

tion 1815, explains that this term 'republican' was used in contrast with 'aristocratic' or 'monarchical.'

"Mr. Justice Cooley in 'Constitutional Limitations' explains the purpose of the guarantee of republican form to protect the union against 'aristocratic and monarchical innovations.'

"In Hopkins vs. Duluth (81 Minn., 189) the court said: 'We apprehend that a little reflection must satisfy any one that the advantages of providing local self-government by the voters directly interested through a referendum is abstractly as well as concretely more republican in form than through representatives of the people in the legislature.'

"The supreme court of the United States (Luther vs. Borden, 7 Howard, 421) declared that the republican character of a state, when recognized by the proper constitutional authority, is binding on every other department of the government and it cannot be questioned in a judicial tribunal.

"Fourteen of the states have actually adopted the initiative and referendum by a popular vote or act of the legislature.

"It was, however, a recognized doctrine of the original states, the constitutions themselves being adopted by the referendum, the initiative being exercised in the right of instruction in the town meetings of New England and the county conventions of the south.

"The right of recall was also recognized by the continental congress (Article V.), in which the states expressly reserved the right to recall their delegates to congress at will.

"The congress of the United States admitted Oklahoma with the initiative and referendum and as a state 'republican in form,' and congress has recognized Oregon, Maine, Montana, South Dakota, Missouri, Arkansas and Oklahoma; and notwithstanding that these states have the initiative and referendum as constitutional provisions, their representatives are not questioned in congress. Congress recognizes these states as republican in form, and this recognition is binding upon every other department of the government under the decisions of the supreme court of the United States. (Texas vs. White, 7 Wallace, 700; Taylor vs. Beckham, 178 U. S., 546.)

"The rule of the people and their right to rule is recognized in all the constitutions. See the bill of rights of North Carolina, Virginia, Maryland, Pennsylvania, New York, Connecticut, Rhode Island, New Hampshire, Vermont, New Jersey, Delaware, South Carolina and Georgia.

"The evidence is overwhelming, and the contention of Mr. Baker is so unsound as to not require any further answer, although further evidence is abundant. "ROBERT L. OWEN."

"Washington, April 11."

#### FRANKLIN PIERCE'S REPLY

Franklin Pierce wrote to the World the following letter: "To the Editor of the World—In your editorial on the initiative and referendum you say that 'under our form of government constitutions are created to protect the rights of the minority, not to protect the rights of the majority.' \* \* \* When legislation is initiated by petition, enacted by referendum and the judges are made subject to recall, constitutions might as well be torn up. Laws are then made by the same authority that establishes the constitution, and hence must have equal force with the constitution."

"The constitutions of the state and of the United States are each paramount to any law coming into existence through the initiative and referendum, in the same manner as such constitutions are now superior to statutes passed by the legislatures of the states or of the national government.

"Again, you say, 'The power of the majority thus becomes as absolute as the power of the czar,' and this you attribute to the fact that if the people can recall judges from office they are masters of the situation.

"There is no reason why a judge should not be recalled from office who disgraces his position and office any more than there is why a legislative officer or administrative officer should not be recalled under like circumstances.

"No legislature ever acted with better judgment in passing laws than did the people of Oregon in the last election in giving their approval or disapproval to the proposition submitted to them by the popular referendum.

"The greatest danger to the permanency of our institutions today is the fact that public questions are not discussed here as in olden times by the voters. Conventions of parties advise and approve liberal measures affecting the welfare of the people, as did the democratic

party at Rochester last fall, and then go into the campaign and say not a word about those principles and afterward meet in legislative assembly and pay no attention to putting those principles into laws.

"Public questions will never be discussed by the people or understood except they are submitted for their direct action by the referendum.

"You write of 'surrendering our old liberties—liberties that have been won by the English-speaking people through long centuries only by drenching the land in blood.' This sounds well, but you know, Mr. Editor, and every man intelligent in public affairs knows, that the people have been losing their liberties because special interests and not the people have controlled legislation and have stolen the people's forests and water rights, and through protective tariffs have brought into being a multitude of trusts to rob them.

"The government of Great Britain is the most democratic in the world simply because the control of government depends upon the opinion of the masses as to specific principles of government and is made practical through the election of a single candidate to parliament, and the law of parliament resulting from such popular election is supreme and not even subject to the test of any constitutional limitations.

"The voice of the people may not be the voice of God, but it is a million times nearer to it than the voice of special interests enacting laws for their own benefit. The power of the majority using the referendum or recall may, as you say, 'become as absolute as the power of the czar,' but it is harmless compared with the arbitrary government of a Roosevelt advising the violation of unjust laws which are not repealed by the legislative assemblies, or the lobby of special interests enacting legislation for their own enrichment, and so long as our representatives in state and national legislatures betray the people ours is not a representative government but a mere perversion of the powers of government for the benefit of the few at the expense of the many. "FRANKLIN PIERCE."

"New York, April 11."

