

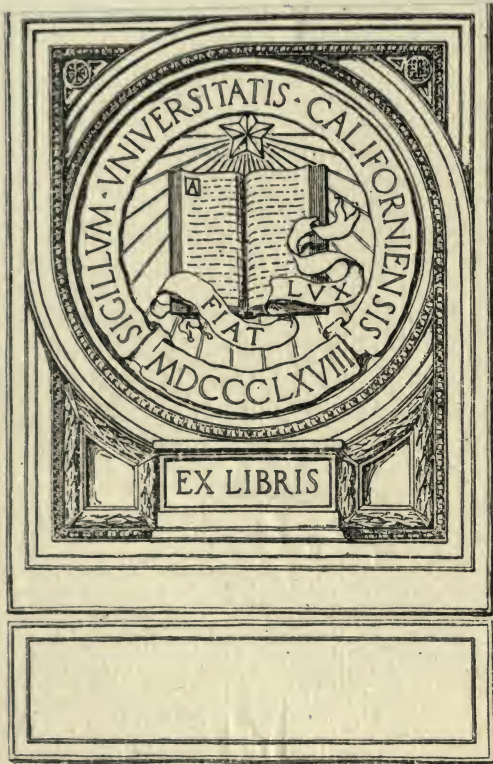
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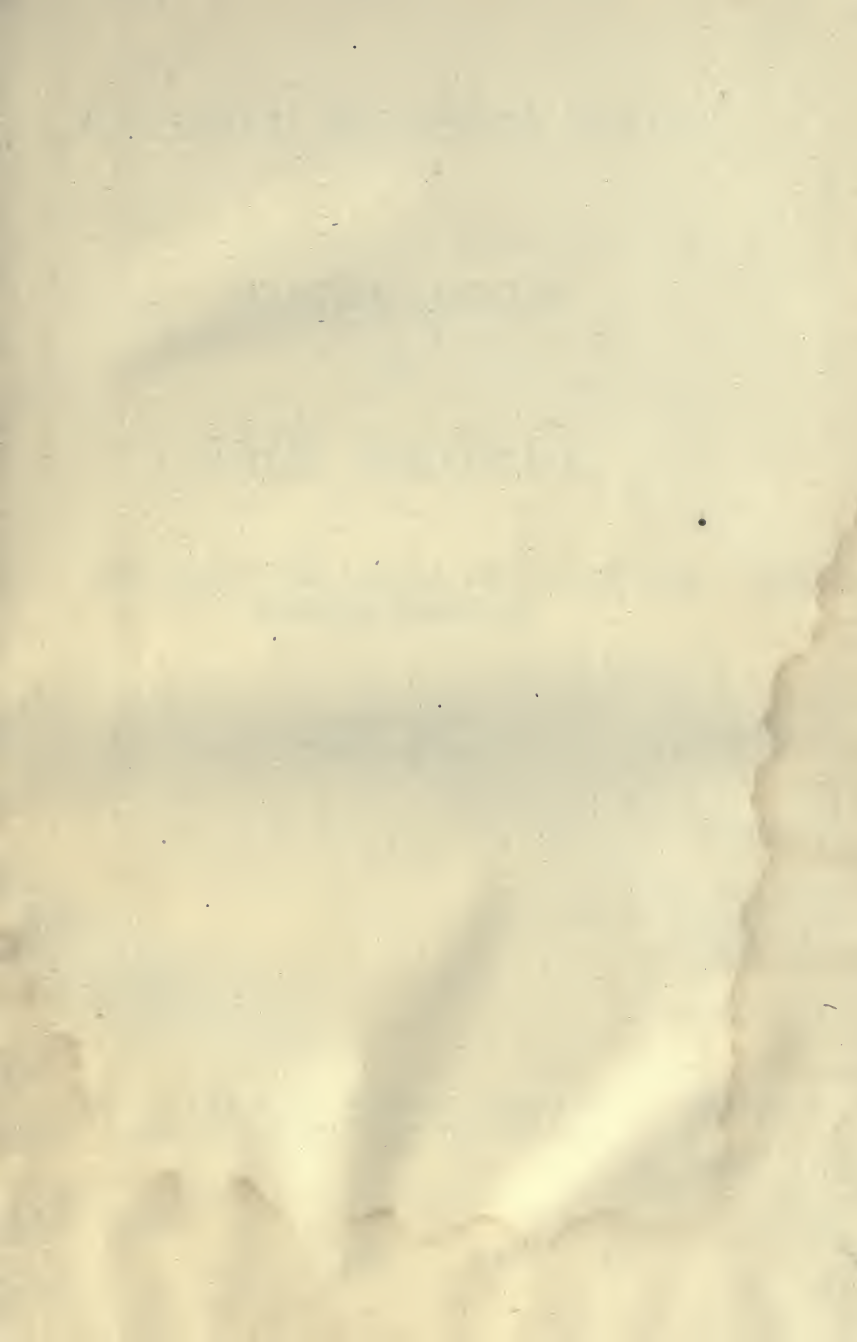
