Col. Roosevelt Outlines Views On Legislation.

Continued from First Page.

ment pretend to work out in detail the methods of achieving your purposes. Let me at the outset urge upon you to remember that, while machinery is important, it is easy to overestimate its importance; and, moreover, that each community has the absolute right to determine for itself what that machinery shall be, subject only to the fundamental law of the nation as expressed in the Constitution of the United States. . . . In the first place, I believe in the short ballot. You cannot get good service from the public servant if you cannot see him, and there is no more effective way of hiding him than by mixing him up with a multitude of others so that they are none of them important enough to catch the eye of the average, workaday citizen. The professional politician and the professional lobbyist thrive most rankly under a system which provides a multitude of elective officers, of such divided responsibility and of such obscurity that the public knows, and can know, but little as to their duties and the way they perform them. The people have nothing whatever to fear from giving any public servant power so long as they retain their own power to hold him accountable for his use of the power they have delegated to him.

I believe in providing for direct nominations by the people, including therein direct preferential primaries for the election of delegates to the national nominating conventions.

I believe in the election of United States senators by direct vote. Just as actual experience convinced our people that presidents should be elected (as they now are in practice, although not in theory) by direct vote of the people instead of by direct vote through an untrammeled electoral college, so actual experience has convinced us that senators should be elected by direct vote of the people instead of indirectly through the various legislatures.

I believe in the initiative and the referendum, which should be used not to destroy representative government, but to correct it whenever it becomes misrepresentative. Here again I am concerned not with theories but with actual facts. If in any state the people are themselves satisfied with their present representative system, then it is of course their right to keep that system unchanged; and it is nobody's business but theirs. But in actual practice it has been found in very many states that legislative bodies have not been responsive to the popular will. Therefore I believe that the state should provide for the possibility of direct popular action in order to make good such legislative failure.

Wisconsin Method Praised.

In a recent speech Governor McGovern of Wisconsin has described the plan which has been there adopted. Under this plan the effort to obtain the law is first to be made through the legislature, the bill being pushed as far as it will go; so that the details of the proposed measure may be threshed over in actual legislative debate. This gives opportunity to perfect it in form and invites public scrutiny. Then, if the legislature fails to enact it, it can be enacted by the people on their own initiative, taken at least four months before election. Moreover, where possible, the question actually to be voted on by the people should be made as simple as possible. In short, I believe that the initiative and referendum should be used not as substitutes for representative government, but as methods of making such government really representative. Give the legislature an entirely free hand; and then provide by the initiative and referendum that the people shall have power to reverse or supplement the work of the legislature should it ever become necessary.

As to the recall, I do not believe that there is any great necessity for it as regards short-term elective officers. On abstract grounds I was originally inclined to be hostile to it. I know of one case where it was actually used with mischievous results. On the other hand, in three cases in municipalities on the Pacific coast which have come to my knowledge it was used with excellent results. I believe it should be generally provided, but with such restrictions as will make it available only when there is a widespread and genuine public feeling among a majority of the voters.

There remains the question of the recall of judges. One of the ablest jurists in the United States, a veteran in service to the people, recently wrote me as follows on this subject:

"There are two causes of the agitation for the recall as applied to judges. First, the administration of justice has withdrawn from life and become artificial and technical. The recall is not so much a recall of judges from office as it is a recall of the administration of justice back to life, so that it shall become, as it ought to be, the most efficient of all agencies for making this earth a better place to live in. Judges have set their rules above life. Like the Pharisees of old, they said, 'The people be accursed, they know not the law' (that is our rule). Courts have repeatedly defeated the aroused moral sentiment of a whole commonwealth. Take the example of the St. Louis boodlers. Their guilt was plain, and in the main confessed. The whole state was aroused and outraged. By an instinct that goes to the very foundation of all social order they demanded that the guilty be punished. The boodlers were convicted, but the supreme court of Missouri, never questioning their guilt, set their conviction aside upon purely technical grounds. The same thing occurred in California. It is to recall the administration of justice back from such practices that the recent agitation has arisen.

