son's "terrible beast" and it was a chipmunk. The "Terrible Teddy" is a good deal of a chipmunk, after all. Dr. Blount's adjective fits him best. He is "Tepid Teddy" when you look him in the eye.

Politics and the Aldrich Bill.

In commending the Aldrich currency bill, President Taft says he has no fear that anybody can play "politics" with it. Whenever it is proposed to keep politics out of public measures, we are reminded of the white man's story about the trustee of a colored church in "the poultry belt," who hinted to the minister that he had better preach "religion pure and undefiled" and "let this 'ere chicken-coop business alone." What the people want most to know about the Aldrich bill is its "chicken-coop" features. Its omission of "politics" won't excuse the "poultry" opportunities it seems to offer to the privilege-hunting banker crowd.

THE RECALL OF JUDGES.

By overwhelmingly adopting the judicial Recall, California reiterated the opinion of Oregon and Arizona, that judges should be popular representatives, Mr. Taft's assertion to the contrary notwithstanding. The people of those States feel that the independence of the judiciary has absorbed so much attention that now it may not be impertinent to devote some to the independence of the electorate. There truly appears to be more or less justification for such a change when it is remembered that during the seven years from 1902 to 1908 the respective supreme courts of the different States declared not less than 468 statutes unconstitutional.

Most of those decisions were in States having progressive legislatures. The respective supreme courts of the six New England States in that seven years invalidated only 16 laws. Certainly, the fewness of the laws there declared unconstitutional cannot be attributed to the radicalness of the courts. It can be explained only on the ground that the legislatures were extremely conservative. In the same seven years the courts of six States of the Middle West—Missouri, Nebraska, Illinois, Indiana, Michigan, and Minnesota—invalidated 131 laws; more than eight times as many as were nullified in New England. It is hardly to be supposed that Western judges are more presumptuous than Eastern ones. The explanation must lie in the more liberal legislation of those Western States. Governors like Folk, Deneen, and Johnson pushed through the legislatures laws that were not tolerated by the courts. In Illinois alone 33 were proscribed—the highest number in any State of the Union in those seven years.

In two States, Big Business did not have to resort to the judiciary. The legislatures of Rhode Island and Delaware have been so completely dominated by the "machine" that no recourse to judges was necessary.

The number of laws declared unconstitutional in Oregan stands in marked contrast with the number so disposed of in California and Washington. The last two States had respectively 26 and 27 laws annulled by judges, whereas but 7 have so fared in Oregon. Yet Oregon for the past decade has been adopting more and more radical laws. Evidently the temper of the Oregon people has strongly influenced the judicial mind in that State. Big Business, in order to protect its vested rights in Oregon, will have to carry its cases to national tribunals.

The accompanying table, which has been compiled from bulletins issued by the New York State Library, shows the number of laws declared unconstitutional for a period of seven years by the respective courts of the different States. But it does not show the equally tremendous, if not superior, influence wielded by the judiciary on the character of our institutions by paralyzing legislation. The many laws that would have been enacted, the laws, so to speak, atrophied in the germ because of a probability of judicial veto, and the innumerable laws distorted and emasculated in the framing so as to meet judicial approval, do not lend themselves to statistical tabulation. The table as it is, however, is a commentary upon judge-made law. It indicates the impotency of popular government under such a system. Read it and think about it:

Number of Statutes Declared Unconstitutional by the Highest Courts of the Respective States in Seven Years.

	1902..	1903..	1904..	1905..	1906..	1907..	1908..	Total.
Alabama	..	..	..	1	1	..	..	2
Arkansas	2	..	1	2	3	1	..	9
California	5	3	3	1	8	4	2	26
Colorado	..	..	..	..	..	2	2	4
Connecticut	..	..	..	..	1	..	..	1
Delaware	..	..	..	..	..	..	..	0
Florida	..	2	..	..	2	2	..	6
Georgia	2	..	..	..	1	1	..	4
Idaho	..	..	3	..	2	..	..	5
Illinois	6	2	5	2	6	6	6	33
Carried over	15	7	12	6	24	16	10	90