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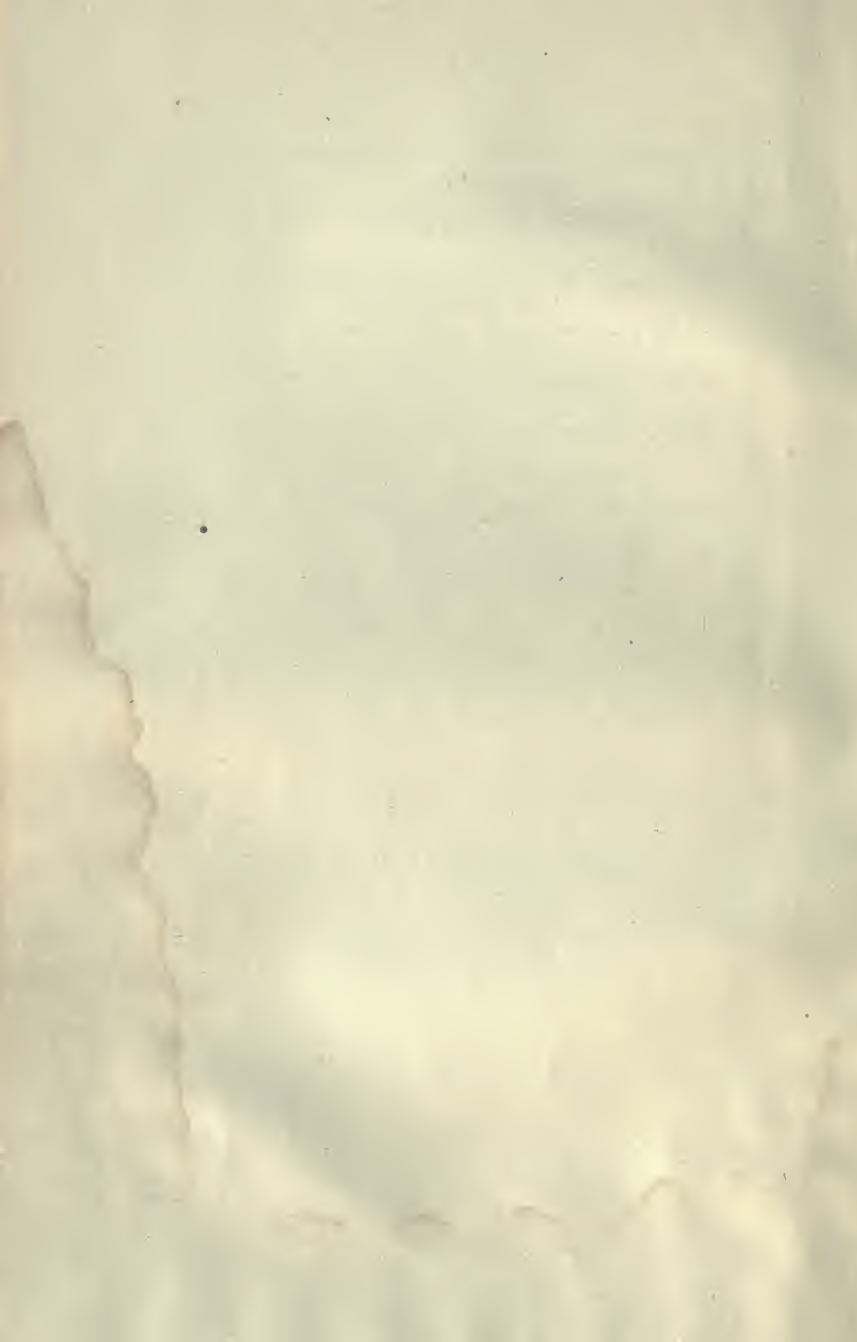
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EXPLANATORY NOTE

