# A CHARTER OF DEMOCRACY.

## Roosevelt's Address Before the Ohio Constitutional Convention.

## FAVORS RECALL OF JUDGES.

Control of Trusts Should Be Adminis-Approves Initiative and Referendum, Direct Nominations and Famular Eduction of Senators.

Mr. President and Members of 114 Oblo Constitutional Convention:

I am profoundly sensible of the houor you have done me in asking me to address you. You are engaged in the fundamental work of self governmen. You are engaged in framing a contution under and in accordance with which the people are to get and to defustice and absolutely to rule them selves. No representative body can have a higher task. To carry it throug successfully there is need to combine practical common sense of the Elon hard hended kind with a spirit of lofty ideniism.

I believe in pure democracy. With Lincoln I hold that "this country, wit! Rs institutions, belongs to the paop who inhabit it. Whenever they sha grow weary of the existing govern ment they can exercise their constitu Sonal right of amending it." We progressives believe that the people have the right, the power and the duty to protect themselves and their own we fare; that human rights are suprem all other rights; that wealth should be the servant, not the master. of the people. We believe that unics representative government does abno butely represent the people it is not representative government at all. We test the worth of all men and all meas eres by asking how they contribute to the welfare of the men, women an children of whom this nation is corposed. We are engaged in one of the great battles of the age long contewaged against privilege on behalf of the common welfare. We hold it prime duty of the people to free on government from the control of mone in politics.

This country, as Lincoln said, be longs to the people. So do the naturresources which make it rich. The supply the basis of our prosperity no: and hereafter. In preserving them which is a national duty, we must no forget that monopoly is based on the control of natural resources and had aral advantages and that it will be the people little to conserve our had wral wealth unless the benefits which it can yield are secured to the paon Let us remember also that conserve tion does not stop with the natural ra sources, but that the principle of mail ing the best use of all we have re cuires with equal or greater insistant that we shall stop the waste of human life in industry and prevent the waste of human welfare which flows from the unfair use of concentrated powand wealth in the hands of men who eagerness for profit blinds them to the oost of what they do. We have : higher duty than to promote the effi elency of the individual. There is no surer road to the efficiency of the na

#### Power Is the People's.

I am emphatically a believer in con stitutionalism, and because of this fac-I no less emphatically protest again any theory that would make of th constitution a means of thwarting in stead of securing the absolute right of the people to rule themselves and t provide for their own social and dustrial . Il being. All constitutio those of the states no less than the of the nation, are designed and to be interpreted and administered no to fit human rights. Lincoln so and administered the us tional constitution. Buchanan a tempted the reverse, attempted to fl human rights to and limit them b the constitution. It was Buchan who treated the courts as a fells! who protested against and condemne all criticism of the judges for uninand unrighteous decisions and unlich the constitution as an instrument for the protection of privilege and of vested wrong. It was Lincoln who appegled to the people against the judge when the judges went wrong, who ad vocated and secured what was practically the recall of the Dred Scott de cision and who treated the constitution as a living force for righteou ness. We stand for applying the con efitution to the Issues of today as Lincolu applied it to the issues of his day. Lincoln, mind you, and not Buchanan. was the real upholder and preserver of the constitution, for the true progressive, the progressive of the Lincoln stamp, is the only true constitutionalist, the only real conservative. If the constitution is successfully it voked to nullify the effort to remed Injustice it is proof positive either that the constitution needs immediate amendment or else that it is being wrongfully and improperly construed I therefore very earnestly ask you elearly to provide in this constitution means which will enable the people readily to amend it if at any point it works injustice and also means which will permit the people themselves by popular vote, after due deliberation and discussion, but finally and without appeal, to settle what the proper construction of any constitutional

point is. It is often said that ours is government of checks and balances Rat this should only mean that these checks and balances obtain as among the several different kinds of representatives of the people-judicial, exscutive and legislative-to whom the people have delegated certain portions of their power. It does not mean that the people have parted with their power or cannot resume it. The "division of powers" is merely the division among the representatives of the powers delegated to them. The term must not be held to mean that the people have divided their power with their delegates. The power is the people's and only the people's.

