

PROGRESSIVE DEMOCRACY

THE PEOPLE AND THE COURTS¹

EDITORIAL BY THEODORE ROOSEVELT

THE American people, and not the courts, are to determine their own fundamental policies. The people should have power to deal with the effects of the acts of all their governmental agencies. This must be extended to include the effects of judicial acts as well as of the acts of the executive and legislative representatives of the people. Where the judge merely does

¹ In this series of editorials Mr. Roosevelt restates in brief form his political and social philosophy. They repeat in essence the statement of his political faith made before the Progressive Convention in Chicago on August 6. The subject of the first editorial in this series, which was published last week, was "The Right of the People to Rule."—THE EDITORS.

justice as between man and man, not dealing with Constitutional questions, then the interest of the public is only to see that he is a wise and upright judge. Means should be devised for making it easier than at present to get rid of an incompetent judge; means should be devised by the bar and the bench acting in conjunction with the various legislative bodies to make justice far more expeditious and more certain than at present. The stick-in-the-bark legalism, the legalism that subordinates equity to technicalities, should be recognized as a potent enemy of justice.

But this is not the matter of most concern at the moment. Our prime concern is that in dealing with the fundamental law of the land, in assuming finally to interpret it, and therefore finally to make it, the acts of the courts should be subject to and not above the final control of the people as a whole. I deny that the American people have surrendered to any set of men, no matter what their position or their character, the final right to determine those fundamental questions upon which free self-government ultimately depends. The people themselves must be the ultimate makers of their own Constitution, and where their agents differ in their interpretations of the Constitution the people themselves should be given the chance, after full and deliberate judgment, authoritatively to settle what interpretation it is that their representatives shall thereafter adopt as binding.

Whenever in our Constitutional system of government there exist general prohibitions that, as interpreted by the courts, nullify, or may be used to nullify, specific laws passed, and admittedly passed, in the interest of social justice, we are for such immediate law, or amendment to the Constitution, if that be necessary, as will thereafter permit a reference to the people of the public effect of such decision, under forms securing full deliberation, to the end that the specific act of the legislative branch of the Government thus judicially nullified, and such amendments thereof as come within its scope and purpose, may constitutionally be excepted by vote of the people from the general prohibitions, the same as if that particular act had been expressly excepted when the prohibition was adopted.

This will necessitate the establishment of machinery for making much easier of amendment both the National and the several State Constitutions, especially with a view to prompt action on certain judicial decisions—action as specific and limited as that taken by the passage of the Eleventh Amendment to the National Constitution.

We are not in this decrying the courts. That was reserved for the Chicago Republican Convention in its plank respecting impeachment. Impeachment implies the proof of dishonesty. We do not question the general honesty of the courts. But in applying to present-day social conditions the general prohibitions that were intended originally as safeguards to the citizen against the arbi-

I am well aware that every upholder of privilege, every hired agent or beneficiary of the special interests, including many well-meaning parlor reformers, will denounce all this as "Socialism" or "anarchy"—the same terms they used in the past in denouncing

trary power of Government in the hands of caste and privilege, these prohibitions have been turned by the courts from safeguards against political and social privilege into barriers against political and social justice and advancement. Our purpose is not to impugn the courts, but to emancipate them from a position where they stand in the way of social justice; and to emancipate the people, in an orderly way, from the iniquity of enforced submission to a doctrine which would turn Constitutional provisions which were intended to favor social justice and advancement into prohibitions against such justice and advancement.

We in America have peculiar need thus to make the acts of the courts subject to the people, because, owing to causes which I need not now discuss, the courts have here grown to occupy a position unknown in any other country, a position of superiority over both the legislature and the executive. Just at this time, when we have begun in this country to move toward social and industrial betterment and true industrial democracy, this attitude on the part of the courts is of grave portent, because privilege has entrenched itself in many courts, just as it formerly entrenched itself in many legislative bodies and in many executive offices.

Even in England, where the Constitution is based upon the theory of the supremacy of the legislative body over the courts, the cause of democracy has at times been hampered by court action. In a recent book by a notable English Liberal leader, Mr. L. T. Hobhouse, there occur the following sentences dealing with this subject:

Labor itself had experienced the full brunt of the attack. It had come, not from the politicians, but from the judges: but in this country we have to realize that within wide limits the judges are in effect legislators, and legislators with a certain persistent bent which can be held in check only by the constant vigilance and repeated efforts of the recognized organ for the making and repeal of law.

It thus appears that even in England it is necessary to exercise vigilance in order to prevent reactionary thwarting of the popular will by courts that are subject to the power of the Legislature. In the United States, where the courts are supreme over the Legislature, it is vital that the people should keep in their own hands the right of interpreting their own Constitution when their public servants differ as to the interpretation.

the movements to control the railways and to control public utilities. As a matter of fact, the propositions I make constitute neither anarchy nor Socialism, but, on the contrary, a corrective to Socialism and an antidote to anarchy.