the penalties of criminal law, as Justice Brewer describes it. It is a device that originates not with the people but with the judiciary; one which has been adopted contrary to custom, even judicial custom, and without statutory sanction; one which enables judges to enact special legislation in their own discretion for each case as it comes before them; and one which deprives persons falsely charged with wrongdoing of at least five elementary rights—the right to an inquiry by a grand jury, the right to be confronted in open court with hostile witnesses and to cross-examine them, the right to know in advance the penalty they incur, the right to trial by jury, and the right to be tried only once for the same wrong.

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When a Justice of the Supreme Court sanctions a judicial revolution which involves the abrogation of such rights, especially when that Supreme Court Justice is on record in an address before another bar association some years ago, as having urged the future importance of the judiciary to the privileged classes as their protection against hostile legislation, the progress of government by injunction may fairly be regarded with even more alarm than its own inherent iniquity might warrant. What may be the limit of judicial usurpation? becomes in those circumstances a burning question. If the judiciary may so far depart from its legitimate function of interpreting and applying the laws that the people enact through their law-making representatives—if it may depart from that function so far as to set aside the very fundamentals of laws so sanctioned and to enact a new system to suit its own ideas of what the new times need, then how far in the way of usurpation may it not go? Verily that was long-sighted and wise advice which Jefferson gave to his countrymen when he warned them, over a hundred years ago, that it is of the nature of courts to draw autocratic power to themselves.

In further verification of Jefferson's warning, we are beginning to find that no sooner has the judiciary assured itself that the outcry against government by injunction "will spend itself," than it proceeds boldly to draw to itself further power through receiverships. Originally receiverships were innocuous devices of chancery practice for the purpose of conserving and distributing imperiled funds. They were not intended to involve the courts in the management of businesses. But step by step the receivership function has been extended, until now all manner of businesses are managed indefinitely by the courts,—an evolution which socialists very properly welcome as socialistic. This reaching out for judicial power has gone so far in one direction that the Supreme Court of New York has actually managed a notorious brothel through receivers (unknown to the court, to be sure, though not to the receivers), while in another direction the courts are grasping at the governmental powers of legislation and administration. Now all this extension of judicial authority may be needed by the changed condition of the times. We are not discussing that aspect of the question. The point we wish to emphasize is that if necessary it is an authority that ought to be conferred upon the courts by the people, and not one which the courts should be permitted to wrest from the people.

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One of the great evils of this lawless acquisition of power, not to mention any of the others, is the popular discredit it tends to throw upon the courts. So long as judges are impartial, the courts can command popular confidence. But popular confidence for any court whose judges apparently have a one-sided interest—whether from pride of management, or the influence of personal associations, or economic considerations, or what not—in the decision of contests litigated before it, is simply out of the question with an intelligent people. Intelligent men may for personal reasons profess great respect for courts whose judges are thus interested, but they never feel it. The judges themselves must sometimes experience a creepy sensation regarding their own impartiality in cases like that. It is of the utmost importance, therefore, that judges should not have their interests tangled up in questions they have to decide. Yet receiverships of great businesses, especially those which own or claim to own property rights in derogation of public rights, are calculated, as such receiverships are now managed, to make just this entanglement, and consequently to undermine confidence in the impartiality of the judiciary. It is not in human nature for any judge to be the responsible manager of a great business system claiming important property rights in derogation of public rights, and yet command public confidence as a judge with reference to his decisions in favor of that business. It is too much like being a judge in his own case. This is the position, however, of every judge who directs a business of that kind through receiverships.

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A striking instance in point is the present plight of Judge Peter S. Grosscup, one of the judges of the Circuit Court of the United States. Judge Grosscup has appointed receivers in a street railway case. The case is notoriously collusive. It was instituted by foreign creditors of a street railway monopoly in Chicago under an arrangement with the owners, a local corporation, for the ostensible purpose of conserving assets of the corporation for the benefit of the creditors, but for the real purpose of forcing the city of Chicago into the Federal courts on a question regarding local street franchises between itself and the local corporation. The suit is manifestly for the benefit of the local corporation. When Judge Grosscup appointed the receivers he became himself the conservator of those franchise interests which the city contests; and in every act he has taken

in the matter since, he has been forced into the apparent position, in the public eye, of a judge in his own case.