Make Popular Rule Effective. hold it to be the duty of every trative and Not Judicial-Lincoln public servant and of every man who Pointed the Way We Must Follow. In public or in private life holds a position of leadership in thought or action to endeavor honestly and fearlessly to guide his fellow countrymen to right decisions, but I emphatically dissent from the view that it is either wise or necessary to try to devise methods which under the constitution will automatically prevent the people from deciding for themselves what governmental action they deem just and proper. It is impossible to invent constitutional devices which will prevent the popular will from being effective for wrong without also preventing it from being effective for right. The only sufe course to follow in this great American democracy is to provide for making the popular judgment really effective.

> Lincoln, with his clear vision, his ingrained sense of justice and his spirit of kindly friendliness to all, forecast our present struggle and saw the way out. What he said should be pondered by capitalist and workingman alike. He spoke as follows (I condense):

> I hold that while man exists it is his duty to improve not only his condition, but to assist in ameliorating mankind Labor is prior to and independent of capital. Labor is the superior of capital and Capital has its rights, which are as worthy of protection as any other rights. Nor should this lead to a war upon property. Property is the fruit of labor. Property is desirable, is a positive good in the world. Let not him who is houseless pull down the house of another, but let him work diligently and build one for himself, thus by example assuring that his own shall be safe from violence when built.

This last sentence characteristically shows Lincoln's homely, kindly common sense. His is the attitude that we ought to take. He showed the proper sense of proportion in his relative estimates of capital and labor, of human rights and the rights of wealth.

Prosperity Must Be Distributed. The ends of good government in our democracy are to secure by genuine popular rule a high average of moral and material well being among our citizens. It has been well said that in the past we have paid attention only to the accumulation of prosperity, and that from henceforth we must pay equal attention to the proper distribution of prosperity. This is true. The only prosperity worth having is that which affects the mass of the people. We are bound to strive for the fair distribution of prosperity. But it behooves us to remember that there is no use in devising methods for the proper distribution of prosperity unless the prosperity is there to distribute. I hold it to be our duly to see that the wageworker, the small producer, the ordinary consumer, shall get their fair share of the benefit of business prosperity. But it either is or ought to be evident to every one that business has to prosper before anybody can get any benefit from it. Therefore I hold that he is the real progressive, that he is the genuine champion of the people. who endeavors to shape the policy alike of the nation and of the several states so as to encourage legitimate honest business at the same time that he wars ngainst all crookedness and injustice and unfairness and tyranny in the business world, for of course we can only get business put on a basis of permaneut prosperity when the element of injustice is taken out of it. This is the reason why I have for so many years insisted as regards our national govcomment that it is both futile and mischievous to endeavor to correct the evils of big business by an attempt to restore business conditions as they were in the middle of the last century. before railways and telegraphs had rendered larger business organizations both

inevitable and desirable. The effort to restore such conditions and to trust for Justice solely to such proposed restoration is as foolish as if we should attempt to arm our troops with the flintlocks of Washington's Continentals instead of with modern weapons of precision. Flintlock legislation of the kind that seeks to prohibit all combinations, good or bad, is bound to fail, and the effort, in so far as it accompl hes anything at all, merely means that some of the worst combinations are not checked and that honest business is checked. What is needed is, first, the recognition that modern business conditions have come to stay, in so far at least as these conditions mean that business must be done in larger units, and then the cool hended and resolute determination to introduce an effective method of regulating big corporations so as to help teritimate business as an incident to thoroughly and completely safeguarding the interest of the people as a whole. We are a business people. The tillers of the soll, the wageworkers, the business men-these are the three big and vitally important divisions of our population. The welfare of each division is vitally necessary to the welfare of the people as a whole. The great mass of business is, of course, done by men whose business is either small or of moderate size.

Should Be Fixed Policy.

