What possible objection to it is there that does not apply with greater force to the present method? Bond dealers need not answer. We are not asking them. No farmer when building a hen house consults the fox, the weasel or the hawk about its architecture, although any of them may be better poultry experts than he. We put these questions to the school teachers of the country who appear now to have broken up the ring that has so long dominated their organization, and to the parents of public school children who are not dealers in school bonds nor otherwise financially tied up with special interests.

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Housekeeping and Woman Suffrage.

Dr. Harvey W. Wiley is quoted as saying that it would be easier to get pure-food laws enforced if the mothers and housekeepers of the nation had a right to vote. Another important issue between Dr. Wiley and President Taft.

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JUDICIAL USURPATION.

It is to be hoped that the action of the President in vetoing the bill to admit New Mexico and Arizona as States, because the Constitution of Arizona contained a provision by which in the circumstances named therein judges might be recalled at any time during the terms for which they were elected, will awaken the people of this country to the grave danger that menaces our republican institutions—a danger growing out of the usurpation of power by our courts, and especially the usurpation of power by the Supreme Court of the United States.

The Constitution of the United States provides for the establishment of one Supreme Court and clearly defines its powers. Nowhere does it appear that the Supreme Court has the power to declare an act of Congress void. Indeed, on four separate occasions during the Constitutional Convention, resolutions were introduced to give the Supreme Court this power, and on each occasion the resolution was overwhelmingly defeated.

That the Supreme Court has been constantly usurping power and encroaching on the domain of the remaining co-ordinate branches of our system of government is apparent to any one who has made a study of the rise and development of our judicial system.

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At the February Term of 1800, Mr. Justice Chase in the case of Cooper vs. Telfair said: "Although it alleges that all acts of the legislature in direct opposition to the prohibitions of the Constitution would be void, *yet it remains a question where the power resides to declare it void.*"

In 1801, when Chief Justice Marshall came to the bench, he arrogated to the Supreme Court the right to declare void acts of Congress and of the legislatures of the several States in contravention of the Constitution of the United States, and this right has been asserted for over one hundred years without the sanction of law or of the Constitution. His decision was rendered in the early part of Jefferson's administration, and grew out of the appointment of some Justices of the peace for the District of Columbia whose commissions had been made out under John Adams's administration but were not delivered.

Years afterwards (in 1820) Mr. Jefferson, in a letter to Mr. Jarvis, said: "It is a very dangerous doctrine to consider the judges as the ultimate arbiters of all Constitutional questions. It is one which would place us under the despotism of an oligarchy. The Constitution has erected no such single tribunal, knowing that to whatever hands confided, with the corruption of time and party, its members would become despots. It has made all of the departments co-equal and co-sovereign with themselves."

Again, in 1821, in a letter to Hammond, Jefferson used this language in commenting on the Supreme Court of the United States:

"It has long been my opinion that the germ of dissolution of our Federal government is in the Constitution of our Federal judiciary—an irrepressible body, for impeachment is scarcely a scarecrow, working like gravity by day and night, gaining a little today, a little tomorrow, and advancing in its noiseless step like a thief over the field of jurisdiction."

Mr. Jefferson's prophecy of ninety years ago has been fulfilled. "Advancing with noiseless step like a thief over the field of jurisdiction," the Supreme Court has at last arrived at the stage where it arrogates to itself the right to usurp the law-making powers of Congress and to change the laws after Congress has refused to do so.

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A few days ago Senator LaFollette denounced the Supreme Court of the United States for its decision in the recent Standard Oil case in the following words: "The Supreme Court has amended the Sherman act. It matters not that Congress for years refused to change this law. The Court has done it and made it apply to *'unreasonable* restraint of trade.' It is a clear case of

usurpation of power by the Court. . . . . The Court has yielded to the importunities of those who wanted the act amended and have changed the law after Congress has refused to do so."

Senator Nelson, chairman of the Senate judiciary committee, in commenting on a bill before the committee looking to an amendment of the Sherman act so as to make it apply only to cases of unreasonable restraint of trade, made the following report to the Senate: "To inject into the act [the Sherman act] the question whether an agreement or combination is reasonable or unreasonable would be to render the act as a criminal or penal statute *indefinite and uncertain* and hence to that extent utterly nugatory and void, and would practically amount to *a repeal of the act itself*. . . . . The act as it now exists is clear, comprehensive and highly remedial. It practically covers the field of Federal jurisdiction and is in every respect a model law. *To destroy or undermine it at the present juncture, when combinations are on the increase, and appearing to be as oblivious as ever of the rights of the public, would be a calamity.*"

Congress refused to amend the Sherman act in the manner proposed, because to do so would be a calamity. Yet that calamity has happened. The act was amended by the Supreme Court of the United States in the Standard Oil decision. They are openly charged on the floor of the Senate with having *"yielded to the importunities of those who wanted the act amended and have changed the law after Congress refused to do so."*

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Instead of precipitating a revolution as one might naturally expect when one of the co-ordinate branches of our government usurps the functions of another branch in a matter of vital importance, the matter seems to be viewed by the people of the country with indifference. The fault lies in the fact that we have millions in this country who live solely for gain and comfort and would prefer a servile peace to a struggle for independence. Quite as helpless as a decadent Roman senate that "discussed vain abstractions while the battering rams of the Barbarians thundered at the gates."

Why this adoration of judges and blind obedience to the decrees of our courts?

It has its genesis in the origin of our judicial system. The administration of justice was a part of the royal prerogative. The king was the *fons et origo* of all justice.

In a primitive state of society the king administered justice in person. In the protosocial stage the chief or head man of the tribe doubtless dealt out such remedial measures, *vi et armis*, as to his savage mind seemed meet and just in the premises.

