

## ARIZONA AND THE RECALL OF THE JUDICIARY

New Mexico and Arizona are entitled to be admitted as States. In New Mexico's case there is no objection anywhere, and not a valid reason can be assigned for the failure to have admitted her several months ago. Without any regard to Arizona, New Mexico should be admitted at once.

But Arizona also should clearly, and as a matter of right and duty, at once be admitted to Statehood. The only objection of consequence to admitting her is that her Constitution provides for the recall of judges. Outside of this provision no serious objection has been made to her Constitution, and personally, after considerable study of the document, I have come to the conclusion that it is an unusually good Constitution; that while, of course, it contains certain provisions as to which there will be considerable dissent, yet that, as a whole, it is a Constitution well above the average, a Constitution which in many vital respects it would be an admirable thing to have imitated in New York and elsewhere in the East. The whole question, therefore, narrows down to the point as to whether it is legitimate to reject Arizona's plea because she has done what Oregon has done, what California has announced she will do—that is, because Arizona desires, when she is a State, to have the same privilege which these two States possess and exercise. Moreover, it must be remembered that, if the people of Arizona desire to exercise the right of recall of the judges, their desire can be made effective immediately after their admission to Statehood; even though, in order to get in, they consent to alter the provision in their Constitution as proposed. It seems to me that the mere statement of these facts is sufficient to show that, on the ground alleged, there is no excuse for failure to admit Arizona to Statehood.

Personally, I do not think that under normal circumstances it is advisable to

have the principle of the popular recall applied to the judiciary. I much prefer the Massachusetts system, under which a judge can be removed by vote of the two branches of the legislative body without trial and on simple assignment of reasons. But the fact that I and other people feel a preference for one system has nothing whatever to do with Arizona's right to adopt another system, and it is an absurdity to say that the adoption of the other system, that of the recall, would make the Arizona government not a republican form of government. The difference between a judicial system under which judges are appointed for life and are removable only after impeachment, and a system under which judges are elected for short terms, is infinitely greater than the difference between the latter system—that is, a short-term elective judiciary without a recall—and the proposed Arizona system of a short-term elective judiciary with a recall. The assertion that both the first two are compatible with the existence of a republican form of government, and that the latter is not, is really hardly worth serious discussion. Massachusetts has one system for her judiciary, New York another, Ohio a third; and in vital and essential matters they differ more among themselves than at least one of them differs from that proposed for Arizona. It would be quite improper for Massachusetts to impose its system upon Ohio, or Ohio its system upon Massachusetts, or for Texas to impose its system upon New York, or New York its system upon Texas; and it is just as improper for all four to impose upon Arizona the system of any one of them, or to refuse to permit Arizona to have the system which Arizona desires.

Moreover, in all these matters it is well to remember that the thing, and not the name, is essential. If in any given State the system of an elective or an appointive judiciary without a recall has proved in actual practice to work badly (as it certainly proved to work badly in California), then practical reformers who are working for the betterment of popular conditions are quite right in trying to substitute for it some other system. The all-important thing is the spirit in which the system is administered. If in any State the adoption of the recall was found to mean the

subjection of the judge to the whim of the mob, then it would become the imperative duty of every good citizen, without regard to previous prejudices, to work for the alteration of the system. If, on the other hand, in any State the judiciary yields to improper influence on the part of special interests, or if the judges even, although honest men, show themselves so narrow-minded and so utterly out of sympathy with the industrial and social needs brought about by changed conditions that they seek to fetter the movement for progress and betterment, then the people are not to be excused if, in a servile spirit, they submit to such domination, and fail to take any measures necessary to secure their right to go forward along the path of economic and social justice and fair dealing. If our people are really fit for self-government, then they will insist upon governing themselves. In all matters affecting the Nation as a whole this power of self-government should reside in the majority of the Nation as a whole; and upon this doctrine no one has insisted more strongly than I have insisted, for in such case "popular rights" becomes a meaningless phrase save as it is translated into National rights. But in a case like this of Arizona the only way to secure popular rights is through unconditional recognition of States' rights. As regards every question involving National sovereignty under the Constitution, the Federal Government is supreme; but in purely State affairs the State is supreme, and the people of the State should have the absolute right to determine just how they wish their judicial system conducted. It is the negation of popular government to deny the people the right to establish for themselves what their judicial system shall be. Arizona has the absolute right to try the recall, just as any of the existing States has the absolute right to try it or not to try it, and to have an elective or appointive judiciary, as it pleases. To keep Arizona from Statehood because she has adopted the recall as applied to the judiciary is a grave injustice to Arizona, and an assault upon the principles which underlie our whole system of free popular government.

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