Direct Legislation and its Operations in America

By the Washington correspondent for the Dallas (Texas) News: The recall is less of an innovation in American constitution-making than are the referendum or initiative. The recall was written into the first constitution of the United States, known as the articles of confederation. The fathers, to whose sagacity public men so frequently refer, wrote it into Art. V. of that instrument in unmistakable terms, when, in providing for the election of delegates to the national congress, they reserved to each state the power "to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year." When the delegates to the constitutional convention undertook to write a new organic law for the nation they created the second chamber of congress, the senate, and left out the recall provision of the articles of confederation.

But there is another constitution, older than the constitution of the United States, into which the fathers wrote a recall sentiment—the constitution of the state of Massachusetts. The recall is in that instrument to this day and will be found in Art. VIII, which reads:

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

In keeping with the spirit of this provision Massachusetts elects her state officers for but one year.

Former United States Senator Blair of New Hampshire calls attention to the fact that "the power of the removal of the judiciary by address of the two houses of the legislature existed, and perhaps still exists, in the state of New Hampshire, while the entire judiciary has been changed frequently by the legislature and the courts since I can remember, about four times."

IN USE IN OREGON

Coming down to the present day and to the power of the recall vested directly in the hands of the people, the record shows that Oregon has had the recall, applicable to all elective state officers, judicial, administrative and legislative, for the last three years. It was written into the constitution through direct legislation, the constitutional amendment providing for it being adopted by a vote of 58,381 to 31,002. In Oregon the recall on state officers can be invoked on the application of 25 per cent of the legal voters. This agency of control, however, has not been invoked by the people of that state since its adoption. In this respect the experience of Oregon is similar to that of Switzerland, where the recall is found in about one-third of the cantons, but is rarely invoked. As a matter of fact, the Swiss have a way of continually re-electing their public officers, so that a competent man in office is there for practically all of his life.

The recall, as affecting state officials, has not yet gone beyond Oregon, but is incorporated in the proposed constitution for Arizona, and just recently has been submitted to the people of California by the legislature of that state. The California proposal also provides for the initiative and referendum, and the situation there in regard to the application of the recall to the judiciary is particularly interesting. In an extended article in the New York Evening Post on the recent political revolution in California, written before the legislature voted to submit a constitutional amendment granting to the people the right to recall judges, appears this statement and prophecy by Chief Justice Beatty of the California supreme court:

"A special committee of the legislature is to investigate the most recent decision of the supreme court in the Ruef case, granting the former boss a rehearing of his case in the supreme court. This decision has now been reversed, and Ruef is at last behind the bars. Chief Justice Beatty of that court, in a public statement, says that he expects the legislature to pass a recall amendment, that a movement will be begun to recall the supreme court judges, and that the movement will be successful."

COL. ROOSEVELT FAVORS ADOPTION

Commenting on the situation in California, former President Roosevelt, in an interview published by the Associated Press, said that, personally, he would prefer to see the legislature itself act in the matter of recalls by providing for the removal of an unfit judge by a majority vote of each house without trial, but on assignment of reasons. "That some of your judges have been placed upon the bench under the old convention system, in response to the demands of special interests, I little question," Col. Roosevelt is quoted as saying. "The legislature, however, has preferred to put the responsibility of their recall upon the people themselves, and therefore you are faced by the alternative of leaving the present system unchanged, or else adopting the amendment proposed. In the immediate emergency there is no other choice, and this being the case, I feel strongly that the amendment should be adopted."

While, however, the recall is still rare in its application to state officials, whether legislative, administrative or judicial, it has spread rapidly in various parts of the country in city governments. In almost every instance of its application to local affairs it is accompanied by the initiative and referendum. There is no complete list showing the recall, initiative and referendum in cities to date, because the movement of extending direct legislation in cities is going on almost from day to day, but the following summary will indicate the extent to which these three instruments of direct control over municipal affairs has developed in the United States:

In Iowa, by a general statute, the recall is granted to every city having a commission form of government, and any city of 25,000 or more may adopt the commission form of government.

In South Dakota there is the same kind of a general law, except that in that state any city of the first or second class or any city having a special charter may change to the commission government, the recall in South Dakota cities being effective upon the application of 15 per cent of the legal voters.

HOME RULE TO THE CITIES

In Oregon in 1906 the people, by a vote of 46,678 to 16,735 extended to every city in the state the initiative, on the application of 15 per cent, and the referendum on the application of 10 per cent of the qualified voters.

The next thing to the Oregon constitution and general law granting home rule to the cities is the constitution and statutes of the state of Washington. By an article in its constitution cities of 20,000 may create for themselves freehold charters, which need not be approved by the legislature, and by a law adopted in 1903 the local electorate on petition of 15 per cent of the voters may initiate amendments to the charter affecting local matters. Under this law Seattle and Everett, Wash., adopted the recall. By a further provision of the Washington general laws all cities of the second class may recall their aldermen on petition of three-fourths of the legal voters of those cities.

