The Right of the People to Rule

Theodore Roosevelt

Roosevelt relinquished the presidency in 1908, believing that his Progressive legacy lay safely in the hands of his handpicked successor, William Howard Taft. Although Taft expanded many of Roosevelt's policies and succeeded in passing through Congress the Sixteenth Amendment, permitting a national income tax, Roosevelt challenged Taft in the 1912 Republican primary. Losing the nomination, he announced an independent candidacy under the banner of the Progressive or "Bull Moose" Party. In this campaign speech, he urges more direct power to the people through recall elections, referenda and initiatives, and direct primaries.

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The great fundamental issue now before the Republican party and before our people can be stated briefly. It is, Are the American people fit to govern themselves, to rule themselves, to control themselves? I believe they are. My opponents do not. I believe in the right of the people to rule. I believe the majority of the plain people of the United States will, day in and day out, make fewer mistakes in governing themselves than any smaller class or body of men, no matter what their training, will make in trying to govern them. I believe, again, that the American people are, as a whole, capable of self-control and of learning by their mistakes. Our opponents pay lip-loyalty to this doctrine; but they show their real beliefs by the way in which they champion every device to make the nominal rule of the people a sham.

I have scant patience with this talk of the tyranny of the majority. Whenever there is tyranny of the majority, I shall protest against it with all my heart and soul. But we are today suffering from the tyranny of minorities. It is a small minority that is grabbing our coal deposits, our water powers, and our harbor fronts. A small minority is battening on the sale of adulterated foods and drugs. It is a small minority that lies behind monopolies and trusts. It is a small minor-

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ity that stands behind the present law of master and servant, the sweat-shops, and the whole calendar of social and industrial injustice. It is a small minority that is today using our convention system to defeat the will of a majority of the people in the choice of delegates to the Chicago Convention. The only tyrannies from which men, women, and children are suffering in real life are the tyrannies of minorities.

If the majority of the American people were in fact tyrannous over the minority, if democracy had no greater self-control than empire, then indeed no written words which our forefathers put into the Constitution could stay that tyranny.

No sane man who has been familiar with the government of this country for the last twenty years will complain that we have had too much of the rule of the majority. The trouble has been a far different one—that, at many times and in many localities, there have held public office in the States and in the Nation men who have, in fact, served not the whole people, but some special class or special interest. I am not thinking only of those special interests which by grosser methods, by bribery and crime, have stolen from the people. I am thinking as much of their respectable allies and figureheads, who have ruled and legislated and decided as if in some way the vested rights of privilege had a first mortgage on the whole United States, while the rights of all the people were merely an unsecured debt. Am I overstating the case? Have our political leaders always, or generally, recognized their duty to the people as anything more than a duty to disperse the mob, see that the ashes are taken away, and distribute patronage? Have our leaders always, or generally, worked for the benefit of human beings, to increase the prosperity of all the people, to give to each some opportunity of living decently and bringing up his children well? The questions need no answer.

Now there has sprung up a feeling deep in the hearts of the people—not of the bosses and professional politicians, not of the beneficiaries of special privilege—a pervading belief of thinking men that when the majority of the people do in fact, as well as theory, rule, then the servants of the people will come more quickly to answer and obey, not the commands of the special interests, but those of the whole people. To reach toward that end the Progressives of the Republican party in certain States have formulated certain proposals for change in the form of the State government—certain new "checks and balances" which may check and balance the special interests and their allies. That is their purpose. Now turn for a moment to their proposed methods.

First, there are the "initiative and referendum," which are so framed that if the Legislatures obey the command of some special interest, and obstinately refuse the will of the majority, the majority may step in and legislate directly. No

man would say that it was best to conduct all legislation by direct vote of the people—it would mean the loss of deliberation, of patient consideration—but, on the other hand, no one whose mental arteries have not long since hardened can doubt that the proposed changes are needed when the Legislatures refuse to carry out the will of the people. The proposal is a method to reach an undeniable evil. Then there is the recall of public officers—the principle that an officer chosen by the people who is unfaithful may be recalled by vote of the majority before he finishes his term. I will speak of the recall of judges in a moment—leave that aside—but as to the other officers, I have heard no argument advanced against the proposition, save that it will make the public officer timid and always currying favor with the mob. That argument means that you can fool all the people all the time, and is an avowal of disbelief in democracy. If it be true—and I believe it is not—it is less important than to stop those public officers from currying favor with the interests. Certain States may need the recall, others may not; where the term of elective office is short it may be quite needless; but there are occasions when it meets a real evil, and provides a needed check and balance against the special interests.

