but nevertheless as by far the predominating class, are the affairs of the States guided and directed by the members of the legal profession. Three of the four governors who have been elected by the people of Montana since her admission into the Union came from its ranks. It is beside the present purpose to consider why this is so. Its obvious significance is that lawyers give concrete expression to the convictions of the public on political questions, however influential they may be in its development. A general concurrence in thought, at least, must be assumed.

There is very little reason, accordingly, to fear the general acceptance of any innovations in the machinery of government that does not commend itself to the intelligent and progressive members of the bar. In the matter of the method of choice or dismissal of judges it is reasonable to believe that the usual deference paid to their views on related questions would be heightened to such an extent as to leave in their hands practically a veto upon any plan proposed. This responsibility carries with it a corresponding obligation to be informed upon any change seriously agitated. It occurred to me, following these reflections, that you might listen with some patience to a brief disquisition upon the recall in its application to the judicial office.

It is nowhere proposed to make the principle of the recall specially applicable to judges, but in the general assault upon the system it is insisted that at least an exception should be made in the case of such officers, and it is in connection with them particularly that it is urged that it offends against the requirement of the Constitution that the government of each State shall be republican in form. As to this claim there is not in it sufficient of substance on which to hang anything that can be dignified as argument. To advance it is to excite distrust of any accompanying comment on the expediency or wisdom of the proposed departure from the prevailing order. In the presentation of this feature of the subject it is usually coupled with the initiative and referendum, the group of related innovations, it is said, operating to characterize any scheme of government of which they are essential parts as democratic in form as contrasted with a republic.

In this connection profuse reference is made to comments of various statesmen of revolutionary times, warning or denunciatory in character, on the evils and perils of unrestrained democracy and on the necessity of an independent judiciary. It is ventured that the clause of the Constitution appealed to was inserted as a safeguard against the dangers that inhere in the democracy, one of which is the destruction of the independence of the judiciary, a result which, it is assumed, will ensue when the judges are subject to be recalled by the people who elect them. Until this ingenious theory was advanced it was quite generally, it might be said universally, believed that the word "republican," as employed in the clause in question, was used by way of contrast to "monarchical."

It was dread of pretensions to kingship which might be set up in some of the States that inspired the provision to which reference has been made, if the testimony of history is of any consequence whatever. It is companion to that part of the last clause of the ninth section of the first article prohibiting Congress from granting any title of nobility, and the corresponding provision of the tenth section, forbidding the States from making any like grant. Referring to those provisions conjointly, Cooley says:

"The purpose of these is to protect a union founded on republican principles and composed entirely of republican members against aristocratic and monarchial innovations." (Cooley on Const. Lim., 28, 6th ed.)

Whatever persuasiveness there might be in the line of alleged reasoning at which the conclusion is reached that the systems adverted to affect a State government with a fatal antirepublican character must appertain to the initiative and referendum, not to the recall. The former secures what has been appropriately called direct legislation by the enactment of a law in the one case and its nullification in the other. Therein lies the vice, as it is claimed, of the system, the essential characteristic of a government republican in form being, it is said, that its laws are made by delegates or representatives of the people, not by the people themselves, except as they are so represented. The recall, on the contrary, has no reference to direct legislation. It has its field only in the case of representatives chosen to make the laws, to construe them, or to administer them. It can operate only in a government which is republican in form. It is coupled in the public mind with the initiative and referendum only because it is the purpose of both systems to secure a higher degree of faithfulness on the part of the legislative representatives.

By the former the people undo what their representatives have done amiss, as they believe, or enact such measures as they have been remiss in omitting to sanction. The primary purpose is not to supplant but to supplement the representative system, that it may be more truly representative. The incentive to procure legislation by corrupt measures is largely withdrawn, it is argued, when the product must run the gantlet of popular approbation to which it may be subjected by the referendum. Indifference to the demands of the people in the matter of legislation, often enforced by platform pledges, will vanish, it is contended, when the certainty confronts the legislator that they will be secured, anyway, through the initiative. By the recall he is displaced with a view to obviating the necessity of a resort to the initiative or referendum or as a penalty for compelling it.

However, then, the system of direct legislation may encroach upon the essential character of a republican form of government, the recall is not amenable at all to the strictures of its critics in that direction. It is sufficient to say, in passing, that the Supreme Court of Oregon in an opinion written by Judge Bean, since appointed United States district judge, in which all of his associates concurred, has held that

the argument is unsound and untenable even as addressed to the initiative and referendum. (Kidderly *v.* City of Portland, 74 Pac., 710.) It would be surprising if any court did reach any other conclusion in view of the prevalence of the town-meeting system throughout New England at the time of the adoption of the Constitution, a feature of the State government which, still persisting, has been extolled as "the wisest invention ever devised by the work of man for the perfect exercise of self-government and for its preservation."

It apparently did not occur to the fathers of the Constitution that those States in which the people were permitted to legislate directly in respect to certain affairs, where the method of a pure democracy constituted a part of their system of government, were, by reason of that fact, ineligible to membership in the Union. They were all admitted, yea, invited to come in, with such local governments as prevailed among them. By the very act of admitting their Representatives in Congress that body determined that such existing governments were republican in form; and so with respect to the systems devised by the people of the new States as they were severally taken into the Union. In Luther *v.* Borden (7 How., 1) the Supreme Court of the United States said:

"When the Senators and Representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority."

The extreme to which the people of a State may go in forming a scheme of local government without transgressing against that provision of the National Constitution which admonishes them that it must be republican in form may be gathered from the fact, a circumstance involved in the case last above referred to, that Rhode Island, unlike the others of the original States, adopted no new constitution pursuant to the recommendation of Congress upon the adoption of the Declaration of Independence, but proceeded under the charter granted by Charles the Second in 1663 with only such changes as were necessary to adapt it to their condition and rights as an independent State. It took a rebellion to change the antiquated system which was recognized for over half a century, whatever its vices and weaknesses may have been, as at least republican in form. It will be impossible to condemn any State constitution as antirepublican if a parallel can be found for the supposed obnoxious feature in the constitution of any one of the 13 original States as it existed at the time the Federal Government came into existence. So the United States Supreme Court said in Minor *v.* Happersett (21 Wall., 162), using the following language:

"No particular government is designated as republican; neither is the exact form to be guaranteed in any manner especially designated. The guaranty necessarily implies a duty on the part of the States themselves to provide such government. All the States had governments when the Constitution was adopted. In all the people participated to some extent through their representatives elected in the manner especially provided. These governments the Constitution did not change. They were 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."

Let this test be applied to the recall as it affects the judicial office. At the time the Constitution was adopted, in no instance was either the governor or any of the judges elected by the people. The latter were uniformly either appointed by the governor or elected by the legislature. In New Hampshire, Massachusetts, Connecticut, Rhode Island, Pennsylvania, and South Carolina they could be removed by address of that body, a majority vote sufficing in Rhode Island and Pennsylvania. Bear in mind, by address—not by impeachment. While impeachment proceedings contemplate definite charges and a trial, neither the one nor the other is requisite in the case of removal by address. A simple vote ends the official career of the individual against whom it is successfully leveled. This method of terminating the official life of the incumbent of a judicial office was borrowed from the English system, under which, since the revolution of 1688, judges have been and still are removable by a majority vote of each House of Parliament. In Rhode Island the tenure was even more precarious, a majority of all the members in joint committee sufficing to accomplish the retirement of a judge. The constitution of that State, adopted in 1842, superseding the old colonial charter, provided that—

"Each judge shall hold his office until his place be declared vacant by a resolution of the general assembly to that effect."

