

OUR JUDICIAL OLIGARCHY

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GILBERT E. ROE & ROBERT M. LAFOLLETTE

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By

Gilbert E. Roe

With an introduction by

Robert M. LaFollette

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INTRODUCTION

The judiciary alone, of all our institutions of government, has enjoyed for many years almost complete freedom from hostile criticism. Until very recently, this branch of our government stood above the legislative and executive departments in popular esteem. Unresponsive, and unresponsive to the public the courts dwelt in almost sacred isolation.

Within the last two or three years the public has begun to turn a critical eye upon the work of the judges. The people in their struggle to destroy special privilege and to open the way for human rights through truly representative government, found barrier after barrier placed across the way of progress by the courts. Gradually the judiciary began to loom up as the one formidable obstacle which must be overcome before anything substantial could be accomplished to free the public from the exactions of oppressive monopolies and from the domination of property interests. A new problem entered into the movement toward democracy — the problem of removing the dead hand of precedent from the judiciary and infusing into it the spirit of the times. So the people, in their need, dropped the unquestioning

eneration which custom had fostered as a shield for the judges, and began to examine into the tendencies and practices of the courts.

Such an examination is certain to have a wholesome effect. Courts should have no more to fear from honest criticism than do the Congress and the President. Judges are public servants. Their acts are public acts. In a self-governing nation, neither courts nor their decisions can properly remain above and beyond the control of the sovereign citizens. Judges cannot perform their high function in the public interest unless they are made acquainted with public needs and are responsive to the public will.

The judiciary has grown to be the most powerful institution in our government. It, more than any other, may advance or retard human progress. Evidence abounds that, as constituted to-day, the courts pervert justice almost as often as they administer it. Precedent and procedure have combined to make one law for the rich and another for the poor. The regard of the courts for fossilized precedent, their absorption in technicalities, their detachment from the vital, living facts of the present day, their constant thinking on the side of the rich and powerful and privileged classes have brought our courts into conflict with the democratic spirit and purposes of this generation. Moreover, by usurping the power to declare laws unconstitutional and by presuming to read their own views into statutes without regard to the

plain intention of the legislators, they have become in reality the supreme law-making and law-giving institution of our government. They have taken to themselves a power it was never intended they should exercise; a power greater than that entrusted to the courts of any other enlightened nation. And because this tremendous power has been so generally exercised on the side of the wealthy and powerful few, the courts have become at last the strongest bulwark of special privilege. They have come to constitute what may indeed be termed a "judicial oligarchy."

Sensing this, the people have become distrustful. In various ways they have shown their dissatisfaction with the work of the courts. Severe attacks have been made recently upon the integrity and ability of certain judges. Everywhere there is a growing public demand for a change that will bring the judiciary again into its proper sphere and into closer communion with the progressive ideals of this generation.

Mr. Roe's book, "Our Judicial Oligarchy," is a most timely and welcome contribution to this discussion. It stands alone in its analysis of the causes that have led up to the present unsatisfactory status of the courts. Mr. Roe lets the decisions themselves tell the story. He does not "muckrake" the judges. He feels that our problem to-day is not merely one of bad and corrupt judges; but rather one of "conservative," technicality-ridden judges who are seeking