Then there is the direct primary—the real one, not the New York one—and that, too, the Progressives offer as a check on the special interests. Most clearly of all does it seem to me that this change is wholly good—for every State. The system of party government is not written in our Constitutions, but it is none the less a vital and essential part of our form of government. In that system the party leaders should serve and carry out the will of their own party. There is no need to show how far that theory is from the facts, or to rehearse the vulgar thieving partnerships of the corporations and the bosses, or to show how many times the real government lies in the hands of the boss, protected from the commands and the revenge of the voters by his puppets in office and the power of patronage. We need not be told how he is thus entrenched nor how hard he is to overthrow. The facts stand out in the history of nearly every State in the Union. They are blots on our political system. The direct primary will give the voters a method ever ready to use, by which the party leader shall be made to obey their command. The direct primary, if accompanied by a stringent corrupt-practices act, will help break up the corrupt partnership of corporations and politicians.

My opponents charge that two things in my program are wrong because they intrude into the sanctuary of the judiciary. The first is the recall of judges; and the second, the review by the people of judicial decisions on certain constitutional questions. I have said again and again that I do not advocate the recall of judges in all States and in all communities. In my own State I do not advocate it or believe it to be needed, for in this State our trouble lies not with corrup-

tion on the bench, but with the effort by the honest but wrong headed judges to thwart the people in their struggle for social justice and fair-dealing. The integrity of our judges from Marshall to White and Holmes—and to Cullen and many others in our own State—is a fine page of American history. But—I say it soberly—democracy has a right to approach the sanctuary of the courts when a special interest has corruptly found sanctuary there; and this is exactly what has happened in some of the States where the recall of the judges is a living issue. I would far more willingly trust the whole people to judge such a case than some special tribunal—perhaps appointed by the same power that chose the judge—if that tribunal is not itself really responsible to the people and is hampered and clogged by the technicalities of impeachment proceedings.

I have stated that the courts of the several States—not always but often—have construed the "due process" clause of the State Constitutions as if it prohibited the whole people of the State from adopting methods of regulating the use of property so that human life, particularly the lives of the working men, shall be safer, freer, and happier. No one can successfully impeach this statement. I have insisted that the true construction of "due process" is that pronounced by Justice Holmes in delivering the unanimous opinion of the Supreme Court of the United States, when he said:

"The police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare."

I insist that the decision of the New York Court of Appeals in the Ives case, which set aside the will of the majority of the people as to the compensation of injured workmen in dangerous trades, was intolerable and based on a wrong political philosophy. I urge that in such cases where the courts construe the due process clause as if property rights, to the exclusion of human rights, had a first mortgage on the Constitution, the people may, after sober deliberation, vote, and finally determine whether the law which the court set aside shall be valid or not. By this method can be clearly and finally ascertained the preponderant opinion of the people which Justice Holmes makes the test of due process in the case of laws enacted in the exercise of the police power. The ordinary methods now in vogue of amending the Constitution have in actual practice proved wholly inadequate to secure justice in such cases with reasonable speed, and cause intolerable delay and injustice, and those who stand against the changes I propose are champions of wrong and injustice, and of tyranny by the wealthy and the strong over the weak and the helpless.

So that no man may misunderstand me, let me recapitulate:

(1) I am not proposing anything in connection with the Supreme Court of the United States, or with the Federal Constitution.

(2) I am not proposing anything having any connection with ordinary suits, civil or criminal, as between individuals.

(3) I am not speaking of the recall of judges.

(4) I am proposing merely 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—which should depend, as Justice Holmes so well phrases it, upon the prevailing morality or preponderant opinion—be submitted for final determination to a vote of the people, taken after due time for consideration. And I contend that the people, in the nature of things, must be better judges of what is the preponderant opinion than the courts, and that the courts should not be allowed to reverse the political philosophy of the people. My point is well illustrated by a recent decision of the Supreme Court, holding that the Court would not take jurisdiction of a case involving the constitutionality of the initiative and referendum laws of Oregon. The ground of the decision was that such a question was not judicial in its nature, but should be left for determination to the other coordinate departments of the Government. Is it not equally plain that the question whether a given social policy is for the public good is not of a judicial nature, but should be settled by the Legislature, or in the final instance by the people themselves?

The President of the United States, Mr. Taft, devoted most of a recent speech to criticism of this proposition. He says that it "is utterly without merit or utility, and, instead of being…in the interest of all the people, and of the stability of popular government, is sowing the seeds of confusion and tyranny." (By this he of course means the tyranny of the majority, that is, the tyranny of the American people as a whole.) He also says that my proposal (which, as he rightly sees, is merely a proposal to give the people a real, instead of only a nominal, chance to construe and amend a State Constitution with reasonable rapidity) would make such amendment and interpretation "depend on the feverish, uncertain, and unstable determination of successive votes on different laws by temporary and changing majorities;" and that "it lays the axe at the foot of the tree of well-ordered freedom, and subjects the guarantees of life, liberty, and property without remedy to the fitful impulse of a temporary majority of an electorate."