The ancient patent under which the colony was originally governed gave to the inhabitants "the power to place or displace officers of justice as they or the greater part of them shall by free consent agree to."

Confessedly, Pennsylvania and Rhode Island came into the Union enjoying a "republican form of government." So that to maintain that a constitution embodying the recall applicable to the judicial office is antirepublican we are driven to the conclusion that a State under whose fundamental law judges are elected by a majority vote of the legislature and are removable by a majority vote of the legislature is republican in form, while that State whose judges are elected by the vote of the people and who are removable by a majority vote of the people is not. That phase of the question may be dismissed. The question is exclusively one of political expediency.

As suggested before, it has never been seriously contemplated to make the recall applicable solely to judges, as might be gathered from some of the discussions in which the question has been involved. The inquiry presents the advisability of a general recall system and then an exception of judges from its operation. A very brief reference to the subject in its general aspect must suffice here. As to all purely administrative offices the question is not perhaps very important. It must be admitted that as to all such the system is ideal except in the contemplation of those who regard the people as fickle, vascillating, "unstable as water," and likely to embroil themselves in constantly recurring elections by continued resort to this method of relief from fancied grievances. Such an argument might be quite forcible as applied to the people of San Domingo, Venezuela or Guatemala, but it is a reform to the adoption of which the people of the United States are invited—not those of Latin America, not a race of turbulent fanatics like those that crowded the court of Herod, nor a primitive people like those that made "unstable Athens heave her noisy seas."

It is exceedingly difficult to understand why it is good business policy in every great corporation to retain, when it can, the right to dismiss its secretary, auditor, or treasurer at will, but is impolitic for the people to retain the right to dismiss a county clerk or a State treasurer when they see fit to do so. A business man or corporation is sometimes forced to enter into a long-time contract in order to secure or retain the services of a valued servant, but it is avoided, for obvious reasons, whenever unnecessary. Usually such contracts bind both parties. The public servant, performing similar services, has his employer bound, but he may escape the obligations of his services at any time by resigning. As to the legislative office, it affords such a check upon a career of corruption, regrettably not infrequent, particularly in municipal councils, as ought to commend it generally with respect to such. In respect to such offices, a course of conduct extending over a considerable period of time may bring conviction of guilt to all intelligent observers that can not be resisted, and yet evidence sufficient to expel be entirely unavailable.

And why should a Member who has violated the pledges under which he was elected, repudiates the measures to secure the passage of which he was delegated, and outrages by his votes the convictions of his constituents on great public questions, continue, against their will, as their alleged representative? In a neighboring State a member was lately elected to the higher branch of the legislature for a term of four years at an election at which the choice of a United States Senator was the paramount, not to say absorbing, question before the voters. He was returned largely because of his professions of allegiance to the popular candidate for that office, to whose cause he publicly and privately declared himself devoted. He voted for the local favorite for 10 days or thereabouts, and then deserted to become the leader of the forces of his antagonist, a man of great wealth, who had the support of a giant corporation believed to be the master of the political destinies of the State, for whose legislative program the recreant member votes with striking consistence. He was overwhelmed with remonstrances from his constituents, and though they did not affect his course he confided to some of his friends that he was opposed to the recall because if it prevailed he would be one of its first victims.

If it should be regarded as wise to punish the error of judgment on the part of the people of his county in electing him by denying to them the right of recall, why should the interests of the rest of the people of the State be imperiled by his retention?

What ground is there for making any distinction in reference to those public servants upon whom devolve the judicial function? The expression "public servants" is used advisedly in connection with judges upon the authority of the Supreme Court of the United States, which said, in Luther *v.* Borden:

"Judges * * * must enforce such (constitution) as the people themselves, whose judicial servants they are, have been pleased to put into operation."

It is the theory of our Government that the whole body of sovereign people, as though they were one sovereign, desire that justice should be administered and lawlessness punished. They employ and depute judges to perform the work for them. It is a speculation quite in keeping with the sacred character of the judicial office that regards the occupant of it, in a special manner, as the minister of divine justice, dispensing to each, with such feeble light as finite intelligence and judgment may, such measure as may be his due.

If we were to conceive his appointment to come from the Infinite Wisdom, we must likewise conceive that the recall awaits his first lapse from rectitude. An error in judgment would be overlooked, not attributable to sloth or persistence in vices that cloud the reason. The decay of the faculties from advancing age or illness would call it into immediate action. The upright judge would have no occasion to fear its exercise until it would be merciful to employ it. Theoretically it is ideal, particularly in the case of judicial officers, if we assume that the majority of the people have the intelligence and virtue to use it aright. At the time the experiment in self-government was first tried on this continent they were not considered as possessing either in sufficient degree to make a wise choice of judges possible or likely by popular vote, and accordingly, as stated, in not one of the 13 original States at the time of the adoption of the Federal Constitution were judges elected by the people.

Now, in 34 of the 40 States the judges are chosen by popular election. These include Georgia, which went to the elective system in 1798, the imperial State of New York, which followed in 1846, and North Carolina, which adopted the popular method recently. The overwhelming sentiment of the people of the United States is that the people of the States, respectively, are competent to choose their judges, and the experience of a century has fully justified that confidence. Irving Browne, in a review of the New York Court of Appeals, published in the Green Bag in 1890, said:

"I have given the names of more than 100 judges, with particulars of many of them; nearly all of whom were first nominated by the people. I believe that under a system of appointment by the governor this test would not have been equaled in merit and distinction, and I point to it as a standing refutation of the argument that the people are not fit to name their judges."

The Federal system of appointment for life, as distinguished from the State system of election for limited terms, is commended in many quarters as immeasurably superior. However, it may be in other parts of the country, it is observed that in our section, at least, the Federal judges are selected very largely from those whose talents were discerned by the people, and who had by them been elected to high judicial position. Vandevanter in Wyoming; Field, Sawyer, Ross, and De Haven in California; Bean and Wolverton in Oregon; Hawley in Nevada; Hunt in Montana; and Rudkin in Washington are of this class. There is not an argument that has ever been advanced against the recall of judges that is not equally forcible when applied to the election of judges by the people in the first instance.

The main contention, about which the argument invariably proceeds, is that the recall would rob or tend to rob the judge of his independence, impelling him constantly, in his official acts, to court the favor of the people by consulting their hopes concerning litigation before him and conforming his judgments to the desires of the majority. That is exactly the line of argument that has been vainly pursued for over a century to stem the tide of democracy as it involves the judicial office. Leonard Jones, in the course of some comments in the American Law Review in disparagement of the idea expressed by Mr. Browne, above quoted, said:

"The worst thing, however, about the elective system is not the fact that it affords unworthy men the chance to obtain judicial office by purchase or other corrupt practices, but that it necessarily, to a greater or less extent, destroys the independence of the judges.

