

SPEECH OF HENRY F. ASHURST
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They are filtered too fine through the sieve of secret caucuses and other machine processes; there are too many conventions preceded by too many private conferences between us and the persons through whom we legislate and conduct our governments.

"We, the people, have not free access enough to our own agents or direct enough control over them. We mean by one change or another to make our governments genuinely popular and representative again. We are cutting away anomalies, not institutions." (Boston Common, May 13, 1911.)

"Such are the failures and scandals which have created distrust in parties and legislatures and caused people to secure direct control of political machinery, their officials and legislative bodies through direct primaries, elections, and legislation.

"States and governments were made for man; and at the same time how true it is that His creatures and servants have first deceived, next vilified, and at last oppressed their Master and Maker. (Mr. Justice Wilson, in *Chisholm v. Georgia*, 2 Dall., 455.)"

THE RECALL

Mr. Ashurst. Mr. President, in discussing the recall, I must not be understood as making an assault upon the supreme court of the United States. I venerate that great court. Its judgments and decrees prove that it realizes the tremendous changes in political and economic conditions and that the present is a dynamic, not a static, condition of society. We hear frequent criticisms of the judiciary, but these criticisms are directed toward the inferior federal judges.

Judges are very like the rest of human beings; they are as easily swayed by passion as are other men; some of them are as vain, as ambitious, and as subject to flattery as any other class of men. Their learning, virtue, integrity, and morality are no higher than that of the profession from which they are exclusively chosen—the legal profession.

There are good judges and bad judges, and the people may always be relied upon to exercise the power of recall wisely and judiciously. The people would never vote to recall a judge merely because of his rendering an unpopular decision, nor for reversing or affirming any decision, unless such decision or judgment were procured by corruption or bribery. With remarkable precision the public sees through the guises and disguises of the judge whose decisions are discolored by improper

influence, by favoritism, or by bribery.

The recall would in no manner lessen the independence of a judge and the intemperate criticism or abuse of a judge by litigants, suitors, and attorneys temporarily disappointed over the loss of a case pending before the court would evoke no sympathy nor encouragement from the voters, while unfounded, unfair, unjust, or untrue charges or criticisms would strengthen the judge.

None of the federal judges is elected by the people; none is removable by the people. Hence those judges who are incompetent or unworthy have yielded to temptation; the weak and needy have fallen, for the mere fact that a man has been appointed as a federal judge seldom transforms his nature.

The federal judiciary in America has grown to be the most powerful institution in our government. More than any other agency it is in a position to promote or retard the advancement and true progress of the people.

There exists today a widespread belief that some of our superior federal courts are havens of refuge for lawbreaking corporations and favor-seeking "interests."

Many factors have contributed to this belief, chief of which is the method of selecting a federal judge, supplemented with the fact that he is to a great degree subjected to certain insidious social influences and environments, and is thrown almost exclusively into the company of opulent men whose views he, perhaps unconsciously, adopts and acts upon.

The people are losing faith in the inferior federal judges, and the chief excellence of the recall is that it would restore the people's confidence in these judges.

Mr. President, I ask permission at this point to incorporate into the Record as a part of my remarks an excerpt from La Follette's Weekly Magazine of November 23, 1912, entitled "The Arizona Spirit," which is as follows:

"Besides giving women an equal voice in government with men, the new state of Arizona distinguished itself in the recent election by restoring to its constitution the provision for the recall of judges.

"Thus is ended an interesting chapter in the present movement toward more complete self-government in state and nation.

"It was in October, 1910, that the constitutional convention of the territory of Arizona wrote into the constitution, with which it planned to set out upon its career of statehood, the provision for the recall of all elective officers, including judges.

This constitution was decisively approved by the voters at the polls.

"Then the question of admitting Arizona to statehood came before congress. A contest arose. Foes of the judicial recall wanted to force all mention of this "heresy" out of the Arizona constitution. Friends of the recall, re-enforced by others who were not convinced of its wisdom but nevertheless unwilling to deny the people of this commonwealth the right to determine for themselves the kind of government they wanted, fought against striking out the recall provision. A compromise was reached whereby Arizona was to be required to vote once more upon this matter of applying the recall to judges. But on August 15, 1911, President Taft vetoed this proposal. He vigorously denounced the recall of judges, and declared, 'I must disapprove a constitution containing it.'

"So, as the price of statehood, Arizona was compelled to strike this provision out of her constitution.