Brought over....	15	7	12	6	24	16	10	90
Indiana	4	5	4	2	..	4	2	21
Iowa	1	..	3	..	..	1	..	5
Kansas	2	2	6	2	2	1	..	15
Kentucky	5	..	..	1	2	5	..	13
Louisiana	3	..	2	3	1	2	2	13
Maryland	1	..	1	1	2	1	..	6
Massachusetts	..	..	..	..	1	3	..	4
Michigan	3	1	..	3	4	4	1	16
Minnesota	1	1	3	4	1	2	3	15
Mississippi	..	2	..	..	2	3	..	7
Maine	..	1	..	..	..	1	..	2
Missouri	2	5	2	2	5	2	5	23
Montana	1	2	2	..	6	1	1	13
Nebraska	2	2	4	5	7	2	1	23
Nevada	1	..	..	..	1	1	1	4
New Hampshire....	1	..	..	1	..	..	..	2
New Jersey.....	2	1	1	3	2	4	..	13
New York.....	2	2	1	2	4	5	1	17
North Carolina.....	..	..	3	2	1	..	..	6
North Dakota.....	2	1	..	..	2	4	2	11
Ohio	3	3	1	2	3	1	1	14
Oklahoma	..	..	..	1	..	2	1	4
Oregon	..	..	2	..	3	2	..	7
Pennsylvania	1	1	1	1	2	..	2	8
Rhode Island	..	..	..	..	..	..	..	0
South Carolina.....	2	1	1	1	1	3	..	9
South Dakota.....	..	1	1	2	3	..	3	10
Tennessee	2	1	2	..	3	2	2	12
Texas	4	1	..	2	3	5	2	17
Utah	2	..	2	..	..	3	1	8
Vermont	1	1	1	..	3	1	..	7
Virginia	..	1	..	..	2	3	..	6
Washington	3	..	1	6	8	6	3	27
Wisconsin	5	2	1	..	2	2	2	14
Wyoming	..	..	..	..	1	..	..	1
West Virginia.....	..	1	1	..	..	1	2	5
Total	71	45	58	52	101	93	48	468

What those who believe in a more responsible judiciary most desire is a complete redefinition of the powers of the judicial department, taking away its prerogative to declare statutes unconstitutional and remanding it to the simple administration of purely judicial functions.

This would leave the legislature the supreme arbiter in all political questions, just as it was previous to the development of the judicial veto, and just as it is in Great Britain yet.

The power of declaring statutes unconstitutional was not granted by the early State Constitutions to the judiciary. This prerogative was first exercised by the Rhode Island court in the case of *Trevett v. Weeden*, in 1786. That it was usurped is plainly proved by the fact that the Governor speedily convened the General Assembly in extraordinary session to impeach the judges. Although impeached, the judges were not removed, the legislature graciously permitting them to hold office until the end of the year, when their term expired. At the expiration of the year, however, they were not re-elected.

In defending the court's decision, one of the judges, Justice Tillinghast, said: "The opinion I gave upon the trial was dictated by the energy of truth: I thought it right—I still think so. Be it as it may, we derived our understanding from the Almighty, and to Him only are we accountable for our judgment." Here we have the old doctrine of "divine right" of kings reasserted in behalf of judges.

And upon that doctrine the defense of judges against the Recall rests today. Since the Rhode Island case, the American judiciary, it would seem, has held itself responsible to the Almighty alone, and responsibility to Him has been construed against electorates. This condition finds a defender in President Lowell, who in his "Essays on Government" at page 124 says: "If it were the duty of the courts to give effect to the wishes of the people upon Constitutional questions, our government would be a truly absurd one." But is it the duty of the courts in a democratic government to thwart the law-making power of the people?

Since the judiciary, as it is now constituted, is in actual effect a political body, and, moreover, a political body which sympathetically is not in agreement with the vast majority of electors, there seems to be no logical reason whatever why the Recall should not be applied to judges as well as to legislators and executive officials. All policy-making officials must in a democracy be directly responsible to the people. Policy-executing or administrative officers, if amenable to the policy-making ones, need not be made liable to Recall. They are responsible to the people through the legislature. If judges, then, were to be deprived of the prerogative of passing upon the Constitutionality of laws, there would no longer be any valid argument favoring even their popular election, much less their Recall.

HERBERT S. SWAN.

EDITORIAL CORRESPONDENCE

"STATE O' MAINE."

Skowhegan, Me.

Substantial achievements in line with Singletax are much nearer in Maine than the casual observer might suspect. The political landslide of 1910 has forced even the Standpatters to admit that something in the economic situation is wrong, and the disciples of Henry George who are upon the ground are seeing