

The Democrat.

Official Paper of County and City.

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CARR, BRONSON & CARR,

Editors and Proprietors.

Subscription price, 1 yr in advance \$1.00

WEDNESDAY, NOV. 22, 1911.

THE MEASURE OF THE PEOPLE.

Under the above caption, Editor Murphy of the Telegraph-Herald, continues to argue in favor of the recall of judges.

Mr. Murphy asserts that those who oppose the recall of judges confer a lack of faith in the people; and, if that assertion is based upon either reason or fact, Mr. Murphy is correct, otherwise he is in error.

Never since he has attained the age of reason has the writer doubted the ability of the people of this country to wisely govern themselves, and he has no quarrel with his friend Murphy or anyone else on that subject.

The people of this country never have, do not now and we trust never will believe in the unqualified rule of a mere majority. They have wisely adopted constitutions, which mere majorities cannot change, and which place limitations upon the rule of mere majorities.

Those who oppose the judicial recall contend, that the advocates of the measure are endeavoring to give mere majorities the power to undermine and weaken constitutional government, not in one particular, but all along the line. They contend that the American people, after mature consideration and full discussion, will reject the proposed innovation with practical unanimity.

The space used by Mr. Murphy in criticizing foreign constitutions has little to do with the merits of the question under consideration. We are not pleading for the safeguarding of constitutions, other than those of our own country.

The constitution of an American state is the supreme, organized and written will of the people, and not an evidence of any lack of faith in the people. By an inspection and examination of all the constitutions of our country, they will be found to be nothing more than so many restrictions or limitations upon the departments of the government and the people. An overwhelming majority of the people of this country are attached to the principles contained in our constitutions, and regard them as the foundation of our national greatness, the fundamental rules of justice, and the guardians of individual liberty and opportunity.

While that is true, it is equally true that we have in our body politic a certain element which resents nearly every constitutional restraint upon the exercise of individual desires. That element is not alone opposed to the principles of our constitution, which places restrictions upon the desires of mere majorities, but also opposed to the fundamentals upon which every Christian religion is based.

The Great Law Giver, who wrote the Ten Commandments upon table of stone, knew that human nature was fallible, was weak, was in need of certain fixed restraints and ruling principles.

And when the American people adopted their constitutions, which safeguard the essential rights of everyone from the attacks of mere majorities, they simply followed the precedent set them by the Divine Ruler when He inveighed against killing, and stealing, bearing false witness and the other offenses named in the Ten Commandments.

Mr. Murphy makes an eloquent and catchy argument against constitutional limitations, as interpreted by the courts, and in favor of the unrestricted rule of the people. Here is one of his best paragraphs:

"It is indeed wise and necessary to order that strict lines shall mark where the rights of one leave off and the liberties of another begin. There is no quarrel with the Constitution per se. The quarrel is with those who would make the Constitution a dead hand upon the rights of humanity and hold back the progress of democracy by giving to the courts the divinity of kings and by denying to the plodding masses—God's common people—the intelligence, unselfishness and virtue essential to the administration of equal justice and the progress of civilization."

This quoted paragraph is replete with brilliant phrases. Yet, taken as a whole, it is unbalanced, and will not stand the test of a careful analysis.

Mr. Murphy has no quarrel with the constitution so long as it remains dormant and inoperative, but when it is used as a bar to prevent a majority of the people, from trespassing upon the constitutional rights of the minority, then, in his judg-

ment, it is a "dead hand" upon the rights of humanity. Right there is where Mr. Murphy's whole argument is out of joint. While contending that he is in favor of a constitutional form of government, he disavows his own contention by lauding the besotness of a pure democracy, which is the unrestrained will of a mere majority.

The history of mankind affords ample proof that the tyranny of unrestrained majorities is frequently as tyrannical and unjust as the unrestrained tyranny of kings.

The desires of mere majorities are not hedged about by anything approaching divinity.

Let us suppose that the duly elected legislature of some state should be stricken by a Malthusian panic, and should duly enact a statute that all children born during the next ten years should be drowned. Would anyone contend that such a statute was right? This may seem so unlikely as not to be even a supposable case, but mere majorities have done things equally as inhuman. The writer has personally examined a sacrificial stone in the city of Mexico, upon which tens of thousands of innocent human beings had been slaughtered. When it did not rain in that country, a majority of the people believed that their rain god was angry, and to appease the wrath of that deity they had to offer human sacrifices, their loveliest and their best. And the same thing happened when they imagined that some of their other numerous gods were out of humor.

But, let us come nearer home, let us suppose that a large majority of the people of some state should decide to enslave all of the Jews within its borders. And let us suppose that there was no "dead hand" constitution to "hold back the progress" of the majority, would such an action on the part of the majority be right? Mr. Murphy takes kindly about the "intelligence, unselfishness and virtue" of mere majorities, but every student of history, and every one who stops and thinks for a moment knows that unrestrained majorities are just as bad as unrestrained kings or czars. Did not a majority of Americans, in ten states of this union, during the memory of many people now living, enslave an entire race because of its color, and appeal to the sword for the right to continue to do so down to the present day?

