

210 Oxford St., Rochester, N.Y.  
June 1, 1911.

Hon. George S. Legare,  
House of Representatives,  
Washington, D. C.

Dear Sir:

I have read your speech, as printed in the Sun, on the "recall" and other features of the Arizona constitution. It was sound and good, although I could not agree with you in asserting that judges, or the judiciary must be accorded higher consideration than the executive and legislative departments of government. History has shown that judges represent little more than the so-called "public sentiment" of the time in which they live and act. Judicial lapses are as serious as executive and legislative lapses. And I cannot understand the action of the house in "resolving" Arizona and New Mexico into the Union after the exposure of the unrepugnant and vicious system involved in the Arizona constitution. It was a compromise and surrender. There should be no compromise with the referendum or the recall. The referendum has had sufficient demonstration in modern "prohibition" or utter violation of the Bill of Rights with reference to one form of lawful property under the law of nations and the statutes of the United States. Indeed the referendum with the initiative would involve the utter breaking down of the constitutional guaranties of life, liberty and property, the very bases of our constitutional system.

In the matter of the recall, it is unnecessary. Impeachment would be sufficient, while conforming to the requirements of the federal constitution. For every official should have the right of trial by jury or by a tribunal in which the rules of evidence prevail as in impeachment trials. The recall denies this right and amounts to such an invasion of fundamental rights as "prohibition" presents, -no trial at all, but simple destruction of property, character and everything by a chance ballot. It is not surprising that with the success of "prohibition" an effort should be made to change constitutions and submit all human rights and the safety of property and even life and liberty to popular vote and "rewrite", that is, destroy the constitution.

I asked Hon. Victor Berger the other day how he could rewrite the constitution unless he changed its postulates, surrendering equality before the law, safety of life and property and the right of trial by jury. He has not yet responded.

If you, as a representative, are to assent in any way to the degradation of our constitutional system, let the judges take pot luck with the rest. They have had their full share in cutting into and degrading the great guaranties of the federal constitution. They have in some cases assented to the doctrine that millions of lawful property under the law of nations and the usages of commerce, can be utterly destroyed as to value and use by the mere expression of opinion at the ballot box, provided the property and its use have been condemned, not by trial, under the forms of law, but by the mere denunciation of an organized cult. Such decisions are practically assent to the referendum, mob rule and denial of the guaranties of the Bill of Rights.

Whatever the Arizona constitution enacted with reference to the recall of judges and other officials, the authors of that constitution justly refused to destroy the property of citizens by a "prohibition" clause, mere fiat. The members of the convention deserve great credit for this refusal to outlaw without trial and in defiance of all justice, any form of lawful property. In this, the convention stands well in comparison with some courts and legislatures.

The devices, initiative, referendum and recall should not be adopted anywhere. While they are far less destructive than fiat "prohibition", all are degradations of our grand and simple system. They invite endless controversy, heavy cost and no finality.

The shortsighted men who have been destroying property right and left by the referendum, and who are now asking congress to divide the Union into shreds and patches, by surrendering to the states power over inter-state commerce in liquor, are the real authors of the present great movement to set aside the written constitution or re-write it to bring chaos in everything.

Yours very truly,

Henry Maine

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