This criticism is really less a criticism of my proposal than a criticism of all popular government. It is wholly unfounded, unless it is founded on the belief that the people are fundamentally untrustworthy. If the Supreme Court's definition of due process in relation to the police power is sound, then an act of the Legislature to promote the collective interests of the community must be valid, if it embodies a policy held by the prevailing morality or a preponderant opinion to be necessary to the public welfare. This is the question that I propose to submit to the people. How can the prevailing morality or a preponderant opinion be better and more exactly ascertained than by a vote of the people? The people must know better than the court what their own morality and their own opinion is. I ask that you, here, you and the others like you, you the people, be given the chance to state your own views of justice and public morality, and not sit meekly by and have your views announced for you by well-meaning adherents of outworn philosophies, who exalt the pedantry of formulas above the vital needs of human life.

The object I have in view could probably be accomplished by an amendment of the State Constitutions taking away from the courts the power to review the Legislature's determination of a policy of social justice, by defining due process of law in accordance with the views expressed by Justice Holmes of the Supreme Court. But my proposal seems to me more democratic and, I may add, less radical. For under the method I suggest the people may sustain the court as against the Legislature, whereas, if due process were defined in the Constitution, the decision of the Legislature would be final.

Mr. Taft's position is the position that has been held from the beginning of our Government, although not always so openly held, by a large number of reputable and honorable men who, down at bottom, distrust popular government, and, when they must accept it, accept it with reluctance, and hedge it around with every species of restriction and check and balance, so as to make the power of the people as limited and as ineffective as possible. Mr. Taft fairly defines the issue when he says that our Government is and should be a government of all the people by a representative part of the people. This is an excellent and moderate description of an oligarchy. It defines our Government as a government of all the people by a few of the people.

Mr. Taft, in his able speech, has made what is probably the best possible presentation of the case for those who feel in this manner. Essentially this view differs only in its expression from the view nakedly set forth by one of his supporters, Congressman Campbell. Congressman Campbell, in a public speech in New Hampshire, in opposing the proposition to give the people real and effective control over all their servants, including the judges, stated that this

was equivalent to allowing an appeal from the umpire to the bleachers. Doubtless Congressman Campbell was not himself aware of the cynical truthfulness with which he was putting the real attitude of those for whom he spoke. But it unquestionably is their real attitude. Mr. Campbell's conception of the part the American people should play in self-government is that they should sit on the bleachers and pay the price of admission, but should have nothing to say as to the contest which is waged in the arena by the professional politicians. Apparently Mr. Campbell ignores the fact that the American people are not mere onlookers at a game, that they have a vital stake in the contest, and that democracy means nothing unless they are able and willing to show that they are their own masters.

I am not speaking jokingly, nor do I mean to be unkind; for I repeat that many honorable and well-meaning men of high character take this view, and have taken it from the time of the formation of the Nation. Essentially this view is that the Constitution is a straight-jacket to be used for the control of an unruly patient—the people. Now I hold that this view is not only false but mischievous, that our Constitutions are instruments designed to secure justice by securing the deliberate but effective expression of the popular will, that the checks and balances are valuable as far, and only so far, as they accomplish that deliberation, and that it is a warped and unworthy and improper construction of our form of government to see in it only a means of thwarting the popular will and of preventing justice. Mr. Taft says that "every class" should have a "voice" in the government. That seems to me a very serious misconception of the American political situation. The real trouble with us is that some classes have had too much voice. One of the most important of all the lessons to be taught and to be learned is that a man should vote, not as a representative of a class, but merely as a good citizen, whose prime interests are the same as those of all other good citizens. The belief in different classes, each having a voice in the Government, has given rise to much of our present difficulty; for whosoever believes in these separate classes, each with a voice, inevitably, even although unconsciously, tends to work, not for the good of the whole people, but for the protection of some special class—usually that to which he himself belongs.

The same principle applies when Mr. Taft says that the judiciary ought not to be "representative" of the people in the sense that the Legislature and the Executive are. This is perfectly true of the judge when he is performing merely the ordinary functions of a judge in suits between man and man. It is not true of the judge engaged in interpreting, for instance, the due process clause—where the judge is ascertaining the preponderant opinion of the people (as Judge Holmes states it). When he exercises that function he has no right to let his political philosophy

reverse and thwart the will of the majority. In that function the judge must represent the people or he fails in the test the Supreme Court has laid down. Take the Workmen's Compensation Act here in New York. The legislators gave us a law in the interest of humanity and decency and fair dealing. In so doing they represented the people, and represented them well. Several judges declared that law Constitutional in our State, and several courts in other States declared similar laws Constitutional, and the Supreme Court of the Nation declared a similar law affecting men in inter-State business constitutional; but the highest court in the State of New York, the Court of Appeals, declared that we, the people of New York, could not have such a law. I hold that in this case the legislators and the judges alike occupied representative positions; the difference was merely that the former represented us well and the latter represented us ill. Remember that the legislators promised that law, and were returned by the people partly in consequence of such promise. That judgment of the people should not have been set aside unless it were irrational. Yet in the Ives case the New York Court of Appeals praised the policy of the law and the end it sought to obtain; and then declared that the people lacked power to do justice!