Like the other volumes in this series, this handbook has been compiled for the especial benefit of students and debaters, and for libraries desiring to meet the needs of their patrons for reference material on this subject. The volume contains reprints of valuable material covering the history and present status of and the arguments for and against the recall, including the recall of judges and of judicial decisions. Briefs are given for the recall of judges and of decisions, but it has not been considered necessary to include one for the general recall as the brief for the recall of judges can be easily adapted for the purpose. The bulk of reprinted matter has been devoted to the judicial recall also, as this seems to be the most popular and important, and many of the arguments are the same as for the general recall. A map has also been included showing the progress already made by the state-wide recall in the United States, and the main features of the various state provisions can be compared by means of the accompanying tabulation.



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BRIEFS

RECALL OF JUDGES

Resolved, That judges should be made subject to recall.

INTRODUCTION

- I. It is asserted that numerous evils exist in our judiciary system.
 - A. Our courts have been severely criticized.
 1. By members of the bench and bar.
 2. In the press and on the platform.
 - B. Many suggestions have been made for the reform of courts and of judicial procedure.
- II. The recall of judges has been adopted as a remedy for these evils.
 - A. It is now in force in Oregon, California, Arizona, Nevada and Colorado.
 - B. Other states have taken steps providing for its adoption.
- III. There is serious and determined opposition to the further adoption of the recall of judges.
 - A. Committees have been appointed to work against it.
 - B. Much literature has been disseminated in opposition.
 - C. President Taft refused to admit Arizona to statehood until the clause providing for the recall of judges had been eliminated from her Constitution.

AFFIRMATIVE

- I. There are many evils in our present judiciary system.
 - A. The delay and expense of litigation is too great.

- B. Decisions are based on legal technicalities and outworn precedent rather than reason and common sense.
- C. The courts have usurped legislative functions.
- D. The judiciary has become the bulwark of special privilege.
- II. The recall of judges is needed to correct these evils.
 - A. Impeachment has failed as a remedy.
 - B. The fact that the recall could be exercised would cause the judges to feel more keenly their responsibility to the people.
 - C. Corrupt and inefficient judges would be deprived of office.
 - D. The good judge would be protected in the performance of duty.
 - E. The courts would be removed from the influence of corrupt interests.
- III. The recall of judges is desirable for other reasons.
 - A. It is the application of good business principle to government affairs.
 - B. It is constitutionally sound.
 - 1. It is consistent with the republican theory of government.
 - 2. It has proved constitutional in the states where it has been exercised.
 - 3. There is sound precedent in our governmental institutions for its use.
 - C. It would be beneficial to the people.
 - 1. It would restore the confidence of the people in the courts.
 - 2. It would arouse people to a more intelligent study of candidates.
 - D. Short terms and frequent elections of judicial officers would be unnecessary if the recall were available.
 - 1. Judges could be elected for life, subject only to removal for inefficiency or malfeasance in office.
- IV. The recall of judges is not dangerous as has been asserted.

- A. It would not be abused.
 - 1. People are conservative and would use it only on great provocation.
 - 2. They are capable of using it wisely.
 - a. They are as competent to recall as to elect.
 - 3. It would not become the tool of vicious interests.
 - a. If this were likely to be the case, these interests would not fight it so bitterly.
- B. It would be exercised sparingly.
 - 1. The fact that it could be utilized if necessary would generally be sufficient.
- C. The rights of the minority would not be disregarded.
 - 1. They would be safeguarded as they now are by the sense of responsibility and justice of the majority which is the preservation of law at all times.

NEGATIVE

- I. The evils of our judiciary system have been much exaggerated.
 - A. The courts have not usurped power to declare legislation unconstitutional.
 - B. They are not reactionary and unprogressive.
 - 1. It is their business to declare law and not to make it.
 - C. Many of the so-called evils are inherent in society and will remain so long as people are human.
- II. Such evils as do exist can be remedied without resort to the recall of judges.
 - A. Members of the bench and bar are already working to reform judicial procedure.
 - B. The existing remedies of impeachment and removal for cause can be made more effective.
 - C. The power of the courts to interpret statutes and to nullify laws by majority vote can be removed.
- III. The recall of judges would be undesirable for many reasons.

