JUDGES FOR RECALL OF JUDGES

Expressions of Opinion from a Number of Well Known Judges on Recall of the Judiciary

California recently adopted the initiative, referendum and recall, including the judiciary. During the campaign the California Outlook published at Los Angeles, printed the following:

Many of the anxious friends of the judiciary are rushing to their defense in the matter of the recall of judges. That this is in great measure "love's labor lost" is evidenced by the opinions of some of the prominent jurists of southern California on this subject. Many are the members of the bench who see nothing inherently wrong in the proposal to make the recall of judges a part of this state's constitution. That the judge who does his duty need have no fear of the recall is made plain by the views given below:

Superior Court Judge, W. A. Sloane, San Diego County: "The whole recall proposition is based upon the fact that the people are the ultimate judges of what is good for them. They place a man in official position, and have a right to make it a condition of his tenure of office that he may be removed by a majority vote if he fails to make good.

"As to the argument that the independence and fair deliberation of the courts would be destroyed or materially affected by the fear of the recall, I do not believe it. Cowardice in the line of duty is not an American characteristic. An upright, honest judge would be stimulated by the existence of the recall provision to a closer scrutiny of his own motives in deciding issues before him to avoid even the suspicion that he was influenced by mere public sentiment."

Judge N. P. Conrey, superior court, Los Angeles county: "I think that the people of our state never would use the recall to change the complexion of a court for the purpose of affecting its decisions upon any subject. It would only be used in those unusual instances where personal unfitness has made the officer conspicuously unworthy of public confidence or respect.

"Our voting population is not a mob. I can not perceive that it would be possible, in a free and enlightened state, for the people to vote in favor of ousting judges from office in order to force a court to change its decision upon any question of either fact or law."

Judge James C. Rives, superior court, Los Angeles county: "There is nothing inherently wrong in the proposal, and nothing as far as I can see which conflicts with the principles upon which our government is founded. The power which a judge wields comes from the people. The people have the right to take it away from those who may be deemed unfit.

"A real enactment, coupled with a tenure of office during good behavior, seems to me to be the logical way to apply the principle. It would remove the bench from the stress of politics, and would mean security to the judge as long as he fills his office efficiently and conscientiously."

Curtis D. Wilbur, judge of superior court, Los Angeles county: "I am in favor of vesting in the people of the state of California the right to recall judges,

"First—Because it accords in theory with that fundamental declaration upon which this government is based; namely, that governments derive all just powers from the consent of those governed.

"Second—Because the people of California have demonstrated to their own satisfaction that they are to be trusted with the selection of judges, and are unwilling to return to an appointive system.

"Third—Because the right of recall would make the people more willing to entrust judges with certain powers necessary to the better administration of justice, which are now withheld.

"Fourth—Because the power of recall would probably remove the objection now existing to long terms for the judiciary, and there would be less danger than at present of efficient judges being ousted for purely political or partisan reasons."

Judge Gavin W. Craig, superior court, Los Angeles county: "I do not think the recall would be of any disadvantage to the judiciary. There is much to be said on both sides of the question, but, on the whole, I think a recall law which would include judges would work out all right.

"I do not think that the right of the people to recall at any time would in any way interfere with the freedom of the judge. If he goes straight ahead with his work and does it as well as he can, there will be little to fear from the people."

George H. Hutton, presiding judge, superior court, Los Angeles county: "I share with President Taft, an inclination to use violent language when I reflect on the methods and procedure in vogue in the courts of our state and union. In many cases they are relics of the seventeenth century procedure and tend to magnify technicalities and minimize justice.

"I believe that the cure for this procedure lies largely in the judges themselves and the most likely way to bring about that cure is to invoke recall, under somewhat stricter conditions than will apply to public officers in general.

"There is no divine right of judges by which they should be allowed to judicially rule a country. The power of a judge, like a stream, can not (except by artificial means) rise above its source, and the source of the judge's power is the will of the majority and when the will of the majority is withdrawn his power is and by right ought to be, withdrawn.

"I firmly believe, that when the people give a matter so serious as the mental or moral fitness or unfitness of a judge, their sober second thought, that the people are to be trusted to decide it right, and until they are to be so trusted, our dream of 'a government of the people, for the people and by the people' will never come true."

"A DANIEL COME TO JUDGMENT"

Rabbi Stephen S. Wise, addressing a gathering representative of the financial and industrial interests of the country, and including J. P. Morgan, Andrew Carnegie, John D. Rockefeller, jr., and other leaders of so-called "big business" in the United States, recently in the Waldorf-Astoria sounded a warning against the tendency of the day to lawlessness.

The occasion was the one hundred and forty-third banquet of the chamber of commerce. Seated on either side of President A. Barton Hepburn were James Bryce, British ambassador; Senator Elihu Root, J. Pierpont Morgan, Rabbi Wise, Rt. Rev. David H. Greer, Governor John A. Dix, General Frederick D. Grant, Thomas A. Edison, Andrew Carnegie, Chauncey M. Depew, St. Clair McKelway, Governor Emmet O'Neal, of Alabama; Mayor Gaynor, Alfred Moseley, General Horace Porter, James J. Hill and Rear Admiral Robert E. Peary.