"This the voters did in the election of December 12, 1911, but with the openly expressed determination to put the judicial recall back into her fundamental law as soon as possible.

"And in the recent election, on November 5, they did so.

"The voters of Arizona have again asserted a fine spirit of independence which will in the end transform all her institutions into instruments for maintaining full and complete self-government.

"It is well for Arizona to have the recall of judges in her constitution if her people want it. It is even better for Arizona to manifest so dogged a determination to rule herself."

I am in no humor this afternoon to throw bouquets, but I will pause long enough to say—and I see the publisher of that magazine honors me with a hearing—that democrats and republicans will not spend their time unprofitably in reading that magazine.

It is well known, of course, that President Taft objected to the recall feature of the Arizona constitution—placed his opinion above and against opinions of the people of Arizona, deliberated upon and decided what the organic law of the state of Arizona should be. The convention which framed the Arizona constitution, which has been such a storm center, but has lighted the way toward a larger liberty for the people even of the older and more populous states, is well worth considering. The result of the convention's labor affords reliable means of judging the qualifications of its members, but the following data will be found interesting:

A former Boston man, a graduate of Harvard university, namely, Hon. M. G. Cuniff, now president of the state senate of the legislative assembly of the state, was the chairman in the convention of the committee on revision, style, and compilation. With Mr. Cuniff on this committee were four other gentlemen, holders of the degree of bachelor of arts, and there were many other learned men in that body. It was said that there were no leaders in the convention, and that was true, for each man had a strong, vigorous mind and did not need any leadership. The sovereignty of his citizenship, his education, and experience, which come soon in the great southwest, were sufficient leadership for him. Moreover, a large majority of the delegates were instructed by the voters as to the kind of constitution the people wished, and the delegates so instructed regarded themselves as bound in conscience and in honor to carry out the solemn mandate of the people. Of the 52 delegates it is interesting to note that they come from 19 different walks in life, as follows:

There were:
Lawyers 14

Miner	.....	1
Railroad switchman	.....	1
Locomotive engineer	.....	1
Civil engineers	.....	2
Stockmen	.....	7
Clergymen	.....	1
Physicians	.....	2
Mine operator	.....	1
Bankers	.....	4
Retired capitalist	.....	1
Machinists	.....	1
Merchants	.....	5
Traffic expert	.....	1
Farmers	.....	5
Newspaper man	.....	1
Plumber	.....	1
Butcher	.....	1
Accountant	.....	1
Total	.....	52

All of the members of the convention were taxpayers.

Thirty per cent of the convention were college men, and every member possessed a wealth of information and practical experience gathered in that romantic land so near to nature's heart. Three were native-born Arizonans; five were foreign born. The foreign born were:

Mexico	.....	1
Canada	.....	1
Germany	.....	1
Honolulu	.....	1
England	.....	1
Total	.....	5

And the various states of the union were represented as follows:

Alabama	.....	3
Kentucky	.....	2
New York	.....	3
Illinois	.....	6
Georgia	.....	1
Indiana	.....	1
Texas	.....	3
Massachusetts	.....	2
Vermont	.....	2
Ohio	.....	5
Michigan	.....	3
Missouri	.....	2
Virginia	.....	2
Pennsylvania	.....	1
North Carolina	.....	1
Tennessee	.....	1
Maryland	.....	1
Oregon	.....	1
Utah	.....	1
Colorado	.....	1
California	.....	1
Kansas	.....	1
Total	.....	52

The five foreign born all were of English descent. The average age of the members was 44 years, and the average number of years they had resided in Arizona was 19.

While the convention was, in every sense of the word, a deliberative body, the members did not use language as did Talleyrand—to conceal thought, but they used language to express thought. Moreover, in the debates they did not balance each sentence with the stupid caution that characterizes passive intellectualism; nor did they immerse every sentence in a tank of diplomatic antiseptic before they allowed it utterance, as we do here.

Mr. President, I now ask unanimous consent that I may include in the Record as Appendices A, B, and C, being respectively, copy of a letter to the public which other citizens of Arizona and I addressed to the people of Arizona upon the subject of the initiative and referendum, also copy of a letter addressed by me to the constitutional convention of the state of Arizona, and also a copy of an address delivered by me on March 27, 1912, to both houses of the legislature of the state of Arizona upon the occasion of their assembly in joint session to ratify my election to the United States senate.

The President pro tempore. Without objection, leave is granted.

Mr. Ashurst. Mr. President, many statesmen, publicists, and editors frequently make the observation that



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