Away back about five hundred years before the Christian era there was a pure democracy in Greece, and of course they had the recall of judges, the same as Mr. Murphy would have in his present day pure democracy. Aristides was the chief officer of their judicial system. His position was similar to that of the Chief Justice of the United States Supreme Court. His judgments were so fair that he gained a reputation for wisdom, integrity and impartiality that will live to the end of earthly time. Notwithstanding all that he was subject to the recall, and the Grecian people took a vote on the question of driving him out of the country. Such votes were taken by writing on a shell the name of the officer the voter wished to "ostracize," to recall, to drive from the country. An Athenian, on the way to the polls met Aristides but did not know him. He asked Aristides to write on his shell a name, and to write "Aristides." Without disclosing his identity Aristides asked the Athenian what grievance he had that prompted him to cast such a vote. No grievance at all said the Athenian "but I am impatient of hearing him called 'The Just' ". And the pure democracy of Greece perished, the same as all of the other ancient democracies of that nature, because the people preferred the tyranny of kings to the tyranny of unrestrained majorities.

Mr. Murphy refers approvingly to the progress made by the democracy of Great Britain, and we join with him in rejoicing over all that has been accomplished for the betterment of mankind in that country. And right here we wish to say, that the people of Great Britain have never attempted to progress backward by proposing anything like a judicial recall. Prior to the thirteenth century the King of England had the arbitrary power to recall judges, and the judges of that period overruled, fined and imprisoned the jurists that did not do the bidding of the King's officers. But the people of Great Britain took that power away from their kings 87 years before the adoption of the constitution of the United States. Since then the judges of Great Britain hold their offices during life or good behavior, removable only upon the address of both houses of parliament, a proceeding quite similar to an impeachment trial under our constitution.

Even in Switzerland, which is the nearest to a pure democracy of any present day government, there is nothing in the nature of a recall of judges by popular vote. The jurors

of office and the independence of the judiciary are carefully guarded by the laws of Switzerland.

Experience has proven that a constitution is necessary to insure a stable and properly balanced government, and it is unwise to do anything that will tend to weaken any branch of the government, for such an act will tend toward the unbalancing of the whole structure.

No one will deny but that there are unjust judges at the present time, the same as there has been in all ages, and that such judges do more to create public unrest and promote the growth of socialism than all other present day causes. But, because that is true, it does not follow that the people should blindly strike at the foundations of their national greatness. That would be repeating the Samson act. That would be using the power of a giant to pull down the temple and destroy themselves as well as their enemies.

Governor Woodrow Wilson is a scholar, a statesman and a lover of mankind, and those who are earnestly seeking for light on this question may find his views more than ordinarily helpful.

In a speech delivered in Kansas City last May, Mr. Wilson said:

"The recall is a means of administrative control. If properly regulated and devised it is a means of restoring to administrative officials what the initiative and referendum restore to legislators—namely, a sense of direct responsibility to the people who chose them.

"The recall of judges is another matter. Judges are not lawmakers. They are not administrators. Their duty is not to determine what the law shall be, but to determine what the law is. Their independence, their sense of dignity and of freedom, is of the first consequence to the stability of the state. To apply to them the principle of the recall is to set up the idea that determinations of what the law is must respond to popular impulse and to popular judgment. It is sufficient that the people should have the power to change the law when they will. It is not necessary that they should directly influence by threat of recall those who merely interpret the law already established. The importance and desirability of the recall as a means of administrative control ought not to be obscured by drawing it into the other and very different field."

In conclusion we confidently assert, that the right to a trial before an independent and impartial court is more important than many of our constitutionally guarded rights, and that opposition to the placing of that right in the hands of a mere majority shows no lack of faith in the people, because the people want all of their important rights constitutionally buttressed and protected from the changing desires of mere majorities.

Out of reach of the impulse of the moment and the cry of "cruelty" stand our constitutional rules of justice, God's justice, which every litigant, though he stand alone, is entitled to; and it is the sworn duty of every judge to see that the judgments of his court conform to those rules, rather than to the desires of erstwhile majorities. And that duty being required of judges we feel quite certain that the American people do not want a law which will interfere in any way with its performance.

ALDRICH BANKING SCHEME BECOMING LESS ATTRACTIVE.

Some of the big bankers of the large cities are still traveling their agents around the country in a sort of hippodrome way for the purpose of creating a public opinion favorable to the Aldrich banking scheme, but the more the scheme is studied by people the less popular it is becoming. Ever since the days of General Jackson, the American people have been opposed to a big central bank of issue and it logically follows that they are opposed to everything in the nature of branch banking.