"What chance is there that a judge who is shortly to seek a reelection by the people will uphold the law and justice in a case where the popular clamor is against law and justice?

"What chance, indeed, unless he be a man and not a caitiff. With that kind of a judge the argument has added force as it is directed against the elective system, because that kind of a judge is likely to solace himself with the reflection that so far as the recall is concerned

it may not be invoked against him anyway, while if his term is expiring and he seeks reelection, he is up against it to a certainty. Moral courage is a quality cardinal in character in a judge. He is called upon to exercise it in the daily discharge of his duties. He is fortunate, indeed, if he is not obliged repeatedly, in his official career, to brave the enmity of powerful interests whose activity is more to be feared than an outburst of passion upon the part of a community or State against an upright public official who faithfully discharges his duty as he sees it."

Even a Federal judge, unless he be free from every honorable ambition, or has reached the topmost round, is not exempt from these trials, as the testimony of Judge Purdy before the Sugar Trust investigation committee would seem to indicate.

It would be futile to attempt to devise a system that would sustain the spineless creature Mr. Jones assumes, very mistakenly, every judge to be. His pusillanimity is inveterate, and it would be wiser to trust to the people's finding him out. Pilate got his place by appointment and was in no way dependent upon the suffrages of the Jews to keep it. The desirability of independence in the judiciary all will concede, and obviously no unnecessary test, in addition to those inherent in the office, ought to confront the judge, lest there be found those whose moral stamina, sufficiently vigorous under other conditions, should be found unequal to it. I am constrained to believe that in respect to litigated controversies in which the people at large take a decided interest, particularly those which give rise to or excite a class feeling, or are believed to have a political aspect, the evil is more likely to be that the side whose expectations are disappointed will assign the candidacy of the judge for reelection in explanation of the result, if he is a candidate, rather than that the outcome is likely to be influenced by any such consideration.

If the contest is between some wealthy and powerful litigants on the one side and some one supposed to represent or whose cause evokes the sympathy of the so-called laboring class on the other, the unfortunate judge assumes the risk of encountering the accusation of the hasty and unthinking among the multitude that he is owned by the "interests" and looks to them to renominate or reelect him, or, on the other hand, that he is a truckling demagogue, bidding for the votes of the mob. As a general rule, subject to very rare exceptions, the general body of the people harbor no such sentiment and listen incredulously to the imputations made as the vaporings of an unsuccessful suitor. But let any such conviction obtain general lodgment in the minds of men, and a situation arises that is not only to be deplored, but which calls for action, for at the very foundation of orderly government must be found the highest confidence in the administration of justice in the courts. Undermine that and the whole edifice of representative government totters, and there remains no alternative but resort to a government of force.

Herein lies, in my judgment, the weakness of the Federal judiciary. The judge is believed to be utterly independent of the people. He does not owe his appointment to them, nor does he look to them for advancement. No reason can ordinarily be conceived why he should incline his judgment to their supposed will in any case, and he is accordingly exempt from any suspicion in that direction. If he decides a case in such a way as to meet popular approval, the incident is regarded as the natural result of the equities of the case, and so speedily forgotten. But when the case turns in the other direction, the opportunity to attribute to sinister influences its outcome is by no means wanting. Setting aside the idea of corruption in its greater form or in its milder manifestations, as disclosed in the Swayne impeachment proceedings, it would be idle to attempt to disabuse the public mind, in this day, of the notion that the great interests, insidiously perhaps, but none the less effectively, exercise a potent influence in the selection of Federal judges.

While this belief prevails, a suspicion affecting his predilection is easily engendered by a course of decisions, whether right or wrong, by a Federal judge favoring such interests. The social aspect is not an unimportant one. By the methods of his selection and the character of his duties he is apart from the general mass of men who naturally assign as his associates and confidants the more opulent and influential, whose prejudices he imbibes and whose views he the more readily adopts. These are some of the considerations which have given rise to the belief prevalent in some quarters that the Federal courts are a haven for the big corporations that are more or less inclined to rapacity.

The Federal system certainly serves, in the very highest degree possible, the independence of the judges—that is, it makes them independent of the people. The system can not be regarded as perfect, however, if the national courts fail to win and maintain the confidence of the great mass of citizens—unless the people feel that those courts are theirs, the judges thereof their judges, doing their work. One distinguishing merit of the recall as applied to judges is that it operates to permit the restoration of public confidence in the court presided over by a judge against whom it was invoked. Why should a judge, guilty of continual intoxication, for instance, be permitted to continue in office, passing upon grave questions affecting the lives, liberties, and fortunes of citizens, until his term expires or he is removed by the slow and uncertain process of impeachment? A day is too long for him to sit bringing to the duties before him a mind inert or befuddled from drink.

The supreme court of my State granted a new trial in Finlen *v.* Heinze (28 Mont., 548), because the undisputed evidence showed that the judge who tried the case, while hearing it, being more or less steeped in liquor, trafficked through a lewd adventuress with one of the parties to the action. Some chapters from the recent judicial history of this State might serve as well to illustrate the utility of a system through which could be secured the prompt elimination of a judge whose conduct was such as to excite deserved public reprobation. Had not the erring justice who fled before the wrath of this association, kindled at the disclosure of his intrusting to counsel for one of the parties in a suit before him, a corporation of great wealth, the preparation of the opinion of the court, voluntarily relinquished his seat, the people of Washington would have had abundant cause to be thankful had they been able to retire him under a recall.

Independence in the judiciary is undoubtedly a quality much to be desired. But we may pay too high a price to secure it. Undoubtedly we do when we keep on the bench the obviously unworthy and unfit judge lest that class, small, as I insist, at best, in whom fear of their political future is the ruling passion might be swerved from the path of right. Independence is not a characteristic essential alone in the judicial servant of the people, as might be imagined from the discussion of the subject before us. All public officers are required to exercise it in varying degree in the proper discharge of their duties. The governor of the State, the President, is supposed to be equally deaf to what is called "popular clamor." They enforce the law against rich and poor alike, high and low. It was this quality which endeared Andrew Jackson to the American people and gave to Theodore Roosevelt a popularity perhaps no less widespread. A prosecuting attorney will find daily exercise for the same virtue. It made Folk and Hughes national characters.

And yet I can not think of an officer against whom the recall might be more appropriately invoked than a recreant prosecutor who pursues the outcast and winks at the crimes of the high and mighty. He might, of course, be deterred by selfish political motives from proceeding against lawless strikers who shed innocent blood or wreck property, but I should rather fear his being appalled by some franchise-grabbing plunderbund or domineering industrial corporation that finds gain in operating in violation of law. The youth of this State are being taught by Prof. Smith, holding the chair of political science in its rising university, that the "independence of public officials which our forefathers were so anxious to secure has been found to be a fruitful source of corruption." "A realization of this fact," he says, "has been responsible for the introduction of the recall system under which the people enforce official responsibility through their power to remove by a vote of lack of confidence."