The average business man of this true is, as a rule, a leading citizen of to pass, as the laws of competition

that tells for its betterment, a man whom his neighbors look up to and respect. He is in no sense dangerous to his community just because he is an integral part of his community, hone of its bone and flesh of its flesh. His life fibera are intertwined with the life fibers of his fellow citizens. Yet nowadays many men of this kind when they come to make necessary trade agre tents with one another flud themselves in danger of becoming unwitting transgressors of the law and are at a loss to know what the law forbids and what it per mits. This is all wrong. There should be a fixed governmental policy, a policy which shall clearly define and punish wrongdoing and shall give in advance full information to any man as to just what he can and just what he cannot legally and properly do. It is absurd and wicked to treat the deliberate law breaker as on an exact par with the man eager to obey the law, whose only desire is to find out from some cotent governmental authority what the law is and then live up to it. It is at surd to endeavor to regulate business in the interest of the public by mer tal of long drawn lawsuits without pay accompaniment of administrative cuttrol and regulation and without any attempt to discriminate between the honest man who has succeeded in business because of rendering a service to the public and the dishonest man who has succeeded in business by cheating the public. So much for the small business man-

and the middle sized business man,

Now for big business. It is imperative to exercise over big business a control and supervision which are unnecessary as regards small business. All business must be conducted under the law. and all business men, big or little, must act justly. But a wicked big interest is necessarily more dangerous to the community than a wicked little interest. "Big business" in the past has been responsible for much of the special privilege which must be unsparingly cut out of our national life. do not believe in making mere size of and by itself criminal. The mere fact of size, however, does unquestionably carry the potentiality of such grave wrongdoing that there should be by law provision made for the strict supervision and regulation of these great industrial concerns doing an interstate business, much as we now regulate the transportation agencies which are engaged in interstate business. The antitrust law does good in so far as it can be invoked against combinations which really are monopolies or which restrict production or which artificially raise prices. But in so far as its workings re uncertain or as it threatens corporations which have not been guilty of anti-social conduct it does harm. Moreover, it cannot by itself accompilate more than a triffing part of the governmental regulation of big business which is needed. The nation and the states must co-operate in this matter. Among the states that have entered this field Wisconsin has taken a lead ing place. Following Senator La Follette, a number of practical workers and thinkers i.. Wisconsin have turned that state into an experimental labora tory of wise governmental action in aid of social and industrial justice. They have initiated the kind of progressive government which means not merely the preservation of true democracy, but the extension of the principle of true democracy into industrialism as well One prime re the state has been so successful in this policy lies is the fact that it has done justice to corporations precisely as it as exacted justice from them.

Thi is precisely the attitude should take toward big business. It is the practical application of the principle of the square deal. Not only as matter of justice, but in our own interest, we should scrupulously respect the rights of honest and decent business and should encourage it where its activities make, as they often do make, for the common good. In other words, our demand is that big business give the people a square deal and that the people give a square deal to any man engaged in big business the honestly endeavors to do what i

ight and proper.

On the other hand, any corporation ig or little, which has gained its too ition by unfair methods and by interference with the rights of others which has raised prices or limited out out in improper fashion and has been guilty of demoralizing and corrupt practices, should not only be broken in, but it should be made the business of some competent governmental bods by constant supervision to see that it does not come together again, save under such strict control as to insure the community against all danger of a repetition of the bad conduct.

#### Control Should Be Administrative.

All business into which the element of monopoly in any way or degree enters and where it proves in practice impossible totally to eliminate this element of monopoly should be carefully supervised, regulated and controlled by governmental authority, and such control should be exercised by administrative rather than by judicial officers.

In emphasizing the part of the administrative department in regulating combinations and checking absolute monopoly I do not, of course, overlook the obvious fact that the legislature and the judiciary must do their part. The legislature should make it more clear exactly what methods are illegal, and then the judiciary will be in a better position to punish adequately and relentlessly those who insist on lefying the clear legislative decrees. do not believe any absolute private monopoly is justified, but if our great combinations are properly supervised. so that immoral practices are prevented, absolute monopoly will not come his community, foremost in everythins and efficiency are against it.