- A. It is inconsistent with our republican form of government.
 - 1. Ours is a representative and not a pure democracy.
- B. The independence of judges would be destroyed.
 - 1. Decisions would be influenced by popular sentiment.
 - 2. The rights of the minority would be subject to the will of the majority.
 - 3. Constitutional guarantees would be endangered.
- C. It would be unfair to judges.
 - 1. The method of procedure does not provide for a fair trial.
 - 2. Passion and feeling would prevail in the election instead of judgment.
 - 3. There would be loss of respect for the judiciary.
- D. It would be difficult to induce good men to serve as judges.
- E. The evils of our present system would increase rather than decrease.
 - 1. The uncertainties of litigation would be increased.
 - 2. The courts would become the tool of the bosses and corrupt interests.
- F. The people are not capable of exercising the recall wisely.
 - 1. They cannot understand the intricacies of law.
 - 2. They are too indifferent to take the trouble to secure correct information about candidates.
 - 3. If the people do not elect good officials, they cannot be trusted to recall those who prove unworthy.
 - 4. Recall elections would be left to the bosses and those in control of the nominations.
- IV. The recall of judges does not stand the test of experience.
 - A. The instances where it has been used show it to be vicious.

- B. Judges elected for life have been shown to be superior to those subject to frequent re-election or recall.

RECALL OF JUDICIAL DECISIONS

Resolved, That state constitutions should be so amended as to provide that when an act passed under the police power of the state has been pronounced unconstitutional by the courts, the legislature shall, after six months and within two years, submit the act to a vote of the people, and a majority in favor shall be sufficient to establish it as law.

INTRODUCTION

- I. Much recent social legislation, intended to relieve the injustices of our changing economic conditions, has been pronounced unconstitutional by the state courts on the ground that it is in violation of the "due process" clause of the Constitution which says that "no person shall be deprived of life, liberty or property without due process of law."
 - A. It is held that such legislation is not a proper exercise of the police power.
- II. As a remedy for this condition of affairs, Ex-President Roosevelt has proposed that "in a certain class of cases involving the police power, when a state court has set aside as unconstitutional a law passed by the legislature for the general welfare, the question of the validity of the law . . . be submitted for final determination to a vote of the people taken after a due time for consideration."
- III. This plan, the recall of judicial decisions, has received considerable support.
 - A. It has received the support of the dean of an important law school.
 - B. It is supported by the Progressive Party.
 - C. It has been adopted in Colorado.
 - D. It has been proposed in the Massachusetts legislature, and as an amendment to the Constitution of Illinois, and also to the Federal Constitution.

- IV. The American Bar Association has proposed, as an alternative, that the Federal Judiciary Code be amended to provide that all decisions made by a state court of last resort may be ordered by a writ of certiorari to be reviewed and reversed by the Supreme Court of the United States.
- A. As it is now, the Supreme Court cannot review any decisions where a state law has been pronounced invalid by a state court because repugnant to the Federal Constitution.
 - B. This proposal has been approved by the Senate of the United States.

AFFIRMATIVE

- I. The people have suffered injustice in many states because the courts have refused to admit much social legislation as constitutional.
- A. Such legislation has been instituted to remedy the injustices of our present social and economic conditions, and would improve very materially the welfare of our people.
 - B. Many judges have failed, both by education and experience, to come in contact with these conditions, and their decisions have been based on legal conventions rather than justice.
 - C. The "police power" has not been interpreted in accordance with present-day standards.
 - D. The "due process of law" clause has often been given a wider application than was originally intended.
 - i. That the courts do not agree on its interpretation is shown by the fact that the same or similar laws have been pronounced constitutional by the courts of some states and not of others.
 - E. Decisions are frequently made by a small majority of the court and hence one man is sometimes able to block the will of the whole people.