Our political forefathers were wise men, patriotic men. Amidst the wreck of the old order, involving social relations as well as political institutions, they studied to excellent purpose the history of government and the contributions to literature of those who had examined into its philosophy. They confessed their first attempt at organizing a national system a failure. The various State constitutions they hurriedly threw together, as a rule, speedily gave place to more carefully planned and consistent systems. A review of these early charters would reveal not a few notions concerning the proper province of government now universally discarded, some of them abhorrent to the general sense of our age.

But one thing among many in the science of government which they did learn and know is that all power is liable to be abused and that there is a fatal tendency in most men in whom it is invested to use it tyrannically. They recognized that there was reposed in judges a vast power and that in the nature of things it must be exercised without fear of personal responsibility, as in the case of administrative or executive officers who were required to answer for any abuse of the power with which they might be charged. They had in mind the career of Jeffreys and the provisions made by the English people in the act of settlement against the recurrence of such a type on the bench, whereby judges were removable by the vote of the Lords and Commons.

Accordingly, in the case of 9 of the 13 States, as their government was administered at the time of the adoption of the Federal Constitution, judges were made removable by address, special provision being made for the case of that class of officials, usually in addition to a general provision for the impeachment of all offices. As a general rule, a two-thirds vote was necessary, but in Rhode Island and Pennsylvania a majority, as heretofore stated, sufficed. The two methods of removal were provided because impeachment was available only in the case of a culpable violation of law. High crimes and misdemeanors only warrant impeachment under the Federal Constitution. Besides, impeachment implies a formal accusation, a trial, and proof.

The evidence may be hard to get, the offense not grave enough to be a crime and yet serious enough to condemn a judge at the bar of intelligent public opinion. It is a trite saying that a virtuous, law-abiding man does not become a criminal in a day—that character is a growth and the loss of it a decay.

As Wendell Phillips put it, "A man may be unfit to be a judge long before he is fit for the State prison." Thereby hangs an interesting tale. Massachusetts had from the beginning the dual method of removing judges, by impeachment and by address. It was in the very heat of the abolition movement that one Edward Greely Loring held, at Boston, at one and the same time, the office of probate judge, under the authority of the State, and the office of United States commissioner. By virtue of the last-named office, acting under the provisions of the fugitive-slave law, he had been instrumental in returning to his owner a runaway slave, the attending circumstances being exasperating to the people. A monster petition was presented to the legislature to remove him.

The great orator spoke for the petitioners and demonstrated to a centainty that the legislature had the power to remove Judge Loring, though he had committed no crime, without hearing any testimony and without giving him any notice of the proceedings. He made clear how tenaciously the people of Massachusetts had clung to the power to which he appealed since the Revolution. He told of the effort to amend the provision of their constitution in question in the famous constitutional convention of 1820, among the members of which were Justice Story, Chief Justice Shaw, Daniel Webster, and many other brilliant men. A majority of the members of the legislature elected sufficing to remove a judge under the constitution, it was proposed by a committee, of which Judge Story was chairman, to increase the number of votes requisite to two-thirds, the report insisting that the existing provision tended to impair the independence of the judges.

Webster asserted that proceeding without notice was against natural right. The subject was debated with profound ability by many of the great lawyers present, but none disputed the unlimited power of the legislature, or offered a suggestion that the feature in question be expunged. The convention voted down the amendment, but submitted to the people an amendment providing for notice, which they rejected. And so this provision of the constitution of 1780 remains unchanged to this day. It reads as follows:

"All judicial officers duly appointed, commissioned, and sworn shall hold their offices during good behavior, excepting such concerning whom there is a different provision made in the constitution; provided, nevertheless, the governor, with consent of the council, may remove them upon the address of both houses of the legislature."

Notwithstanding the requirement of participation of the governor and council in the formal act of removal, both Story and Shaw declared that judges in Massachusetts held their offices at the will of the majority of the legislature, and so it appeared in Loring's case. For the legislature, having voted the address for his removal, and the governor neglecting to act, another governor was promptly chosen who did remove him.

The considerations actuating the people of Massachusetts in incorporating this provision in their constitution for the summary removal of judges have been regarded as persuasive by those of 15 other States, namely, North Dakota, South Dakota, California, Kansas, Mississippi, North Carolina, Nevada, Ohio, Rhode Island, South Carolina, Virginia, Washington, Wisconsin, West Virginia, Utah, and Illinois, though in most a two-thirds vote is necessary and notice to the judge attacked is essential. In New York judges are removable on recommendation of the governor by vote of two-thirds of the senate.

The conviction seems to be quite general that the people should have some means other than impeachment to rid themselves of an unfit judge. The futility of resort to that method was demonstrated years ago. It has never been resorted to in England since the failure of the Hastings trial. Political considerations are likely to be paramount or, at least, are apt to exercise a decided influence in the deliberations of legislative bodies. The members are not required to be trained lawyers nor judges skilled in the analysis of evidence. An abortive effort was made to impeach the Montana judge, whose evil reputation is perpetuated after his death by the report of the case above referred to.

In 1902, Judge Samuel Chase, an Associate Justice of the Supreme Court of the United States, was tried by the Senate and acquitted, though Schouler says:

"He had made himself odious by his harsh behavior and irascible, overbearing manners. He went rampant on his spring assize, trying the important offenses committed within his circuit more like a frocked politician who seeks revenge than the minister of law and justice. He ranted before the grand juries as though in a mass meeting."

The heated political atmosphere, the clumsiness of the management of the case, and the patriotic public services of the accused are assigned as reasons for the result. In the Swayne case the defendant admitted that a railroad being in the hands of a receiver appointed by his court, he traveled, without expense to himself, in a private car belonging to the company, from the State of Delaware to Florida and from there to the Pacific coast and return, the connecting lines generously handling the car gratuitously. Yet he was acquitted.

The wisdom of some provision for the removal of judges other than by impeachment being conceded, the question arises, Where shall it be lodged; with the people direct or with the legislature? Arguing in favor of his resolution to amend the Massachusetts constitution on the occasion mentioned, Justice Story said the judge in that State "does not hold his office by the tenure of good behavior, but at the will of a majority of the legislature, and they are not bound to assign any reason for the exercise of their power. This is the provision of the constitution, and it is only guarded by the good sense of the people."

He had no fear, he added, of the voice of the people when he could get their deliberate voice; but he did fear the legislature.

"A powerful individual who has a cause in court which he is unwilling to trust to an upright judge may, if he have influence enough to excite a momentary prejudice and command a majority of the legislature, obtain his removal."

Prescient man! Out of the profundity of his wisdom and learning he saw as through a glass, darkly, the Illinois Legislature with its "jack pot" a hoary tradition. "I have no fear of the voice of the people." And no other honest and upright judge need fear that voice. It is idle to talk about the judge being called upon to take the hustings to defend his decisions. If he can successfully defend his character and his conduct, his decisions will take care of themselves. The people will not require that he be right in his opinions, but that he be honest and decent in his life.

It might be said that there is more occasion for a recall provision in Massachusetts, where the judges hold during good behavior, than in jurisdictions where the tenure is for a limited time. But the tendency is to protract the terms of judges, particularly of the higher courts. In New York the justices of the court of appeals are elected for 14 years; in Pennsylvania the term for the corresponding office is 21 years; in Montana 6. The shortest of these terms is a long time to tolerate a judge who needs removing. The decrepitude of age may come upon him unexpectedly early in life. Illness may overtake him and even render him unappreciative of his own infirmity. A Massachusetts judge was removed for such a cause. With the recall it is comparatively unimportant how long the term is.

