

THE RECALL OF JUDGES

Senator Borah's reasons for objecting to the recall of judges may be summarized as follows:

That the recall is a new and dangerous departure from our established policy.

That the recall makes judges timid, weak, obedient, and spineless; and therefore in the end make them corrupt.

That the recall tends to make decisions "bear the color and drift of majority rule and party domination."

That the recall of judges is despotism.

It does not seem to us that Senator Borah is particularly happy in any of these objections. Let us take them in order.

The recall of judges may or may not be dangerous; but it is not a new departure. It is simply a new de-

vice for attaining a very old object. There are just two consistent logical plans of choosing a judiciary. One is to appoint them for life. The other is to elect them for the term of the good pleasure of the electors. Nearly all the states have adopted the latter plan; but up till now in partial indecisive fashion. They have been content with electing judges for certain stated terms. Manifestly the judge who must seek re-election every so often is to that extent "dependent" on the people for his tenure of office. The recall is a good weapon. The election of judges for certain stated terms is a poor weapon. But both were designed for the same purpose of enabling the people to get rid of an unjust judge.

Mr. Borah says the recall would make judges timid, weak and spineless. On what practical grounds does he rest this objection? Nine-

tenths of all the world's work is done under the recall system, now. The physician and the surgeon, the engineer, the lawyer, the architect are hired, not for stated terms, and still less for life; but during the good pleasure of their employers. Is it Mr. Borah's experience that the average surgeon, or attorney, or engineer is a weak, timid, cringing creature? Is it not a fact that private employers get a higher average of initiative and energy than has yet been displayed in public life? And if the lawyer before his elevation to the bench maintains dignity and courage, despite the conditions of his employment, why should he lose those characteristics when nothing is changed but his employer?

The trouble with this part of Mr. Borah's reasoning is that it is based on an analogy which does not exist. It was the habit of evil kings of old to use their power to appoint and remove judges in such a way as to secure unjust and outrageous decisions. Passing the obvious retort that the American public can not properly be likened to Charles First or James Second, we would point out that the olden king had powers which the people do not possess. The king could not merely remove a judge from the bench, but could make it practically impossible for him to earn his livelihood in private. The electors of today have and can have no such power.

Mr. Borah says that the recall of judges will make decisions follow the elections. Would Mr. Borah mind telling us what decisions follow now? Has he never heard of political decisions? To go back far enough to keep out of present controversies, what of the Dred Scot case? Would that have been possible after 1865, even if enough of slavery had been left to make the test? We think not.

Mr. Borah's objection that the recall of judges would make this government despotic seems to us to be based on a misuse of language. But it serves, at least, to get the whole question before us in a lump. At the bottom of all the objections to the recall there seems to abide the fear that if the people get the power to change their public servants at pleasure, they will straightway knock off work, and settle down to amusing themselves by continual elections. Where Mr. Borah or anyone else finds warrant for this fear in the histories of democratic peoples, we do not know. From Athens to the United States, there has been nothing so shortlived as demagogery; nothing that commanded public respect so quickly and so continuously as the courage to defy popular clamor.

The Saturday Evening Post not long ago likened the initiative, referendum and recall to the gun which the farmer of colonial days took with him when he went to plow. He took it, because experience had taught him that Indians were likely to be in the woods and that they respected a gun far more than they did a plow. The citizen of today has found that there are often Mohawks, not to say Ethiopians, concealed in the fuel supply; and has concluded that he will take the recall musket along with him when he goes to work. Straightway from every worshiper of the past rises a cry that if the citizen has this gun, he will neglect plowing for target practice. He will quit business to play politics; and he will leave his common sense so thoroughly that he will by preference shoot friends instead of foes.

It is not so that we read our countrymen. We believe the American people admire the courageous, upright, and capable judge. We believe that no judge who is courageous, upright and capable will have much reason to fear the recall. But

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