Speaking to the topic "The Conscience of the Nation," Rabbi Wise said he was not unmindful that in the assemblage were some who, "like the notorious Lord Melbourne, are afraid that 'this damned morality will ruin everything,'" but urged that "the newly quickened conscience of the nation demands that business, which has become too largely impersonal, needs to be repersonalized, and that articles of incorporation are not to be offered as a substitute for the mandates of the decalogue." He continued.

"Instead of ceaseless and senseless clamor against the department of law at Washington, we are to see to it that our business be so regulated and administered that it shall not be in constant collision with the law. In a word, the nation and commerce must cease to war upon each other, but they can only cooperate upon the basis of the government's inflexible insistence upon the supremacy of the law, however inconvenient and unprofitable be conformity thereto, and the acquiescence of commerce in the ideal of obedience to the spirit as well as the letter of the law, lest too, spoliation by the few be at last replaced by expropriation by the many.

"One of the tendencies against which the American people must battle earnestly and steadfastly is the tendency to lawlessness, as dangerous to our democracy today as the Greeks believed it to be twenty-five hundred years ago.

"We must do battle against the anarchy of lynching, against the anarchy of endless homicidism, against the anarchy which inheres in the not less deadly homicides that are the daily incidents of industry.

"Not only is democracy incompatible with the violent lawlessness of the inflamed and unreasonable, but with the lawlessness of technical conformity with the letter and actual violation of the spirit of the law. Lawlessness is not less menacing when it clothes itself in the forms of law. The practise of the law is not to be a shield and covert for lawless practises. The ends of justice are too often defeated by means of the law. There is little to choose between the anarchist who believes in the breaking of the law because it is law, and because all laws are oppressive, and the lawlessness which breaks the law because it is unjust. The one honestly aims at justice without law and the really lawless anarchist is the man of place and power who aimed at law without justice."
—New York American.

ECHOES OF 1904

Columbus, O., Dec. 18, 1911.—Editor Commoner: The editorial statement of the Wall Street Journal, quoted in the Commoner of Nov. 10th, that the interests (therein called the "business community") controlled the election in 1908 and that Mr. Taft owed his election to them is absolutely true. The reason, however, assigned by the Journal for their intervention covertly hides the true one and does not state the whole truth. It says: "If President Taft was stronger than his party in 1908 it was because the business community gave him their confidence. The alternative was Mr. Bryan and Mr. Bryan's policies, which it was not believed President Taft would adopt." The interests took fright when Mr. Bryan said to President Roosevelt: "Show me a trust officer or director who is supporting me, and I will inform him that I will, if elected, enforce the penal sections of the Sherman anti-trust law against him." That statement in my judgment, was decisive of the election. From that time on the interests got busy. Mr. Rockefeller came out for Taft and the interests made up a large part of the campaign fund, which Hitchcock swore amounted to over $1,700,000, contributed, as the list shows, almost entirely by trust officers, directors or beneficiaries. The newspapers state that when the United States marshal served the summons in the United States company dissolution suit upon Mr. Carnegie, the latter gave the marshal an autographed photograph as a souvenir, that Mr. Morgan received him gruffly without comment, and that Mr. Rockefeller, jr., greeted him with, "I am glad to see you." How different would have been his reception if he had gone after them with a warrant of arrest!

In answer to Mr. Bryan, President Roosevelt replied that Judge Henry S. Priest of St. Louis was for his (Bryan's) election. What hyprocrisy! Judge Priest on his return from Europe had replied to a reporter that he was a democrat and expected to vote for Mr. Bryan. He was acting as attorney for Pierce of the Waters-Pierce Oil Co., a subsidiary of the Standard Oil company, endeavoring to defeat the efforts of the state of Texas in its attempt to take Pierce back to the state in order to try him for violating the anti-trust law of that state. Roosevelt would have Mr. Bryan's statement include the imprisonment of the defendant's attorney for his client's criminal act. If the attorney should be compelled to go to jail along with his client upon the latter receiving sentence, the business of the criminal lawyer would surely be extra-hazardous.

The Journal also correctly says that the interests decided the election of 1896, it might also add that of 1900. The railway companies of the country were as effective in 1896 in securing our defeat on account of the anti-injunction plank as were the banks. The will of the people was stifled in both these campaigns by the use of the interest's boodle.

In the present state of the public mind it is to be hoped that the democratic party shall not be compelled in 1912 to try over again the disastrous experiment of 1904, that of nominating a candidate to please the interests. If it should, the verdict against it will be even more pronounced. JOHN C. L. PUGH.

WILL YOU JOIN IN THE EFFORT TO INCREASE THE COMMONER'S CIRCULATION FOR 1912? TAKE IT UP AT ONCE WITH YOUR NEIGHBOR.