One of the grounds of complaint against the elective system is the brevity, as a rule, of the terms, in consequence of which it is claimed the bench has no attraction to the best talent at the bar. The term could ordinarily be safely lengthened with a recall provision. In Oregon it is proposed to extend the term of members of the legislature to six years, but make them subject to recall at any time. Its most ardent advocates admit that it will be a long time until the recall enters the field of the national organization, but if any State is disposed to try the experiment, it is with confidence asserted that, upon reflection, no reason will appear why judges should be excepted from its operation.

Mr. MYERS. I further ask that the article be printed as a public document.

Mr. SMOOT. I object to its being printed as a public document.

The VICE PRESIDENT. Objection is made to its being printed as a public document.

Mr. MYERS. Then, I will read it.

The VICE PRESIDENT. It has already been ordered printed in the RECORD.

Mr. SMOOT. It will go in the RECORD, as I understand.

Mr. MYERS. May I ask the Senator from Utah what his objection is to its being printed as a public document? I do not believe I have cost this Government much in the time I have been here. It is the first article I have ever asked to have printed as a public document. It is short, and the cost will be inconsequential. I do not think I have trespassed much upon the time of the Senate or have cost the Government much.

This is a brief but a very conservative and temperate argument upon a subject which is now the cause of much interest to the people of the United States, and I can hardly understand why the Senator from Utah should object to having it printed as a public document.

Mr. NELSON. I trust the Senator from Utah will waive his objection and allow the article to be printed as a public document. It is not a very large document.

Mr. SMOOT. It is not a question of cost at all, I will say to the Senator from Montana. It is an address delivered by a man who holds no position in the Government. He is not a judge. As I understood the Senator to say, it is a speech delivered upon a subject upon which perhaps thousands have been delivered in the United States. The Joint Committee on Printing of the two Houses and also the Senate Committee on Printing have felt that speeches delivered by private citizens should not be printed as public documents. I realize this address is not long.

Mr. OVERMAN. It is the wrong time for the Senator to object at this late hour in the session. Suppose you make that rule at the next session and let the article go in at this time. Make that rule then; it would be a good rule; and I would agree to it fully.

Mr. MYERS. Whatever the rule may be, I know it has been the custom to have printed at this session of the Senate documents that I think were no more entitled to go to the public than this short document.

Mr. SMOOT. I am fully aware that documents have been printed here at the request of Senators, but I have heard many Senators say that it ought to be stopped, and I am really of the opinion it ought to be.

Mr. OVERMAN. I fully agree with the Senator that it ought to be, but in this case——

Mr. MARTIN of Virginia. Mr. President——

The VICE PRESIDENT. To whom does the Senator from Montana yield? Five Senators are on the floor seeking recognition.

Mr. MYERS. I yield to the Senator from Utah. I will let him finish what he has to say first, and then I will yield to the Senator from Virginia.

Mr. SMOOT. I thought I had the floor. I thought I was recognized by the Chair.

The VICE PRESIDENT. No; the Senator from Montana had the floor. The Senator from Utah interposed an objection.

Mr. SMOOT. Mr. President, I will say to the Senator from Montana that I do not want him to think that I have any feeling whatever in this matter.

Mr. MYERS. I am satisfied the Senator has not.

Mr. SMOOT. I would not object because the request is made by the Senator from Montana, and to show him I would not do so I will withdraw my objection to having it printed as a public document, but I wish to call the attention of the Senate to the fact that it is a growing evil and ought to be stopped.

Mr. MYERS. I am very glad the Senator permits the evil to grow a little bit more. I thank him.

The VICE PRESIDENT. Without objection, the order asked by the Senator from Montana will be entered. [S. Doc. No. 100.]

If there are no further amendments to be offered to the joint resolution, as in Committee of the Whole, it will be reported to the Senate.

The joint resolution was reported to the Senate as amended, and the amendments were concurred in.

The joint resolution was ordered to be engrossed for a third reading, and it was read the third time.

The VICE PRESIDENT. Shall the joint resolution pass? [Putting the question.] The ayes have it.

Mr. HEYBURN. I ask for the yeas and nays.

Mr. MARTINE of New Jersey. Let us have the yeas and nays.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. FLETCHER (when Mr. BRYAN's name was called). I wish to announce that my colleague [Mr. BRYAN] is unavoidably absent from the city.

Mr. CHILTON (when his name was called). I have a general pair with the Senator from Illinois [Mr. CULLOM]. I believe, though, that he is for the joint resolution. Therefore I will vote. I vote "yea."

Mr. CULBERSON (when his name was called). I transfer my general pair with the Senator from Delaware [Mr. DU PONT] to the Senator from Florida [Mr. BRYAN], and vote. I vote "yea."

Mr. DILLINGHAM (when his name was called). I transfer my general pair with the Senator from South Carolina [Mr. TILLMAN] to the Senator from Massachusetts [Mr. CRANE], who is detained from the Chamber to-day by illness. Upon this question I vote "yea."

Mr. GUGGENHEIM (when his name was called). I have a general pair with the senior Senator from Kentucky [Mr. PAYNTER]. He is unavoidably detained. On account of his absence I shall withhold my vote. If I were at liberty to vote, I should vote "yea."

Mr. CURTIS (when Mr. LODGE's name was called). I was requested to announce that the senior Senator from Massachusetts [Mr. LODGE] is paired with the junior Senator from New York [Mr. O'GORMAN].

Mr. NELSON (when Mr. McCUMBER's name was called). If the Senator from North Dakota [Mr. McCUMBER] were here, he would vote "yea." He is paired with the senior Senator from Mississippi [Mr. PERCY].

Mr. SMITH of South Carolina (when his name was called). I have a general pair with the junior Senator from Delaware [Mr. RICHARDSON]. I transfer my pair to the junior Senator from Maryland [Mr. SMITH], and vote. I vote "yea."

Mr. TAYLOR (when his name was called). I transfer my pair with the junior Senator from Kentucky [Mr. BRADLEY] to the senior Senator from Arkansas [Mr. CLARKE], and vote. I vote "yea."

Mr. WATSON (when his name was called). I have a general pair with the senior Senator from New Jersey [Mr. BRIGGS]. He, however, advises me that he would vote "yea" if present. I am therefore at liberty to vote. I vote "yea."

The roll call was concluded.

Mr. CURTIS. I was requested to announce that the junior Senator from Nevada [Mr. NIXON] is paired with the senior Senator from Nevada [Mr. NEWLANDS].

Mr. BURNHAM. I desire to state that my colleague [Mr. GALLINGER] is paired with the Senator from Arkansas [Mr. DAVIS]. If my colleague were present, he would vote "yea."

Mr. CLAPP. I wish to state that the junior Senator from California [Mr. WORKS] is unavoidably absent.