- II. When acts passed under the police power of the state and affecting the well-being of the entire people are declared unconstitutional by the courts, the people should have the right to recall the decision.
 - A. The judges are the servants of the people and not their masters.
 - B. The people are as capable of interpreting the law as they are of enacting it.
 - C. Interpretation of the police power depends on prevailing moral standards and the people are best fitted to judge what these standards really are.
- III. The recall of decisions is preferable to other remedies that have been suggested.
 - A. Impeachment could not be resorted to in the case of such decisions.
 - B. Changing the act so as to secure a favorable decision from the courts would not be desirable.
 1. It would take too long.
 2. The act would be weakened.
 - C. Amending the due process clause of the constitution so as to prohibit state courts from reviewing such legislation is less desirable.
 1. Besides the delay, it is uncertain whether the court would consider itself bound to observe the amendment.
 2. It would be arbitrary and dangerous.
 - a. The legislature would be freed from necessary restrictions.
 - b. Constitutional limitations would be disregarded.
 3. The present difficulty is not with the constitution, but with the judges' interpretation of it.
- IV. The recall of judicial decisions would be desirable for other reasons.
 - A. It would not alter constitutional rights.
 - B. It would not disturb the courts.
 - C. It would remove the demand for the recall of judges.

- D. It would teach the courts what the will of the people really is.
- E. It is practicable.
 - 1. Ample time can be given for consideration.
- F. It is conservative.
 - 1. The principle of the recall is already established in our constitutions.
- V. The argument that the people have not the ability to understand judicial reasoning is unsound.
 - A. Much of this reasoning is outworn and unnecessary.
 - B. The decisions of the people cannot be more inconsistent than many of those which have been reached by the courts.

NEGATIVE

- I. It is necessary that the judicial function should be exercised by an entirely independent body.
 - A. Constitutional law must be kept distinct from statute law.
 - B. The separation of the legislative, judicial and executive functions of government must be preserved.
- II. The decisions of the courts in cases involving the police power should be final.
 - A. The term "police power" demands legal interpretation.
 - B. It is too vague to be left for interpretation to the legislature or to the people.
- III. The recall of judicial decisions is impracticable.
 - A. It is more cumbersome than existing methods of amending the state constitutions.
 - B. It could not be put into effect, except in cases involving state constitutional questions alone, without an amendment of the Federal Judiciary Code.
 - 1. Such amendment would be sufficient to remedy existing difficulties without resorting to the recall of decisions by the people.
- IV. The recall of judicial decisions is unnecessary.

- A. The present system of judicial procedure is flexible enough to overcome present difficulties in the way of progressive legislation.
 - 1. Courts are responding slowly but surely to public opinion.
 - 2. Judges should keep closer in touch with public affairs and render decisions more in accord with prevailing moral standards.
 - 3. If a law is pronounced unconstitutional by the courts, a new measure can be drafted which will meet constitutional requirements.
 - a. Many decisions are due to errors in drafting bills.
- B. If a change is necessary, there are other remedies less cumbersome and revolutionary than the recall of judicial decisions.
 - 1. It could be provided that legislation should not be pronounced unconstitutional unless the decision is concurred in by more than a bare majority of the judges.
 - 2. Easier methods of amending state constitutions could be provided where necessary.
 - 3. The Federal Judiciary Code could be amended so as to permit a wider appeal from state courts to the United States Supreme Court in cases involving the Federal Constitution.
 - 4. The "due process of law," "equal protection of the laws," and other clauses of a similar character could be removed from state constitutions, where these clauses merely duplicate limitations upon state action contained in the Federal Constitution.
- V. The recall of judicial decisions would be undesirable for other reasons.
 - A. Constitutional guarantees would be endangered.
 - 1. Necessary checks on legislation would be removed.
 - 2. Cases would be decided by the people with reference to expediency only, and with no regard for their legality.

- a. The recall would be exercised in times of excitement and public feeling.
- P. The uniformity of law would be destroyed.
- C. It would be dangerous to the courts.
 1. The authority of and respect for courts would be lost.
 2. The independence and impartiality of judges would be destroyed.
 - a. Decisions would be influenced by public sentiment.
- D. It would decrease rather than increase the control of the people over political affairs.
- E. The people are not competent to exercise the recall wisely.
 1. They have not had the necessary legal training.
 2. They could not and would not inform themselves as to the merits of the cases.
 3. It would be difficult to ascertain from the results of the vote what the real decision of the people was.
- F. The recall of judicial decisions is inconsistent with our form of government.
 1. It is not republican.
 2. It substitutes mob rule for law.
 3. It exposes the people to the tyranny of the majority.

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