UNLESS EVERY BANK IS ABSOLUTELY PROHIBITED FROM EITHER DIRECTLY OR INDIRECTLY OWNING STOCK IN ANY OTHER BANK, THE BIG BANKS IN TWO OR THREE OF THE BIG CITIES OF THE COUNTRY WILL FORGE A CHAIN OF BANKS AND IN THAT WAY SECURE A CENTRALIZED CONTROL OF AMERICAN BANKING CREDIT. SUCH A MONEY TRUST WOULD PRACTICALLY CONTROL EVERY BANK WITHOUT OWNING IT, FOR NO SMALL BANKING INSTITUTION COULD SAFELY TRANSACT BUSINESS UNLESS UNDER THE PROTECTING WING OF THE BIG MONEY TRUST.

If Congress makes any change in our present financial legislation, it should commence by positively prohibiting every bank from owning stock in any other bank or banking association, and it should also prohibit all corporations not engaged in the banking business, from owning or exercising control over any of the banks of the country. If such corporations became the owners of bank stock they should not be allowed to vote such stock. Without legislation

of that nature there would be nothing to prevent the formation of a money trust with power to harm equal to all the other trusts combined.

Let congress take a firm stand against everything, which could by any possible construction result in a centralized control of the banking business of the country, and the besotness of the Aldrich scheme will rapidly vanish from the minds of the big bankers who are now touring their plan around the country and setting it up like a golden calf for people to fall down before and worship.

Ex secretary of the treasury, Leslie M. Shaw, has not in our judgment been always right on public questions, but we believe that he is correct when he says that he could afford to pay the entire national debt for a bank charter such as the Aldrich scheme proposes to turn over as the gracious gift to a big central banking association.

SHALL WALL STREET GOVERN THE COUNTRY?

Under the above head lines, the New York World vigorously contends that Wall street wants the Sherman law destroyed and other legislation enacted in its stead which will enable Big Business to continue to run the country.

The following forcible extracts from the editorial supporting its contention are worthy of more than ordinarily careful consideration:

"A campaign is already in progress to terrorize the Taft Administration and force it to terms. Another campaign is in progress to establish the ascendancy of the so-called 'conservative' elements in the Democratic party. Details may be missing, but the general movement of 'accelerating public opinion' is unmistakable.

"For twenty years Wall street pretended that the Sherman Anti-trust law could not be enforced, and took good care to see that it was not enforced. Now that the Supreme Court decisions in the Oil and Tobacco cases prove that the law can be enforced, Wall street is plaintively wailing that the business of the country cannot be carried on while such an oppressive law remains on the statute books.

"With the United States Government regulating Big Business, Big Business would promptly proceed to the matter of regulating the United States Government. It has done this before, and has faith that it can do it again.

"For twenty years after the civil war the tariff-protected industries shaped the policies of National Administrations, and they are still powerful enough to prevent legislation that will reform the abuses of the tariff and reduce its cost of living. For the last twenty years now Big Business has been engaged in controlling Government for its own profit. The Sherman law was not treated seriously either by the Harrison or the Cleveland Administration, although it was enforced in a few isolated cases. After Hanna had raised his monumental campaign fund in 1896, Wall street virtually secured a license from the 'federal authorities' and his reward was an immunity worth hundreds of millions of dollars to the promoters and exploiters of trusts and combinations.

"Now that the day of actual immunity is past, it is seeking new legislation that will secure an extension of immunity under the forms of law. For two decades the American people have been striving to destroy monopolies and conspiracies in restraint of trade. The point has finally been reached at which effective enforcement of an effective statute is possible. Is the country now ready to throw away the fruits of this twenty years' war against predatory plutocracy? Is it ready to let Big Business dictate the policy of the United States toward trusts and combinations?"

"Shall Wall street govern the Government?"

SPECIAL WASHINGTON CORRESPONDENCE.

By Clyde H. Tavenner.

Why is the Wickersham suit against the steel trust one in equity instead of a criminal prosecution? The Sherman anti-trust law carries a provision by which guilty trust magnates may be sent to jail. If it is possible to dissolve the steel trust under the Sherman law—and President Taft and Attorney General Wickersham insist that it is—why not dissolve every illegal combination in the land under this statute? Why are not the men who organized and direct these illegal monopolies equally liable to successful prosecution.

With the fact admitted that it was in J. P. Morgan's library that the steel trust conspiracy was developed, that it was he who sent Gary and Frick to "see" President Roosevelt about the Tennessee Coal and Iron Co. merger, and that Morgan received \$20,000,000 in clear profit for his part in the organization work, it would appear to the lay mind that Morgan is just as liable to prosecution for having organized an illegal monopoly as any monopoly is liable to dissolution for being in existence in violation of the law.

"GUILTY IS PERSONAL."

The American public is about convinced that trust magnates care little or nothing about "snake," as long as they are directed against corporations and not individuals, and especially if the government "trust buster" is to be a former trust attorney and a member of a political party whose campaign funds were supplied by the very trust he pro-

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