Editorial in Denver News: "The New York World is making a determined attack on the initiative and referendum, with a few side shots at the recall.

"The World has earned, by arduous and intelligent public service, the right to have its opinions soberly considered by the advocates of any reform. The News will try to accord such consideration.

"The objections of the World are two-fold.

"First: The initiative and referendum is contrary to that clause of the federal constitution which guarantees to each state a republican form of government.

"Second: Even if constitutional, the initiative and referendum is unwise; because it leads to ill-considered legislation, puts every statute passed in such manner on a par with the constitution of the state, and, coupled with the recall, sweeps away the safeguards for the rights of the minority, and makes the temporary majority a czar.

"We will take these objections in their order.

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"What constitutes a republican form of government? That question has been judicially determined by the supreme court of the United States. In the case of Chisholm vs. Georgia, Mr. Justice Wilson said:

"My short definition of such a government is, one constructed on this principle, that the supreme power resides in the body of the people." (2d Dallas, 457.)

"Unless the supreme court is willing to reverse itself, and give a contradictory definition of a republican form of government, the initiative and referendum cannot be held unconstitutional on this ground. No one, not even our own Bewildered Bonyng, who views all changes with alarm and denies the existence of most of them, can say that the initiative and referendum takes the supreme power away from the body of the people. It merely provides a different and more direct way of exercising that power."—Denver News.

#### AS TO THE UNWISDOM OF IT

"Coming now to the unwisdom of the initiative and referendum, the New York World declares:

"When legislation is initiated by petition, enacted by referendum, and judges are subject to the recall, constitutions might as well be torn up. Laws are then made by the same authority

that establishes the constitution, and hence must have equal force with the constitution. \* \* \* Should judges persist in declaring initiative and referendum statutes invalid, the judges would be subject to removal under the recall. The power of the majority thus becomes as absolute as the power of the czar."

"The statement that all laws would stand on an equality with the fundamental law is not true, nor if true, is it necessarily terrifying. All laws stand on such a theoretical equality in England; yet the broad principles of the British constitution persist; and will persist so long as Englishmen retain a sincere desire for personal liberty. Coming nearer home, at least two states have already made a difference between the passing of a new law and the passing of a constitutional amendment, making the latter more difficult, and requiring the co-operation of a larger number of citizens than the former.

"The World seems to regard the 'numerical majority' as a tyrannous and dangerous thing, constantly seeking to override the rights of the minority, and only restrained by courts and constitutions. Such is not our own view. The tyranny of the majority is a very real thing; but it has not often appeared in history, and we see no reason to apprehend it here. The tyranny of the majority is found only in seasons of intense excitement; and usually in limited areas, where the massing of great bodies of people brings out the ancient characteristics of the mob. The time required for the operation of the initiative, referendum and recall gives time for passion to die out; and for that sober second thought, of which we have spoken before, to assert its sway.

"Let us suppose a law brought up by petition which, if passed, would seriously infringe the rights of the minority. All the time that petition was circulating, the opponents of the law could present their arguments. The circulation of the petition would occupy at least sixty days. Even with a special election, ninety days would elapse between the filing of the petition and the counting of the votes. If tested in the courts, another ninety days at least would elapse before a decision need be rendered. If this decision were adverse, and the advocates of the law tried the recall, they would have to circulate their petition, say sixty days, and then conduct a campaign, at least sixty days more. All told, it comes to one year. If the majority in any American state can be kept adhering to an unjust and unconstitutional proposition for that length of time, then we have misjudged our countrymen; and free government of any sort is doomed to perish among us.

"The initiative and referendum is a chisel, not a guillotine. We may cut our fingers with it now and then; but we shall not cut off heads with it. The World's alarm is groundless."—Denver News.

#### MAINTAIN THE CONSTITUTION

"To the editor of the World: In a recent comment upon a pamphlet issued by Fred A. Baker of Michigan you say that the initiative and referendum would eliminate the deliberative assembly and hence disestablish republican government.

"The first part of this statement is not very important, even if it were true. One has but to consult the files of the World for ample proof that it is high time that something were done with our deliberative assemblies. The recent senatorial situation, which has made us the laughing-stock of the world, is a case in point. Our deliberative assemblies have long since ceased to promote republican government, and if they were eliminated the loss would not be very great. It is not true, however, that the initiative and referendum would eliminate them and no advocate of that reform thinks so. They who make that charge either do so in ignorance of what has been accomplished under the initiative and referendum or they deliberately ignore the achievements in those political divisions of our country where direct legislation has had full and free rein. We claim that the present legislative system and its advantages—its compactness, legal wisdom, experience and power for work—would be retained, while its evils—its haste, complexity, opportunities for bribery and corruption, overlegislation and legislation against the wishes and will and interest of the people—would be eliminated. The legislature would continue to do the law-making as now, but its power to do wrong or to impede progress or to do as it pleased in spite of the people would be gone. It would involve no denial of a republican form of government, but on the contrary would promote this. In the words of Jefferson, 'government is republican