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EDITORIAL

James R. Garfield on the Recall of Judges.

In a recent public letter James R. Garfield makes an answer, true and crisp, to the criticisms of the Recall for judges, one that should be considered with especial care. "The purpose of the Recall," he says, "is to provide a more ready method to get rid of the inefficient or crooked official. If that official be a Judge, the greater the reason for his removal. *There is no surer way to teach disrespect to courts than to keep such men on the bench.*"

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The Recall of Judges.

An upright and courageous lawyer of New York—one without its provincialism, too, for he knows that New York is provincial, and to have it called so doesn't disturb his serenity—draws the line for democracy on the thither side of the judicial Recall. Our allusion is to John Brooks Leavitt, whose thoughtful denunciations of labor injunctions fully justify our characterization of him. Not merely as an advocate in courts has he denounced this novelty in jurisprudence, but at lawyers' conventions and with a professional standing at stake and a profitable practice to lose. That takes both uprightness and courage; and when such a man earnestly objects to the judicial Recall, his objections deserve special consideration.

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Mr. Leavitt is evidently convinced that "the

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path to a better administration of justice does not lie" in the direction of the Recall, and the influence that convinces him is history. In his reading of history he finds that "the secret of a fearless, honest and upright judiciary is independence of the appointive power, whether that power be a King, a President, a Governor, a Boss or the people." But Mr. Leavitt has a question to answer here which he will not find as easy as his declared determination never to be open-minded on the subject of the judicial Recall. How can you make the judiciary independent of King, President, Governor or Boss, without making it dependent upon the people? Mr. Leavitt's fallacy lies in his identification with the people themselves, of representatives or agents who act in their name and with their power.



Like many others whose thought on this subject has not been *de novo* and painstaking, Mr. Leavitt, thinks of the people as supine under the bossism of their representatives. They have not been supine. In so far as they have appeared to be so, it has been because they have had neither the power of appointment nor the power of Recall—have had only a "grab bag" chance in choosing representatives and been hopelessly bound by the "draw" until the next election. Mr. Leavitt would be supine in his own law office if his freedom in choosing clerks and clients were half as much restricted as the people's in politics under the delegated type of representative government.



And, pray, does not Mr. Leavitt's argument against recall of judges apply as well to recall of other officials, and end in a total denial of popular suffrage? If judges are to be independent of the people's power of recall, why not legislators and executives? Because judges are better men? It isn't true. Wigs and gowns may make men look good, but they don't make them so. *Is it, then, because judges are good where they are independent of the appointive power, as in England?* If Mr. Leavitt believes this, let him read the long and circumstantial editorial in the *London Nation* of May 27, 1911, on "The Judges and Public Morals," which tells us of English judges that the "semi-deification of the Bench is over forever." To close one's mind to the reasons for the judicial Recall is to open it in turn to pleas for abolishing the election of judges by popular vote, and providing for their appointment by executives and legislators, for making the judicial office a life tenure, for abolishing the elec-

tion of the appointing officers, for giving the appointing officers life tenures, and finally for basing representative government upon the birthrights of what Lloyd George has called "the first of the litter." Mr. Leavitt is quite right in linking Recall of judges with recall of other representatives of the people; but when he says that "if the Recall as to administrative officers requires it for judges also, then I shall be an opponent of the one in order to prevent the other," he reasons backwards. It is as much as to say, "If judges must be representatives of the people by the direct and at any time reversible choice of the people, in order that administrative officers may be so, then I shall oppose direct and reversible choice of all representatives. Either that, or else the judicial office, unlike the administrative, is not a part of government of, by and for the people, but is in the nature of a sovereignty superimposed upon the people.



We suspect that Mr. Leavitt is worried about the judicial Recall by what worries most people most—the thing that never happens. The traditions of his professional education probably conjure up in his mind a recall by the defeated party to every lawsuit. Such efforts at recalling judges would be laughed down everywhere. We fear that similar efforts are not laughed down now, in the bank parlors and directors' rooms where judges are made—and recalled. For an equivalent of the judicial recall exists today in subtle forms, and the people have neither knowledge of it nor control over it. The real menace to a fearless, honest and upright judiciary is not the open Recall for which we stand, but the secret recall to which well-meaning men like Mr. Leavitt unconsciously lend their influence. It takes greater fearlessness, greater honesty, greater uprightness for a judge to make just decisions in the face of this menace, than in the face of hostile public opinion, even when public opinion is armed with the judicial Recall. The very judge who might only blanch at the latter and then do his duty, shrinks and shivers and goes to pieces at the former when once he understands its power to punish and its ability to reward.



Judicial Tomfoolery.

A critical reader of the *New York Tribune*, Edward J. Shriver, recognizes what may be an editorial joke, with this highly sensible comment upon a situation that is no joke: "One is tempted to suspect that your editorial on the Standard Oil