Mr. MYERS. I was requested to announce that the Senator from Arkansas [Mr. DAVIS] is paired with the Senator from New Hampshire [Mr. GALLINGER]. If the Senator from Arkansas were present, he would vote "yea."

Mr SMOOT. I desire to announce that my colleague [Mr. SUTHERLAND] is out of the city and has a general pair with the senior Senator from Maryland [Mr. RAYNER]. If my colleague were here, he would vote "yea."

The result was announced—yeas 53, nays 9, as follows:

YEAS—53.

Bacon	Foster	Nelson	Smoot
Bankhead	Gamble	Oliver	Stephenson
Borah	Hitchcock	Overman	Stone
Burnham	Johnson, Me.	Owen	Swanson
Burton	Johnston, Ala.	Page	Taylor
Chamberlain	Jones	Penrose	Thornton
Chilton	Kenyon	Perkins	Townsend
Clark, Wyo.	Kern	Poindexter	Warren
Crawford	Lea	Reed	Watson
Culberson	Lippitt	Root	Wetmore
Curtis	McLean	Shively	Williams
Dillingham	Martin, Va.	Simmons	
Dixon	Martine, N. J.	Smith, Mich.	
Fletcher	Myers	Smith, S. C.	

NAYS—9.

Bailey	Bristow	Cummins
Bourne	Brown	Heyburn
Brandegee	Clapp	Pomerene

NOT VOTING—27.

Bradley	du Pont	Lorimer	Rayner
Briggs	Gallinger	McCumber	Richardson
Bryan	Gore	Newlands	Smith, Md.
Clarke, Ark.	Gronna	Nixon	Sutherland
Crane	Guggenheim	O'Gorman	Tillman
Cullom	La Follette	Paynter	Works
Davis	Lodge	Percy	

So the joint resolution was passed.

On motion of Mr. SMITH of Michigan the title was amended so as to read: "A joint resolution to admit the Territories of New Mexico and Arizona as States into the Union upon an equal footing with the original States."

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by J. C. South, its Chief Clerk, announced that the President of the United States, having returned to the House of Representatives, in which it originated, the bill (H. R. 11019) to reduce the duties on wool and manufactures of wool, with his objections thereto, the House had proceeded, in pursuance of the Constitution, to reconsider the same, and resolved that the bill do not pass, two-thirds of the House of Representatives not agreeing to pass the same.

EXECUTIVE SESSION.

Mr. NELSON. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After 15 minutes spent in executive session the doors were reopened, and (at 6 o'clock and 25 minutes p. m.) the Senate adjourned until to-morrow, Saturday, August 19, 1911, at 12 o'clock m.

NOMINATIONS.

Executive nominations received by the Senate August 18, 1911.

PROMOTIONS IN THE ARMY.

CAVALRY ARM.

Lieut. Col. Walter L. Finley, Thirteenth Cavalry, to be colonel from August 11, 1911, vice Col. Joseph H. Dorst, Third Cavalry, retired from active service August 10, 1911.

Maj. Harry C. Benson, Fifth Cavalry, to be lieutenant colonel from August 11, 1911, vice Lieut. Col. Walter L. Finley, Thirteenth Cavalry, promoted.

Maj. George H. Sands, Tenth Cavalry, to be lieutenant colonel from August 11, 1911, vice Lieut. Col. John C. Gresham, Fourteenth Cavalry, advanced to the grade of colonel under the provisions of an act of Congress approved March 3, 1911.

Capt. Charles A. Hedekin, Third Cavalry, to be major from August 11, 1911, vice Maj. Harry C. Benson, Fifth Cavalry, promoted.

Capt. Francis J. Koester, Fifth Cavalry, to be major from August 11, 1911, vice Maj. George H. Sands, Tenth Cavalry, promoted.

First Lieut. Casper W. Cole, Ninth Cavalry, to be captain from August 11, 1911, vice Capt. Charles A. Hedekin, Third Cavalry, promoted.

First Lieut. Edmond R. Tompkins, Eleventh Cavalry, to be captain from August 11, 1911, vice Capt. Francis J. Koester, Fifth Cavalry, promoted.

Second Lieut. George Dillman, Sixth Cavalry, to be first lieutenant from August 11, 1911, vice First Lieut. Casper W. Cole, Ninth Cavalry, promoted.

Second Lieut. Philip J. R. Kiehl, Thirteenth Cavalry, to be first lieutenant from August 11, 1911, vice First Lieut. Edmond R. Tompkins, Eleventh Cavalry, promoted.

Under the provisions of an act of Congress approved March 3, 1911, the officer herein named for advancement in grade in accordance with the rank he would have been entitled to hold had promotion been lineal throughout his arm of service since the date of his entry into the arm to which he permanently belongs:

Lieut. Col. John C. Gresham, Fourteenth Cavalry, to be colonel from August 11, 1911.

COAST ARTILLERY CORPS.

Lieut. Col. Adelbert Cronkhite, Coast Artillery Corps, to be colonel from August 11, 1911, vice Col. Garland N. Whistler, retired from active service August 10, 1911.

Maj. Herman C. Schumm, Coast Artillery Corps, to be lieutenant colonel from August 11, 1911, vice Lieut. Col. John D. Barrette, detached from his proper command under the provisions of an act of Congress approved March 3, 1911.

Capt. James F. Brady, Coast Artillery Corps, to be major from August 11, 1911, vice Maj. Herman C. Schumm, promoted.

First Lieut. Lewis Turtle, Coast Artillery Corps, to be captain from August 11, 1911, vice Capt. James F. Brady, promoted.

Second Lieut. Charles A. Eaton, Coast Artillery Corps (detailed first lieutenant in the Ordnance Department), to be first lieutenant from August 11, 1911, vice First Lieut. Lewis Turtle, promoted.

Second Lieut. Rollin L. Tilton, Coast Artillery Corps, to be first lieutenant from August 11, 1911, vice First Lieut. Charles A. Eaton, whose detail in the Ordnance Department was continued from that date.

TO BE CHAPLAIN WITH RANK OF MAJOR.

Under the provisions of an act of Congress approved April 21, 1911, the officer herein named for promotion in the Army of the United States:

Chaplain Thomas J. Dickson, Twenty-sixth Infantry, to be chaplain, with the rank of major, from August 12, 1911.

PAY DEPARTMENT.

Lieut. Col. Webster Vinson, Deputy Paymaster General, to be Assistant Paymaster General, with the rank of colonel, from August 16, 1911, vice Col. William H. Comegys, Assistant Paymaster General, retired from active service August 15, 1911.

Maj. James B. Houston, paymaster, to be Deputy Paymaster General, with the rank of lieutenant colonel, from August 16, 1911, vice Lieut. Col. Webster Vinson, Deputy Paymaster General, promoted.

APPOINTMENTS IN THE ARMY.

MEDICAL RESERVE CORPS.

To be first lieutenants with rank from August 15, 1911.

Henry Leland Akin, of Nebraska.

John Barnwell Elliott, jr., of Louisiana.

Cyriaque Joseph Gremillion, of Louisiana.
Robert Russell Hollister, of Nebraska.
Albert John Hoskins, of California.
James Kenan, of Alabama.
Robert Thomas Legge, of California.
Edgar Webb Loomis, of Texas.
Charles McVea, of Louisiana.
Francis Marion Pottenger, of California.
Herbert Wellington Taylor, of Vermont.