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How is it possible with any man, be he never so discreet, that the people should not feel dubious of the impartiality of his advice and decisions in support of franchises of which he may thus have become conservator? Some men may be able to serve two masters, but popular faith in agility of that kind is not profound. It is to be noted, moreover, that as to Judge Grosscup, he has not been over-discreet in dealing with this delicate juxtaposition. As conservator of the Chicago street car systems, he has disclosed an appearance of enthusiasm for the interests in his charge, and of indifference for those in conflict with them, which cannot fail to disturb confidence in his judicial impartiality. For instance, in giving exparte advice to the receivers (p. 229) as to the constitutionality of the street franchise in dispute, Judge Grosscup said that the objections "do not merit space for statement, much less for discussion." This is not calculated to reassure a doubting people, when they learn the facts. For the franchise in question was conferred by a private and local law of the legislature, it embraced more than one subject, neither subject was expressed in the title, and this law was enacted under a State constitution that forbade the passage of any private or local law which embraced more than one subject or which failed to express its subject in the title. There may possibly be room for discussion in support of the constitutionality of a law of that kind, under a constitution of that kind; but there is none for an off-hand retort to the constitutional objections which are raised, that they are not only not worth discussing but are not worth stating. It would at least be difficult to avoid the conclusion that a judge who makes this retort has got his impartiality as a judge tangled up in his interests as a conservator.

If there were no other objection to government by receivership, the unwholesome effect it has had upon judges, and the discredit it has tended to cast in the public mind upon their impartiality as a class, would be enough to condemn it. Being only men, judges are too apt, when they are thus forced into acting for one party to a controversy and deciding for both, to get the case into the shape that the distinguished Judge David Davis hinted at when the defendant in a case before him asked an adjournment on account of the absence of his lawyer, and the plaintiff's lawyer opposed the adjournment. Turning to the plaintiff's lawyer, Judge Davis said: "Mr. Smith, if you won't consent to an adjournment the trial will have to go on; and as the defendant has no lawyer, the court will be obliged to look after his interests. Now there was just such a situation in the last county I sat in. The plaintiff insisted on going to trial, although the defendant had no lawyer; so the court kept an eye on the defendants interests. And, do you know, Mr. Smith, we beat the plaintiff in that case." In less degree, perhaps, the same demoralizing effect that is produced through government by receivers upon the judiciary and upon public confidence in it, is also produced through government by injunction. When judges make their own law, apply it in their own way, try accusations under it according to their own standards, fix penalties to suit themselves, and all without other legal sanction than judge-made law and in total disregard of constitutional safeguards, they very easily fall into a line of conduct which fairly brings their impartiality under suspicion. Let that happen and the usefulness of the judiciary is practically at an end. This suspicion has already become so general in the United States, under the regime of government by injunction, that no one any longer expects impartial decisions in labor injunction cases. Workingmen do not, and they are mad about it; employers do not, and they are glad of it. The demoralizing effect is the same in either case.

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In such circumstances it is peculiarly gratifying to be able to name a Chicago judge who suggests a better course with reference to public disorder in connection with labor controversies. In charging the Cook County grand jury on the 20th, Judge Edward Osgood Brown called that body's attention to the reports of intimidation and rioting which the local newspapers have been exploiting for several days in connection with a labor strike. Judge Brown instructed the grand jury not in what he thought the law ought to be, but in what it is as the people have sanctioned it; and he advised them to make an investigation into the truth of the reports of disorder and to indict guilty parties. This is the orderly and lawful course. If there has been public disorder, the grand jury is the proper body to bring it formally to the attention of the criminal court. If that body indicts any persons, their guilt can be determined in an orderly and lawful way. They will be confronted by the witnesses against them and be free to cross-examine them; they will be tried by a jury; the law will be that of the people and not the judge-made article; if found guilty they will be punished as the law has prescribed in advance; and they will be immune from further prosecution for the same offense. This mode of procedure is calculated to strengthen public confidence in the courts instead of weakening it.

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Judge Brown's charge to the grand jury has been distorted by the agents and detectives of employers' unions so as to make him appear to have advised indictments of trade union leaders for conspiracy. This is a suggestion of an old trick; namely, the prosecution of workingmen who organize or who lead in organizations with a lawful purpose, for the unlawful and unauthorized acts of others in the organization or in mobs out-