With the development of our social system the burden of administering justice in person became too arduous, and we then find that authority to do so is delegated to some official of the king's household, but always under the direction and sanction of the king. With the lapse of years we find a body of men specially trained for this work, and they finally usurp the prerogative itself and administer justice in direct opposition to the royal will. In the language of biotic evolution, this offshoot from the royal prerogative soon absorbed the largest bundle of fibro vascular tissues and the parent stock soon atrophied, so that the king today is in happy disability to do injury to the meanest of his subjects.

The offshoot grew and flourished and when transplanted in this country became a power that transcends all the other powers of our system of government and bids fair to absorb them as it absorbed the main stock of royal power.

It is axiomatic that development always follows the line of the germinal impulse. The exploded idea that the king can do no wrong has survived down to our day out of a past age in slavish obedience to the decrees of our courts, and the investing of the courts with that divinity that doth hedge about a king. The *ipse dixit* of the Court has been substituted for the royal will. The law of the land is no longer the will of the people expressed through their properly accredited representatives in Congress; the law of the land is in the mouth of the Supreme Court, and there is nothing basic, nothing fundamental, that will control them.

They have overridden the Constitution. They are irremovable. Their appointment is practically for life, and in a manner they are segregated from the great body of the people.

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The danger becomes more apparent when you consider the manner in which our Federal judiciary is selected.

They are appointed by the President—practically for life. The history of the Federal judiciary for the last fifty years shows that the judges are almost uniformly selected from among those lawyers who have gained repute by the adroit manner in which they have handled the business of large corporations. In the last analysis men are governed by their unconscious, inarticulate prejudices. The prejudices engendered by years

of servile attention to corporate interests, as against the interests of the people, tend to seduce the mind from the straight and narrow path that leads to justice. Thus we find the judiciary, under the tutelage of corrupt lawyers, ever ready to crucify the people to satisfy corporate greed.

It has been suggested that there is no need to provide for a recall, in that there is a full and adequate remedy by impeachment. Thomas Jefferson has said that impeachment is scarcely a scarecrow. It certainly falls far short of providing a remedy. In an impeachment proceeding a conviction is practically impossible. But on a recall it rests wholly with the people. They are the ones who are the most concerned and they should have the right to employ and discharge for reasons that seem sufficient to them. The people will judge their judicial servants by the character of their work.

It would be impossible to sustain an impeachment proceeding based upon the decision of the Supreme Court in the recent Standard Oil Case; yet we find them openly charged on the floor of the United States Senate with having usurped the power of Congress and amended the Sherman act when Congress refused to do so, and in so doing with "having yielded to the importunities of those who wanted the act amended."

At the time that decision was rendered the judges of the Supreme Court were well aware of the efforts that had been made to induce Congress to amend the Sherman act, and well knew that Congress had persistently refused. Yet eight out of the nine Justices voted to amend the law when they concurred in the decision in that case—voted to amend the law in open defiance of Congress. The Supreme Court has itself ravished the "ark of the covenant" and with sacrilegious hands has broken the tables of the law.

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The ideals of liberty which we have set up for ourselves have vanished with the first touch of reality. We are no longer consumed with theoretical aspirations for liberty, but are disenchanted by the hard conditions that our liberty brings.

In making the provision in their Constitution providing for a Recall the people of Arizona were but pointing the way for others to follow—a way that it is sincerely hoped will relieve us of the threatened judicial usurpation. When our courts learn that they are but servants of the people, when they learn that a swift and sure judgment will be visited upon those who are unmindful of the interests of the community, they will have greater care and we shall witness less of that arbitrary power that has been a standing disgrace to our judicial system. An honest judge has nothing to fear from such a provision. It is only the corrupt judge, elected to safeguard special interests, who need fear it.

The President has referred to the proposed provision as a "legal terrorism." Be that as it may. But viewed in the light of its constant aggression, "advancing with noiseless step like a thief over the field of jurisdiction," the action of our judiciary looks in the last analysis like treason.

Let us take heed lest the day of well meant reforms be past and the evil go so deep as to be beyond the power of any man to find a peaceful remedy, and we are confronted with an imposing army of anarchy, with hunger for the propelling power, carrying fire and the sword into the sanctuaries of the law.

JOHN FREEMANTLE.

INCIDENTAL SUGGESTIONS

CONGESTION OF POPULATION IN NEW YORK.

New York, Sept. 2, 1911.

Your editorial on "Hostile Testimony to Single-tax Progress," in The Public of September 1 at page 893, gives me undeserved credit for leadership in the movement for the relief of congestion in New York City. This is a popular movement, and uniquely popular is the proposal to reduce the tax-rate on buildings.

As bitter an opponent of the movement as Mr. Allan Robinson, President of the Allied Real Estate Interests, has said that if put to a vote of the people, the halving-of-the-tax-rate-on-buildings bill would be adopted. The following list of organizations which have endorsed this bill indicates the basis for Mr. Robinson's conviction:

Brooklyn Central Labor Union.
Tenants' Union of New York.
The Federation of Churches.
The Wyckoff Heights Taxpayers' Association.
The South Brooklyn Board of Trade.
The City Club of New York.
The Citizens' Union of the City of New York.
The People's Institute.
The Women's Trade Union League.
The Church Association for Advancing the Interests of Labor.
The Neighborhood Workers' Association.
The East Flatbush Taxpayers' Association.
The People's Forum.
The Committee on Congestion of Population in New York.
The United Hebrew Trades.
The Central Federated Union.
The New York State League of Savings & Loan Associations.

It is of paramount importance that this question be recognized as a moral issue, and the following