The Public

**A National Journal of Fundamental Democracy &
A Weekly Narrative of History in the Making**

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Vol. XV. CHICAGO, FRIDAY, JUNE 14, 1912. No. 741.

Published by Louis F. Post
Ellsworth Building, 537 South Dearborn Street, Chicago

Single Copy, Five Cents Yearly Subscription, One Dollar

Entered as Second-Class Matter April 10, 1898, at the Post Office at Chicago, Illinois, under the Act of March 3, 1879.

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EDITORIAL

Advisory Recall for Federal Judges.

When President Taft compelled the people of the Territory of Arizona to strike the judicial Recall out of their proposed Constitution as a condition to their admission to Statehood, he set them a-thinking further. The result is that the Arizona legislature has not only placed before the people of their State a proposal to re-insert the judicial Recall for State judges but has enacted an Advisory Recall for Federal judges. The latter is unique. Yet the people of other States may find it worth adopting as a check upon the Presidential creation of judicial gymnasts like Judge Hanford.

The Arizona bill provides that—

a popular petition of 15 per cent shall require the submission to popular vote of the question of requesting the resignation of a District Judge of the United States for the District of Arizona, the petition to set forth the reasons in not more than 200 words; that on the same ballot, but separate from the question, there shall be placed the names of as many candidates for successor to such judge as shall have been proposed by 5 per cent petitions; that if the Recall of the sitting judge is favored by a majority vote, the result shall be officially transmitted to the President and the Senate of the United States, along with the name of the candidate receiving a majority of the votes as that of the person recommended in case the office becomes vacant by resignation or otherwise.

The same law provides that—

in case of vacancy on the United States District

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Court bench for Arizona, otherwise than in consequence of the Advisory Recall, a direct primary election may be held for the purpose of recommending a successor by popular vote; that for this primary, nominations may be made by 5 per cent petitions; that candidates may file statements prior to the primary to the effect that if appointed they (1) will resign whenever so requested by the people under the Advisory Recall, or (2) will not resign if so requested, such statement to be officially published and to appear upon the ballots under the names of the candidates respectively; and that the voting shall be by a preferential system insuring majority nominations.

This unique measure appears to derive its popularity in Arizona immediately from the fact that President Taft, in the interest of the Interests, has nominated ex-Governor Sloan for United States District Judge. Should Mr. Sloan be confirmed by the Senate at the present Congressional session, an Advisory Recall will be a feature at the November election; should he not be confirmed, a recommendatory primary will be substituted with reference to the vacancy; should he get a recess appointment, his name will go on the primary ballot with those of other candidates. So a practical use of this Arizona novelty for throttling the Interests that swarm about the Presidential chair when "good" judges are wanted, is pretty certain to be tried practically, one way or another, in a few months. Advices from Arizona are to the effect that if Mr. Sloan is confirmed, the popular request for his Recall (strictly for his resignation) will be carried by 10 to 1, and that if he has a recess appointment he will be at the bottom of the primary poll. The questions thus sought to be raised may be directed at a sitting judge: "Will you continue to judge the people after they vote that they have no confidence in you?" or at the President of the United States: "Will you ignore the wishes of the people of a whole State by appointing over them a judge in whom they declare that they have no confidence?"

The Judiciary.

In the June number of that excellent publication, the Illinois Law Review, Albert M. Kales makes a convincing argument for a reformed judicial system. In most respects his suggestions are manifestly good ones. The whole plan would be good, in its general features at any rate, if it were not that one of these might fasten a judicial oligarchy upon the State or the nation adopting it. Escape from the despotism of absolute monarchy would in contrast be child's play. Concentration of authority is good when coupled with powers of popular Recall or other popular control; without those powers it is reactionary. This reactionary mistake is one that advocates of "the short ballot" often make. The people are not disposed, and they are right in this, to substitute appointments for election, if thereby they may lose control. In the readiness with which the "short ballot" idea is accepted in municipal charters providing for the Initiative, Referendum and Recall, and the infrequency with which those powers are invoked, there should be instruction to "short ballot" advocates and to all other protagonists of concentration of official responsibility.

"Kissing the Bible."

Ridicule of the Canadian courts for rejecting the testimony of a witness who refused to "kiss the Bible" but offered to testify on his word of honor, may be misplaced. Paganistic as are "kiss the Bible" formalities in courts of justice, and out of date though it is to depend upon superstitions of witnesses as guarantees of their veracity, the Canadian courts may be in the right with reference to modern theories. If we no longer depend upon superstitious fears to prevent false witness, we do depend upon fears of temporal punishment for perjury. But in order to punish perjury there must be some formality to distinguish perjury (which is lying as a witness in legal proceedings) from lying of the "common garden variety." The mere fact that the liar is on a witness stand ought to be formality enough, of course; but under existing laws, those of Canada for instance, that may not be enough. If witnesses are still required to "kiss the Bible," and if this is the only formality to lay the basis for temporal punishment for perjury, then there is nothing ridiculous in a judge's refusing to allow a witness to testify without "kissing the Bible." Under those circumstances, to accept a witness on his word of honor would be to license him to lie at will and yet escape conviction for perjury. Judges have sins enough of their own to bear without being saddled with those of legislators.

Impeaching Judge Hanford.

What the judiciary committee of the House of Representatives will do with Congressman Berger's charges against Judge Hanford of Seattle we shall know after a while. It may whitewash that judge at the start, or it may impeach him, which, tested by past cases, would mean sending his case up to the Senate for a whitewash. Mean-

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