To be first lieutenant with rank from August 16, 1911.

Louis Joseph Aloyesus Sebille, of Michigan.

PROMOTIONS IN THE NAVY.

Capt. Bradley A. Fiske to be a rear admiral in the Navy from the 3d day of August, 1911, to fill a vacancy.

Lieut. Commander Noble E. Irwin to be a commander in the Navy from the 1st of July, 1911, to fill a vacancy.

Lieut. (Junior Grade) William A. Hall to be a lieutenant in the Navy from the 1st day of July, 1911, to fill a vacancy.

Lieut. (Junior Grade) Thomas Withers, jr., to be a lieutenant in the Navy from the 3d day of July, 1911, to fill a vacancy.

CONSULS GENERAL OF THE UNITED STATES.

Roger S. Greene, of Massachusetts, now consul at Harbin, to be consul general of the United States of America at Hankow, China, vice Robert Brent Mosher, nominated to be consul at Plauen.

George Horton, of Illinois, now consul at Saloniki, to be consul general of the United States of America at Smyrna, Turkey, vice Ernest L. Harris, appointed consul general at Stockholm.

Edward D. Winslow, of Illinois, now consul at Plauen, to be consul general of the United States of America at Copenhagen, Denmark, vice Wallace C. Bond, resigned.

CONSULS OF THE UNITED STATES.

Hubert G. Baugh, of California, now student interpreter in China, to be consul of the United States of America at Saigon, Cochin China, vice Jacob E. Conner, appointed consul at St. Petersburg.

Homer Brett, of Mississippi, to be consul of the United States of America at Maskat, Oman, vice John A. Ray, nominated to be consul at Maracaibo.

E. Carleton Baker, of California, now consul at Antung, to be consul of the United States of America at Chungking, China, vice Albert W. Pontius, nominated to be consul at Dalny.

Robert T. Crane, of Maryland, now consul at Guadeloupe, to be consul of the United States of America at Rosario, Argentine Republic, vice Henry P. Coffin, resigned.

Frederick T. F. Dumont, of Pennsylvania, to be consul of the United States of America at Guadeloupe, West Indies, vice Robert T. Crane, nominated to be consul at Rosario.

Frank Deedmeyer, of Alabama, now consul at Charlottetown, to be consul of the United States of America at Leghorn, Italy, vice Ernest A. Man, resigned.

George F. Davis, of Missouri, to be consul of the United States of America at Ceiba, Honduras, vice Allen Gard, nominated to be consul at Charlottetown.

Charles M. Freeman, of New Hampshire, now consul at Durango, to be consul of the United States of America at Sydney, Nova Scotia, vice John E. Kehl, nominated to be consul at Saloniki.

Allen Gard, of New Jersey, now consul at Ceiba, to be consul of the United States of America at Charlottetown, Prince Edward Island, vice Frank Deedmeyer, nominated to be consul at Leghorn.

Philip E. Holland, of Tennessee, now consul at Puerto Plata, to be consul of the United States of America at Saltillo, Mexico, vice Thomas W. Voetter, nominated to be consul at La Guaira.

Charles M. Hathaway, of Pennsylvania, to be consul of the United States of America at Puerto Plata, Dominican Republic, vice Philip E. Holland, nominated to be consul at Saltillo.

Alexander Heingartner, of Ohio, now consul at Batum, to be consul of the United States of America at Liege, Belgium, vice Henry Abert Johnson, nominated to be consul at Ghent.

Theodore C. Hamm, of Virginia, to be consul of the United States of America at Durango, Mexico, vice Charles M. Freeman, nominated to be consul at Sydney, Nova Scotia.

John F. Jewell, of Illinois, now consul at Melbourne, to be consul of the United States of America at Vladivostok, Siberia, vice Lester Maynard, nominated to be consul at Harbin.

Henry Abert Johnson, of the District of Columbia, now consul at Liege, to be consul of the United States of America at Ghent, Belgium, vice William P. Atwell, deceased.

Milton B. Kirk, of Illinois, now consular assistant, to be consul of the United States of America at Manzanillo, Mexico, vice Arminius T. Haeberle, appointed consul at Tegucigalpa.

John E. Kehl, of Ohio, now consul at Sydney, Nova Scotia, to be consul of the United States of America at Saloniki, Turkey, vice George Horton, nominated to be consul general at Smyrna.

Graham H. Kemper, of Kentucky, to be consul of the United States of America at Cartagena, Colombia, vice Charles L. Latham, nominated to be consul at Punta Arenas.

Marion Letcher, of Georgia, now consul at Chihuahua, to be consul of the United States of America at Progreso, Mexico, vice George B. McGoogan, nominated to be consul at Georgetown.

Charles L. Latham, of North Carolina, now consul at Cartagena, to be consul of the United States of America at Punta Arenas, Chile, vice John E. Rowen, resigned.

George B. McGoogan, of Indiana, now consul at Progreso, to be consul of the United States of America at Georgetown, Guiana, vice Arthur J. Clare, appointed consul at Bluefields.

William C. Magelssen, of Minnesota, now consul at Colombo, to be consul of the United States of America at Melbourne, Australia, vice John F. Jewell, nominated to be consul at Vladivostok.

Charles K. Moser, of Virginia, now consul at Aden, to be consul of the United States of America at Colombo, Ceylon, vice William C. Magelssen, nominated to be consul at Melbourne.

Lester Maynard, of California, now consul at Vladivostok, to be consul of the United States of America at Harbin, China, vice Roger S. Greene, nominated to be consul general at Hankow.

Robert Brent Mosher, of the District of Columbia, now consul general at Hankow, to be consul of the United States of America at Plauen, Germany, vice Edward D. Winslow, nominated to be consul general at Stockholm.

Isaac A. Manning, of Oregon, now consul at La Guaira, to be consul of the United States of America at Barranquilla, Colombia, vice Charles C. Eberhardt, appointed consul general at large.

Albert W. Pontius, of Minnesota, now consul at Chungking, to be consul of the United States of America at Dalny, Manchuria, vice Percival Heintzleman, appointed second secretary of the legation at Peking.

John A. Ray, of Texas, now consul at Maskat, to be consul of the United States of America at Maracaibo, vice Ralph H. Totten, nominated to be consul at Trieste.

Emil Sauer, of Texas, to be consul of the United States of America at Bagdad, Turkey, vice Frederick Simpich, appointed consul at Ensenada.

Gaston Schmutz, of Louisiana, to be consul of the United States of America at Auguascalientes, Mexico, vice A. Donaldson Smith, resigned.

Maddin Summers, of Tennessee, now consular assistant, to be consul of the United States of America at Chihuahua, Mexico, vice Marion Letcher, nominated to be consul at Progreso.

Walter H. Schulz, of Oklahoma, to be consul of the United States of America at Aden, Arabia, vice Charles K. Moser, nominated to be consul at Colombo.

Ralph H. Totten, of Tennessee, now consul at Maracaibo, to be consul of the United States of America at Trieste, Austria, vice George M. Hotschick, deceased.