"Second, by the abuse of the power to declare laws unconstitutional the courts have become a lawmaking, instead of a law-enforcing, agency. Here again the settled will of society to correct confessed evils has been set at naught by those who place metaphysics above life. It is the courts, not the constitutions, that are at fault. It is only by the process which James Russell Lowell, when answering the critics of Lincoln, called 'pettifogging the constitution,' that constitutions which were designed to protect society can thus be made to defeat the common good. Here again the recall is a recall of the administration of justice back from academical refinements to social service."

There is one kind of recall in which I very earnestly believe, and the immediate adoption of which I urge. There are sound reasons for being cautious about the recall of a good judge who has rendered an unwise and improper decision. Every public servant, no matter how valuable, and not omitting Washington or Lincoln or Marshall, at times makes mistakes. Therefore we should be cautious about recalling the judge, and we should be cautious about interfering in any way with the judge in decisions which he makes in the ordinary course as between individuals. But when a judge decides a constitutional question, when he decides what the people as a whole can or cannot do, the people should have the right to recall that decision if they think it wrong. We should hold the judiciary in all respect; but it is both absurd and degrading to make a fetish of a judge or of any one else.

Lincoln actually applied in successful fashion the principle of the recall in the Dred Scott case. He denounced the Supreme court for that iniquitous decision in language much stronger than I have ever used in criticizing any court, and appealed to the people to recall the decision—the word "recall" in this connection was not then known, but the phrase exactly describes what he advocated. He was successful, the people took his view, and the decision was practically recalled. It became a dead letter without the need of any constitutional amendment.

The Law and the State.

Under our federal system the remedy for a wrong such as Abraham Lincoln described is difficult. But the remedy is not difficult in a state. What the Supreme court of the nation decides to be law binds both the national and the state courts and all the people within the boundaries of the nation. But the decision of a state court on a constitutional question should be subject to revision by the people of the state. Again and again in the past justice has been scandalously obstructed by state courts declaring state laws in conflict with the Federal Constitution, although the Supreme court of the nation had even decided in a contrary sense. When the supreme court of the state declares a given statute unconstitutional because in conflict with the state or the National Constitution, its opinion should be subject to revision by the people themselves. Such an opinion ought always to be treated with great respect by the people, and unquestionably in the majority of cases would be accepted and followed by them. But actual experience has shown the vital need of the people reserving to themselves the right to pass upon such opinion. If it is sustained well and good. If not, then the popular verdict is to be accepted as final, the decision is to be treated as reversed, and the construction of the Constitution definitely decided—subject only to action by the Supreme court of the United States.

Many eminent lawyers who more or less frankly disbelieve in our entire American system of government for, by, and of the people violently antagonize this proposal. They believe, and sometimes assert, that the American people are not fitted for popular government, and that it is necessary to keep the judiciary "independent of the majority or of all the people;" that there must be no appeal to the people from the decision of a court in any case; and that therefore the judges are to be established as sovereign rulers over the people. I take absolute issue with all those who hold such a position. I regard it as a complete negation of our whole system of government; and if it became the dominant position in this country, it would mean the absolute upsetting of both the rights and the rule of the people. If the American people are not fit for popular government, and if they should of right be the servants and not the masters of the men whom they themselves put in office, then Lincoln's work was wasted and the whole system of government upon which this great democratic republic rests is a failure. I believe, on the contrary, with all my heart that the American people are fit for complete self-government, and that, in spite of all our failings and shortcomings, we of this republic have more nearly realized than any other people on earth the ideal of justice attained through genuine popular rule.

People Fundamentally Right.

I do not say that the people are infallible. But I do say that our whole history shows that the American people are more often sound in their decisions than is the case with any of the governmental bodies to whom, for their convenience, they have delegated portions of their power. If this is not so, then there is no justification for the existence of our government; and if it is so, then there is no justification for refusing to give the people the real, not merely the nominal, ultimate decision on questions of constitutional law.