Mr. Taft again and again, in quotations I have given and elsewhere through his speech, expresses his disbelief in the people when they vote at the polls. In one sentence he says that the proposition gives "powerful effect to the momentary impulse of a majority of an electorate and prepares the way for the possible exercise of the grossest tyranny." Elsewhere he speaks of the "feverish uncertainty" and "unstable determination" of laws by "temporary and changing majorities;" and again he says that the system I propose "would result in suspension or application of Constitutional guarantees according to popular whim," which would destroy "all possible consistency" in Constitutional interpretation. I should much like to know the exact distinction that is to be made between what Mr. Taft calls "the fitful impulse of a temporary majority" when applied to a question such as that I raise and any other question. Remember that under my proposal to review a rule of decision by popular vote, amending or construing, to that extent, the Constitution, would certainly take at least two years from the time of the election of the Legislature which passed the act. Now, only four months elapse between the nomination and the election of a man as President, to fill for four years the most important office in the land. In one of Mr. Taft's speeches he speaks of "the voice of the people as coming next to the voice of God." Apparently, then, the decision of the people about the Presidency, after four months' deliberation, is to be treated as "next to the voice of God;" but if, after two years of sober thought, they decide that women and children shall be protected in industry, or men protected from excessive hours of labor under

unhygienic conditions, or wage-workers compensated when they lose life or limb in the service of others, then their decision forthwith becomes a "whim" and "feverish" and "unstable" and an exercise of "the grossest tyranny" and the "laying of the axe to the foot of the tree of freedom." It seems absurd to speak of a conclusion reached by the people after two years' deliberation, after threshing the matter out before the Legislature, after threshing it out before the Governor, after threshing it out before the court and by the court, and then after full debate for four or six months, as "the fitful impulse of a temporary majority." If Mr. Taft's language correctly describes such action by the people, then he himself and all other Presidents have been elected by "the fitful impulse of a temporary majority;" then the Constitution of each State, and the Constitution of the Nation, have been adopted, and all amendments thereto have been adopted, by "the fitful impulse of a temporary majority." If he is right, it was "the fitful impulse of a temporary majority" which founded, and another fitful impulse which perpetuated, this Nation. Mr. Taft's position is perfectly clear. It is that we have in this country a special class of persons wiser than the people, who are above the people, who cannot be reached by the people, but who govern them and ought to govern them; and who protect various classes of the people from the whole people. That is the old, old doctrine which has been acted upon for thousands of years abroad; and which here in America has been acted upon sometimes openly, sometimes secretly, for forty years by many men in public and in private life, and I am sorry to say by many judges; a doctrine which has in fact tended to create a bulwark for privilege, a bulwark unjustly protecting special interests against the rights of the people as a whole. This doctrine is to me a dreadful doctrine; for its effect is, and can only be, to make the courts the shield of privilege against popular rights. Naturally, every upholder and beneficiary of crooked privilege loudly applauds the doctrine. It is behind the shield of that doctrine that crooked clauses creep into laws, that men of wealth and power control legislation. The men of wealth who praise this doctrine, this theory, would do well to remember that to its adoption by the courts is due the distrust so many of our wage-workers now feel for the courts. I deny that that theory has worked so well that we should continue it. I most earnestly urge that the evils and abuses it has produced cry aloud for remedy; and the only remedy is in fact to restore the power to govern directly to the people, and to make the public servant directly responsible to the whole people—and to no part of them, to no "class" of them.

Mr. Taft is very much afraid of the tyranny of majorities. For twenty-five years here in New York State, in our efforts to get social and industrial justice, we have suffered from the tyranny of a small minority. We have been denied, now

by one court, now by another, as in the Bakeshop Case, where the courts set aside the law limiting the hours of labor in bakeries—the "due process" clause again—as in the workmen's compensation act, as in the tenement-house cigar factory case—in all these and many other cases we have been denied by small minorities, by a few worthy men of wrong political philosophy on the bench, the right to protect our people in their lives, their liberty, and their pursuit of happiness. As for "consistency"—why, the record of the courts, in such a case as the income tax for instance, is so full of inconsistencies as to make the fear expressed of "inconsistency" on the part of the people seem childish. . . .