The important thing is this-that under such government recognition as we may give to that which is beneficent and wholesome in large business organizations we shall be most vigilant never to allow them to crystallize into a condition which shall make private initiative difficult. It is of the utmost importance that in the future we shall keep the broad path of opportunity just as open and easy for our children as it was for our fathers during the period which has been the glory of America's industrial history. In a word, then, our fundamental purpose must be to secure genuine equality of opportunity. No man should receive a dollar unless that dollar has been fairly earned. Every dollar received should represent a dollar's worth of service rendered. No watering of stocks should be permitted, and it can be prevented only by close governmental supervision of all

italization. We stand for the rights of property. but we stand even more for the rights of man. We will protect the rights of the wealthy man, but we maintain that he holds his wealth subject to the general right of the community to regulate its business use as the public welfare requires.

stock issues so as to prevent overcap-

#### Welfare of Labor.

We also maintain that the nation and the several states have the right to regulate the terms and conditions of labor, which is the chief element of wealth, directly in the interest of the common good. It is our prime duty to shape the industrial and social forces so that they may tell for the material and moral upbuilding of the farmer and the wageworker, just as they should do in the case of the business man. You, framers of this constitution, be careful so to frame it that under it the people shall leave themselves free to do whatever is necessary in order to help the farmers of the state to get for themselves and their wives and children not only the benefits of better farming, but also those of better business methods and better

conditions of life on the farm. Moreover, shape your constitutional action so that the people will be able through their legislative bodies or, falling that, by direct popular vote to provide workmen's compensation acts, to regulate the hours of labor for children and for women, to provide for their safety while at work and to prevent overwork or work under unbyglenic or unsafe conditions. See to it that no restrictions are placed upon legislative powers that will prevent the enactment of laws under which your people can promote the general wel-

fare, the common good. So much for the ends of government, and I have, of course, merely sketched in outline what the ends should be. Now for the machinery by which these ends are to be achieved. and here again remember I only sketch in outline and do not for a moment 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. Massachusetts has the right to have appointive judges who serve during good behavior, subject to removal, not by impeachment, but by simple majority vote of the two houses of the legislature whenever the representatives of the people feel that the needs of the people require such removal. New York has the right to have a long term elective judiciary. Ohlo has the right to have a short term elective judiciary without the recall. California, Oregon and Arizona have each and every one of them the right to have a short term elective judiciary with the recall. Personally of the four systems I plefer the Massachusetts one if addition be made to it as I hereinafter indicate.

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 offective 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 crook in public life is not ordinarily the man whom the people themselves elect directly to a highly important and responsible position. The type of boss who has made the name of politician odious rarely himself runs for high elective office, and if he does and is elected the people have only themselves to blame. 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.

### Direct Nominations,

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. Not as a matter of theory, but as a matter of plain and proved experience, we find that the convention system, while it often records the popular will, is also often used by adroit politicians as a method of thwarting the popular will. In other words, the existing machinery for nominations is cumbrous and is not designed to secure the real expression of the popular desire.

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 indirect 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 legis latures.

I believe in the initiative and the ref erendum, 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 pecular action in order to make good such legislative failure.

#### Recall of Judges.

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 in clined to be hostile to it. I know of one case where it was actually used with mischievous results. On the oth er hand, in three cases in municipali ties on the Pacific coast which have come to my knowledge it was use 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 le service to the people, recently wrote me as follows on this subject: "There are two causes of the agita

tion 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 fustice 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 Pharlsees of old, they have 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 con fessed. 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. Nero, fiddling over burning Rome, was a patriot and a statesman in comparison with judges who thus trifle with and frustrate the aroused moral sentiment of a great people, for that sentiment is politically the vital breath of both state and nation. 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 insteed 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."

An independent and upright judiciary which fearlessly stands for the right. even against popular clamor, but which also understands and sympathizes with popular needs, is a great asset of popular government. There is no public servant and no private man whom I place above a judge of the best type and very few whom I rank beside him. I believe in the cumulative value of the aw and in its value as an impersonal, disinterested basis of control. I be lieve in the necessity for the courts' interpretation of the law as law with out the power to change the law or to substitute some other thing than law for it. But I agree with every great jurist, from Marshall downward, when say that every judge is bound to condder two separate elements in his decision of a case, one the terms of the law and the other the conditions of actuni life to which the law is to be applied. Only by taking both of these elements into account is it possible to apply the law as its spirit and intent demand that it be applied. Both law and life are to be considered in order that the law and the constitution shall become, in John Marshall's words, "a living instrument and not a dead let

Justice between man and man, be tween the state and its citizens, is a living thing, whereas legalistic justice is a dead thing. Moreover, never for get that the judge is just as much the servant of the people as any other official. Of course he must act conscientiously. So must every other offi cial. He must not do anything wrong because there is popular clamor for it any more than under similar circumstances a governor or a legislator or a public utilities commissioner should do wrong. Each must follow his conscience, even though to do so costs him his place. But in their turn the people must follow their conscience. and when they have definitely decided

on a given policy they must have po lic servants who will carry out that policy.