A decision rendered but a few months ago by the court of appeals of my own state, the state of New York, declared unconstitutional the workmen's compensation act. In their decision the judges admitted the wrong and the suffering caused by the practices against which the law was aimed. They admitted that other civilized nations had abolished these wrongs and practices. But they took the ground that the Constitution of the United States, instead of being an instrument to secure justice, had been ingeniously devised absolutely to prevent justice. They insisted that the clause in the Constitution which forbade the taking of property without due process of law forbade the effort which had been made in the law to distribute among all the partners in an enterprise the effects of the injuries to life or limb of a wage-worker. In other words, they insisted that the Constitution had permanently cursed our people with impotence to right wrong, and had perpetuated a cruel iniquity; for cruel iniquity is not too harsh a term to use in describing the law which, in the event of such an accident, binds the whole burden of crippling disaster on the shoulders least able to bear it—the shoulders of the crippled man himself, or the dead man's helpless wife and children. No anarchist orator, raving against the Constitution, ever framed an indictment to it so severe as these worthy and well-meaning judges must be held to have framed if their reasoning be accepted as true. But, as a matter of fact, their reasoning was unsound, and was as repugnant to every sound defender of the Constitution as to every believer in justice and righteousness. In effect, their decision was that we could not remedy these wrongs unless we amended the Constitution (not the constitution of the state, but the Constitution of the nation) by saying that property could be taken without due process of law! It seems incredible that any one should be willing to take such a position. It is a position that has been condemned over and over again by the wisest and most far-seeing courts. In its essence it was reversed by the decision of state courts in states like Washington and Iowa, and by the Supreme court of the nation in a case but a few weeks old.

According to one of the highest judges then and now on the Supreme court of the nation, we had lived for a hundred years under a Constitution which permitted a national income tax, until suddenly by one vote the Supreme court reversed its previous decisions for a century, and said that for a century we had been living under a wrong interpretation of the Constitution (that is, under a wrong Constitution), and therefore in effect established a new Constitution which we are now laboriously trying to amend so as to get it back to the Constitution that for a hundred years everybody, including the Supreme court, thought it to be. When I was president, we passed a National Workmen's Compensation act. Under it a railway man named Howard, I think, was killed in Tennessee, and his widow sued for damages. Congress had done all it could to provide the right, but the court stepped in and decreed that congress had failed. Three of the judges took the extreme position that there was no way in which congress could secure the helpless widow and children against suffering, and that the man's blood and the blood of all similar men when spilled should forever cry aloud in vain for justice. This seems a strong statement, but it is far less strong than the actual facts; and I have difficulty in making the statement with any degree of modification. The nine justices of the Supreme court on this question split into five fragments. One man, ex-Justice Moody, in his opinion stated the case in its broadest way and demanded justice for Howard, on grounds that would have meant that in all similar cases thereafter justice and not injustice should be done. Yet the court, by a majority of one, decided as I do not for one moment believe the court would now decide, and not only perpetuated a lamentable injustice in the case of the man himself, but set a standard of injustice for all similar cases. Here again I ask you not to think of the mere legal formalism, but to think of the great immutable principles of justice, the great immutable principles of right and wrong, and to ponder what it means to men dependent for their livelihood, and to the women and children dependent upon these men, when the courts of the land deny them the justice to which they are entitled.

Now, gentlemen, in closing, and in thanking you for your courtesy, let me add one word. Keep clearly in view what are the fundamental ends of government. I hope that not only you and I but all our people may ever remember that while good laws are necessary, while it is necessary to have the right kind of governmental machinery, yet that the all-important matter is to have the right kind of man behind the law. A good Constitution, and good laws under the Constitution, and fearless and upright officials to administer the laws—all these are necessary; but the prime requisite in our national life is, and must always be, the possession by the average citizen of the right kind of character. Our aim must be the moralization of the individual, of the government, of the people as a whole. We desire the moralization not only of political conditions but of industrial conditions, so that every force in the community, individual and collective, may be directed toward securing for the average man, and average woman, a higher and better and fuller life, in the things of the body no less than those of the mind and the soul.

Chinese Salutation.

The Chinese salutation consists of clasping the left hand with the right and waving it up and down, at the same time bowing deeply; or, if unusual respect is wished to be evinced, the Chinaman bows as low as is possible, swinging his clasped hands backwards and forwards.

For Good or for Evil?

So surely as the day and the night alternately follow one another, does every day when it yields to darkness, and every night when it passes into dawn, bear with it its own tale of the results which it has silently wrought upon each of us, for good or for evil. —William Ewart Gladstone.

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Given under my hand this 9th day of February, 1912.

LEVI D. MAUS,
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