In California all cities of 3,500 population or more may create freeholders' charters, subject to the approval of the legislatures, but it has been the custom of the legislatures to approve practically all of these city charters. Amendments to such charters may be initiated by 15 per cent of the voters, which amendments when approved by a vote of the people must be submitted to the legislatures. The amendments, like the charters, are in nearly every instance approved by the legislature. Thus all of the important California cities today have either the initiative and referendum or the recall, or all three of these means of direct legislation. In a sense, Los Angeles was the pioneer of the recall cities of California, modeling its statutes after the recall law of the Canton Schaffhausen in Switzerland. It provides for the recall of any elective officer by 25 per cent of the electors who are qualified for the election of a successor to the man to be recalled. Other California cities followed with modifications in the matter of percentage of voters required to force a recall election, as follows: San Diego 25 per cent, San Bernardino 51 per cent, Santa Monica 40 per cent, Alameda same as Los Angeles, except that it applies also to appointive officers; Long Beach 40 per cent, San Francisco 30 per cent, Riverside and Vallejo 25 per cent. A number of California cities, including Sacramento and Eureka have the initiative and referendum without the recall, while practically all of the above-mentioned cities, which have the recall, also have the initiative and referendum.

In Texas the initiative, referendum and recall has been granted by the legislature to three cities by special charters. The Dallas recall provision follows the general lines of the Los Angeles provision, except that in Dallas 35 per cent of the voters is required for a recall election; in Fort Worth the percentage is 20, while in Denison the recall on the application of 20 per cent of the legal voters applies only to the mayor and aldermen. By reason of Governor Colquitt's veto the initiative, referendum and recall charter of Texarkana failed.

This summary does not cover all of the direct legislation development in American cities, but it serves to show the extent to which these checks on representative government in municipalities has grown in the past decade. How intelligently it has been used in some communities is shown by the following instance from San Francisco, with a mixed, ring-ridden population of 416,912: On November 15, last, San Francisco held a special election at which thirty-eight proposed amendments to the city charter were voted upon. These amendments filled a thirty-six-page pamphlet, and 45,000 voters, about 50 per cent of the electorate, participated in the election. As to the result, the well-known weekly publication, the Nation, comments thus:

"Every voter had to discriminate and act separately on the thirty-eight proposals. There were no party emblems to help him. Yet there is nothing in the result to indicate that the decision was not arrived at as carefully as it would have been had the amendments been submitted to a representative assembly. Eighteen of the amendments were carried and twenty were rejected. Practically all the so-called reform amendments were accepted. The franchise rights of the city were safeguarded by the passage of amendments forbidding a monopoly of subways and tunnels and permitting the city to recall a franchise whenever it decides to buy the property of the traction company. Business interests opposed the proposal for the initiative and the recall, and a hard campaign was made against the franchise amendments, but both were carried, although by closer votes than those on most of the other proposals. San Francisco may be boss-ridden and union-labeled, but apparently the voters know how to decide important public questions intelligently."

MACHINE RULED CITIES

How some of the larger cities obtained the recall and the initiative and referendum is an interesting chapter in the development of direct legislation in machine-ruled cities. Seattle is a typical instance. One of the first uses by Seattle of the initiative and referendum was to get a charter amendment for a recall. This was in 1906. It took 25 per cent of the legal voters to initiate a recall amendment to the city charter. The city administration, through its corporation counsel and city clerk, threw one obstacle after another in the way of the movement, and the courts had to be invoked. The supporters of the movement were compelled, through a technicality, to submit the petition for the recall amendment on two separate occasions to 25 per cent of the voters for signatures before they could get it on the ballot, and when it did get there finally the amendment was so worded that the word "recall" did not appear in it for the guidance of the voters. The amendment read as follows: "No. 8. An amendment to fix term of office." It carried by 8 to 1. Of the 17,708 men who voted at this election, which was also the mayoralty election, 10,583 voters located and voted on the amendment and of this number, 9,312 voted for it and only 1,271 against it. At this same election an amendment to increase the salaries of the city officials was defeated by 1,000 votes.

POWER OF RECALL FEATURE

In 1902 Los Angeles adopted the recall by a vote of 5 to 1, after an exciting campaign. It used this instrument of control once and threatened to use it again with interesting results. The Los Angeles official who was removed by the recall was an alderman, whose influence, it was thought, was too uniformly in favor of the corporations that were manipulating city matters through the city council. When an aldermanic ring voted to give a printing contract to a bidder who was $25,000 higher than the competing bidder, the people of Los Angeles undertook to make an example of that particular alderman. About 40 per cent of the voters in his ward signed a petition for recall and at the special recall election he was retired to private life by a vote of 1,837 to 1,083. His successor, it is said, fought the political machine and the corporations that dominated the machine for a time, but finally gave up the fight and settled