#### Impeachment a Failure Keep clearly in mind the distinction

between the end and the means to a tain that end. Our aim is to get type of judge that I have described. keep him on the beach as long an tosible and to keep off the beach and, necessary, take off the bench it wrong type of judge. Under the co ditions set forth in the extract fro the letter given above I would no sonally have favored the recall of judges both in California and in M sourl, for no damage that could have been done by the recall would have equaled the damage done to the comunity by judges whose conduct h revolted not only the spirit of justing but the spirit of common sense. I not believe in adopting the recall say as a last resort, when it has become clearly evident that no other conwill achieve the desired result. It either the recall will have to be ador ed or else it will have to be m much easier than it now is to get not merely of a bad judge, but o judge who, however virtuous, h grown so out of touch with needs and facts that he is unfit lon to render good service on the ben It is nonsense to say that impenment meets the difficulty. In accordance practice we have found that impenment does not work; that unfit judg stay on the beach in spite of it. In peachment as a remedy for the ills which the people justly complain is complete fajlure. A quicker, a mosummary, remedy is needed.

But there is one kind of recall which I very carnestly believe and th immediate adoption of which I urg There are sound reasons for being tious about the recall of a good jud who has rendered an unwise and i proper decision. Every public serva no matter how valuable, and not enting Washington or Lincoln or Ma shall, at times makes mistakes; ther fore we should be cautious about calling the judge, and we should cautious about interfering in any w with the judge in decisions which makes in the ordinary course as ween individuals. But when a jud

ides a constitutional question, wh decides what the people as a whi an or cannot do, the people sho have the right to recall that decisi if they think it wrong. We should he the judiciary in all respect, but it both absurd and degrading to make fetish of a judge or of any one e Abraham Lincoln said in his first lugural: "If the policy of the governme upon vital questions affecting the who people is to be irrevocably fixed by d cisions of the supreme court . . the people will have ceased to be the own rulers, having to that extent pratically resigned their government is the hands of that eminent tribun Nor is there in this view any assett upon the courts or the judges." oin actually applied in successful facilities ion the principle of the recall in the Dred Scott case.

#### Trust the People.

Many eminent lawyers who more or less frankly disbelleve in our eath American system of government for, by and of the people violently antau nize this proposal. They believe a sometimes assert that the America people are not fitted for popular go ernment and that it is necessary keep the judiciary "independent of majority or of all the people;" there must be no appeal to the pool from the decision of a court in an case and that therefore the judges to be established as sovereign rul over the people. I take absolute is: with all those who hold such a potion. I regard it as a complete neg tion of our whole system of govern ment, and if it became the dominant position in this country it would me the absolute upsetting of both rights and the rule of the people. the American people are not fit popular government and if they shou of right be the servants and not masters of the men whom they they selves put in office, then Lincoln's w was wasted and the whole system government upon which this democratic republic rests is a fall I believe, on the contrary, with all heart that the American people are for complete self government and th in spite of all our failings and ab comings we of this republic have in nearly realized than any other pas on earth the ideal of justice attail through genuine popular rule. If courts have the final say so on all islative acts and if no appeal can from them to the people, then they the irresponsible masters of the pe

The only tenable excuse for such position is the frank avowal that people lack sufficient intelligence morality to be fit to govern themselv In other words, those who take t position hold that the people h enough intelligence to frame and ada constitution, but not enough intel gence to apply and interpret the stitution which they have themselves made.

I do not say that the people are infallible, but I do say that our while history shows that the American pe ple are more often sound in their decisions than is the case with any of the governmental bodies to which, for their convenience, they have delegated portions of their power.

Just as the people and not the supreme court under Chief Justice Taney were wise in their decisions of the vi tal questions of their day, so I hold that now the American people as a whole have shown themselves wiser than the courts in the way they have approached and dealt with such vital questions of our day as those concerning the proper control of big corporations and of securing their rights to industrial workers.