Edwin W. Trimmer, of New York, now consul at Cape Gracias á Dios, to be consul of the United States of America at Niagara Falls, Canada, vice William H. H. Webster, deceased.

Thomas W. Voetter, of New Mexico, now consul at Saltillo, to be consul of the United States of America at La Guaira, Venezuela, vice Isaac A. Manning, nominated to be consul at Barranquilla.

Adolph A. Williamson, of the District of Columbia, now student interpreter in Japan, to be consul of the United States of America at Antung, China, vice E. Carleton Baker, nominated to be consul at Chungking.

SECOND SECRETARIES OF EMBASSY.

Arthur Hugh Frazier, of Pennsylvania, now secretary of the legation at Bogota, to be second secretary of the embassy of the United States of America at Vienna, Austria, vice M. Marshall Langhorne, resigned.

Willing Spencer, of Pennsylvania, now private secretary to the Assistant Secretary of State, to be second secretary of the embassy of the United States of America at Berlin, Germany, vice Jordan Herbert Stabler, appointed secretary of the legation at Guatemala.

SECRETARY OF LEGATION.

G. Cornell Tarler, of New York, now secretary of the legation and consul general at Bangkok, to be secretary of the legation of the United States of America at Montevideo, Uruguay, vice A. Campbell Turner, resigned.

UNITED STATES ATTORNEY.

Walter R. Stiness, of Rhode Island, to be United States attorney, district of Rhode Island, commencing September 1, 1911, vice Charles A. Wilson, resigned.

APPRAISER OF MERCHANDISE.

Charles V. Johnson, of Oregon, to be appraiser of merchandise in the district of Portland, in the State of Oregon, in place of Owen Summers, deceased.

UNITED STATES MARSHAL.

Leslie M. Scott, of Oregon, to be United States marshal in and for the district of Oregon, vice Elmer B. Colwell, whose nomination was rejected May 22, 1911.

POSTMASTERS.

ILLINOIS.

Cornelius T. Beekman to be postmaster at Petersburg, Ill., in place of Cornelius T. Beekman. Incumbent's commission expired February 19, 1910.

Henry P. Hurd to be postmaster at Odin, Ill. Office became presidential October 1, 1910.

INDIANA.

Francis E. Garn to be postmaster at Plymouth, Ind., in place of Monroe Steiner, resigned.

IOWA.

Ed L. Richardson to be postmaster at Cumberland, Iowa, in place of Esther M. McFarlan, resigned.

KANSAS.

C. K. Gerard to be postmaster at Leoti, Kans., in place of Roy A. Hoisington, resigned.

MAINE.

Thomas E. Wilson to be postmaster at Kittery, Me., in place of Jessie F. Fernald, resigned.

NEBRASKA.

John Fenstermacher, jr., to be postmaster at Cedar Bluffs, Nebr., in place of George Yung, resigned.

NORTH CAROLINA.

S. R. Seymore to be postmaster at West Raleigh, N. C. Office became presidential January 1, 1911.

CONFIRMATIONS.

Executive nominations confirmed by the Senate August 18, 1911.

UNITED STATES ATTORNEY.

Walter R. Stiners, attorney district of Rhode Island.

PROMOTION IN THE ARMY.

Lieut. Col. Webster Vinson to be assistant paymaster general with the rank of colonel.

PROMOTIONS IN THE NAVY.

Commander Alexander S. Halstead to be a captain.

The following-named lieutenants to be lieutenant commanders:

Henry B. Soule,
Walter M. Hunt, and
Zachariah H. Madison.

The following-named lieutenants (junior grade) to be lieutenants:

Walter W. Lorshbough,
Robert L. Ghormley, and
Herbert B. Riebe.

Civil Engineer Richard C. Hollyday, with the rank of commander, to be a civil engineer.

Civil Engineer Frank T. Chambers, with the rank of lieutenant commander, to be a civil engineer.

Asst. Civil Engineer Samuel Gordon to be a civil engineer.

Asst. Civil Engineer Paul J. Bean to be a civil engineer.

POSTMASTERS.

KANSAS.

August Ringwalt, Moundridge.

MAINE.

Hiram W. Ricker, South Poland.

MASSACHUSETTS.

George O. Currier, Leicester.

NEW YORK.

Adolph Bluestone, Canaseraga.
Frank C. Wisner, Lowville.

OHIO.

John C. McManus, Jewett.

PENNSYLVANIA.

William F. Gabrio, Lattimer Mines.

PORTO RICO.

Eugenio C. Manautou, Caguas.
Victor M. Rivera, Rio Piedras.

WISCONSIN.

Peter E. Olsen, Rice Lake.

HOUSE OF REPRESENTATIVES.

FRIDAY, *August 18, 1911.*

The House met at 12 o'clock noon.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

Our Father in heaven, we most fervently pray that there may more and more obtain in the hearts of men the spirit of the Master, who reviled not when He was reviled, who bore with patience and fortitude all the persecutions heaped upon Him by wicked men, and died with the sublime prayer upon His lips, "Father, forgive them, for they know not what they do"; that love may reign supreme in every home, and brotherly love prevail in all the world; that Thy kingdom may come and Thy will be done on earth as it is in heaven, for Thine is the kingdom and the power and the glory forever. Amen.

The Journal of the proceedings of yesterday was read and approved.

EXTENSION OF REMARKS IN THE RECORD.

Mr. BOOHER. Mr. Speaker, I ask unanimous consent to print in the RECORD some remarks on the publicity bill.

The SPEAKER. The gentleman from Missouri [Mr. BOOHER] asks unanimous consent to extend his remarks in the RECORD on the publicity bill. Is there objection?

Mr. RUCKER of Missouri. Mr. Speaker, reserving the right to object, I would like to know for what period of time?

Mr. BOOHER. For five days.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Crockett, one of its clerks, announced that the Senate had passed without amendment bill of the following title:

H. R. 13391. An act to increase the cost limit of the public building at Lynchburg, Va.

The message also announced that the Senate had passed with amendment bill of the following title, in which the concurrence of the House of Representatives was requested:

H. R. 13276. An act to provide for the disposal of the present Federal building site at Newark, Ohio, and for the purchase of a new site for such building.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED.

Mr. CRAVENS, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bills and joint resolution of the following titles, when the Speaker signed the same:

H. R. 2958. An act to amend an act entitled "An act providing for publicity of contributions made for the purpose of influencing elections at which Representatives in Congress are elected," and extending the same to candidates for nomination and election to the offices of Representative and Senator in the Congress of the United States and limiting the amount of campaign expenses:

H. R. 13277. An act to increase the limit of cost of the public building authorized to be constructed at Gettysburg, Pa.; and

H. J. Res. 146. Joint resolution for appointment of a member of the Board of Managers of the National Home for Disabled Volunteer soldiers.

ENROLLED BILLS PRESENTED TO THE PRESIDENT FOR HIS APPROVAL.

Mr. CRAVENS, from the Committee on Enrolled Bills, reported that this day they had presented to the President of the United States, for his approval, the following bills and joint resolution:

H. R. 2958. An act to amend an act entitled "An act providing for publicity of contributions made for the purpose of in-