

The Public

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

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Vol. XIV.

CHICAGO, FRIDAY, FEBRUARY 24, 1911.

No. 673

Published by Louis F. Post
Ellsworth Building, 357 Dearborn Street, Chicago

Single Copy, Five Cents Yearly Subscription, One Dollar

Entered as Second-Class Matter April 16, 1893, at the Post Office at
Chicago, Illinois, under the Act of March 3, 1879.

EDITORIAL

Graft.

"One of the most remarkable things about graft is the eminently respectable pockets that it finds its way to." Judge Lindsey invented the statement, but he did not invent the fact. The owners of the pockets did that.

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President Roosevelt's Latest Feat.

In the second of a series of articles in *The Outlook*, the one in the issue of January 21st, ex-President Roosevelt assents to the proposition of the Initiative, Referendum and Recall—"at least in principle." His discussion of the subject makes you think of a bow-legged man of no previous gymnastic experience trying to walk a tight-rope without a balancing pole, and by some miracle succeeding.

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Judicial Powers in Law-Making.

The judicial issue in American politics (p. 146) was rightly stated by Frank J. Loesch, one of the leaders of the Chicago bar, in a professional address on the 16th before the Illinois Bar Association. Referring to the Referendum as intended now to apply only to legislation, Mr. Loesch said:

But courts make law as well as declare it. What is to hinder, as the next logical step in democratic progress, having a Referendum on opinions and judgments of the Supreme Court upon politico-legal questions? Or, if this is too great a stretch of the

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imagination, we can have a practical question in the Recall.

What is to hinder? Only one thing. And that? A reversal of the judicial policy of overruling people's laws. The courts must take themselves out of politics. Mr. Loesch evidently had this alternative in mind in asking his question, for in his enumeration of the causes of discontent with the judiciary, he defined one of them as "the political power vested in our courts."

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No desire or purpose to interfere with legitimate judicial functions has or ever will inspire any popular demand for a Recall for judges. Let the courts limit their decisions, not only professedly but actually, to applying the people's laws to particular controversies, and the public mind will be content with any plan for the appointment and tenure of office of judges that tends to secure the best judicial service. But so long as the courts continue to *make law*, they perform political functions and must be subject to political control,—which in a republic means people's power. That is to say, if judges are to continue making laws, their office must be an elective office, and they must be subject to recall like any other law-makers. Better incompetent judges who make good laws, than able judges who make bad laws.

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Nor alone as matter of public safety must law-making judges be under popular control; they soon will be, as matter of historical probability. We have seen how the attempt to keep our Presidential office out of politics by means of the Electoral College has resulted; we may see a similar result from letting the Supreme Court into politics. We are seeing how futile in the long run the effort was to put the election of Senators outside of people's rule; we may see how futile in the long run the effort was to substitute Supreme Court decisions for people's rule. What the extra-Constitutional nominations for President were in making an empty formality of Electoral College functions, and the Oregon plan has been in making an empty formality of the legislative function of choosing Senators, so may the Recall—yes, even the Referendum—come to be with reference to law-making by the courts.

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Gentlemen of the bar—you who plead with the people to hold the judicial office sacred, to respect judges in office, to bow to the decisions of the courts as oracular—you are answered by one of your own leaders, one who has analyzed and re-

flected as some of you have not. Divest the courts of political power, and your pleading shall not be in vain. Under no circumstances should courts be sacrosanct, but as arbitrators in litigations even their errors are better than perpetual private warfare. For that reason they and their decisions should be respected—rationally, not superstitiously. But vested with political power, so that their decisions may repeal laws made by the people and make laws to which the people are opposed, they become absolute governors of the Republic. In that capacity they must be subject to all the safeguards against the despotism that always springs from concentrated power, to which any other political department of republican government is or may be subjected. Take your choice, gentlemen: election and recall of judges, or relinquishment by the judiciary of all the law-making and law-repealing power it has assumed. The issue will not end with Arizona if she comes into the Union with her people's power Constitution; it will not vanish if President Taft ventures to keep her out of the Union.

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Annexation of Canada.

President Taft need not have been at the trouble of giving assurances that his reciprocity arrangement with Canada is not part of any plot for Canadian annexation. The vague notion on this side of the border, that Canadians are keen for annexation is without the slightest basis in fact. Nothing could in all probability be more abhorrent to the great mass of them. It is doubtful if a thousand votes for annexation could be got in all Canada.

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The inhabitants of British birth or descent, the descendants of the old loyalists (known over here as the "Tories" of our Revolution), and party Conservatives, all have their own unreasonable reasons; but they, in common with the Liberals and the radicals of every shade, and citizens of the United States who have become Canadian citizens, have also a reasonable reason. If all other objections to annexation were removed, Canadians would still be opposed to it because they regard the Canadian government as more democratic, more sensitive to public opinion, more completely subject to people's rule, than the government of the United States. And they are right. The Canadian government is more directly and immediately responsible to the people than ours. This fact alone puts political annexation out of the field of the possible, out of the field even of the debatable.

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Instead of a step toward political annexation,