LEGISLATION

THE RECALL

The enactment by the Legislature of the Province of Alberta of *The Legislative Assembly (Recall) Act*[1] should be of interest to students of political science. It is the third of a trinity of so-called "progressive" reforms which attained a great deal of popularity in the United States and the Western Provinces of Canada about twenty-five years ago. The universal adoption of the *Initiative, Referendum and Recall* was one of the principle aims of "Progressive" parties in the United States at that time. It epitomized a general distrust of, and movement away from, representative government in the direction of direct government and direct legislation. The *Initiative and Referendum* had their Canadian birth in the Province of Manitoba in 1916.[2] A very vigorous and bitter struggle was fought over the constitutionality of these provisions, and the same were finally declared ultra vires by the Judicial Committee of the Privy Council in the case of *In re Initiative and Referendum Act.*[3] Shortly thereafter interest in the ideas began to lag. In the result they have never played a really important part in the legislative processes of Canadian government.

In the United States, whence the *Initiative and Referendum* came to Canada, the years 1911 and 1912 apparently mark the high water-mark of popular interest in these "progressive" principles of legislation, which were being widely advertised as the only means whereby popular sovereignty could be restored to the American people. The year 1912 saw the publication of at least half a dozen works on the *Initiative, Referendum and Recall.*[4] It is doubtful whether half that many have been published in the quarter of a century which has elapsed since.

In the year 1912, Professor William Bennett Munro was able to write:

> There has been no more striking phenomenon in the development of American political institutions during the last ten years than the

[1] (1936), 1 Ed. VIII, c. 82 (Alta.)

[2] *Initiative and Referendum Act,* Manitoba Statutes, 1916, c. 59.

[3] (1916), 32 D.L.R. 148; affirmed in (1919), 48 D.L.R. 18.

[4] W. B. Munro. *The Initiative, Referendum and Recall* (1913); Edwin M. Bacon and Morrill Wyman, *Direct Elections and Lawmaking by Popular Vote* (1912); Charles A. Beard and Birl E. Shultz, *Documents on the Initiative, Referendum and Recall* (1912); *The Initiative, Referendum and Recall,* Annals of the American Academy of Political and Social Science, Vol. XLIII (1912); Oberholtzer, *The Referendum in America;* Phelps, *Selected Articles on the Recall;* J. D. Barrett, *The Operation of the Initiative, Referendum and Recall in Oregon.*

> rise to prominence in public discussion, and consequently to recognition upon the statute-book, of those so-termed newer weapons of democracy —the initiative, referendum and recall. By the *initiative* is meant the right of a stated percentage of the voters, in any state or municipality to propose both constitutional and ordinary laws, and to require that, if these be not enacted forthwith by the state or municipal legislature, they shall be submitted for ratification to the whole body of voters. By the *referendum* is meant the right of a stated percentage of the voters to demand that measures passed by the ordinary law-making bodies of the state or municipality shall be submitted to the whole body of voters for acceptance or rejection. By the *recall* is meant the right of the electors in any state or municipality to end by an adverse vote the term of any elective officer before the expiration of the period for which he was elected. However opinions may differ concerning the inherent merits and defects of these agencies of popular government, or concerning their compatibility with a sound representative system, it is at all events not to be denied that they have gained, during recent years, a remarkable hold upon the confidence of a large and apparently growing portion of the American electorate. [5]

The Great War appears to have effectively diverted public fancy from these ideas. That is not, however, equivalent to saying that they were entirely neglected. There are, as a matter of fact, some states in the Union, and some municipalities which employ one or other or all of the methods in their governmental systems, with more or less successful results. But as a principle postulated for universal adoption, it has definitely played no important part since the War.

Whereas the earlier Manitoba experiment above referred to was definitely a reverberation in Canada of the movements that were then going on in the United States,[6] the enactment of the instant Act in Alberta by the new Social Credit Legislature can hardly be described as having been influenced by the American movements. The present instance would appear to be a purely spontaneous outgrowth of local conditions, which has been taken up by an electorate in despair, seeking a way out of the Depression. Whether the instant Act will materially assist in this purpose is a question the answer to which history will doubtless record.

Suffice it here to note some of the outstanding provisions of the legislation in question. Any ten persons whose names appeared upon the voters' list used at the last election for a member of the Legislature may present an application for a petition for the recall of a member, setting forth, *inter alia*, the

[5] *The Initiative, Referendum and Recall*, p. 1-2.

[6] "The Direct Legislation League" was represented by counsel before the Manitoba Court of Appeal in the argument of the reference respecting the Initiative and Referendum Act.

reason for the recall.[7] This application must be accompanied by a fee of two hundred dollars.[8] The Clerk of the Executive Council must then prepare forms of petition, which, when ready, are delivered to the agent for the promoters of the petition.[9] The petition will then be circulated, and the promoters must endeavour to obtain the signatures of at least 66⅔% of the total number of voters who were upon the voters' list in the last election.[10] Every signature must be attested by a witness over the age of twenty-one years.[11] The petition must be completed and lodged with the Clerk of the Executive Council within forty days after the day upon which the forms for the petition were first delivered to the agent.[12] The Clerk of the Executive Council must immediately give notice of the petition to the member affected thereby and to the Chief Justice of Alberta.[13] The Chief Justice will appoint a day and place for the purpose of holding "an inquiry into the regularity or otherwise of the petition."[14] The inquiry will "proceed to inquire as to whether or not the petition conforms to all the provisions of this Act."[15]

Section 10 (1) of the Act declares :

> After hearing all the evidence adduced before him and any representations which may be made by or on behalf of any person entitled to appear upon the inquiry, the Chief Justice or other judge designated by him, if satisfied by such evidence that all the requirements of this Act in relation to the petition have been complied with, shall transmit to the Clerk of the Executive Council a report in writing declaring that a petition has been duly lodged with the Clerk of the Executive Council which conforms to all the requirements of this Act and that the seat of the member to which the same relates is vacant, otherwise he shall report to the Clerk of the Executive Council that the petition does not so conform and that the same is a nullity and of no effect.

The seat of any member of the Legislative Assembly becomes vacant upon delivery to the Clerk of the Executive Council of a report made pursuant to the Act setting out that a petition has been signed and lodged in conformity with the provisions of the Act, and that the seat of that member is vacant.[16] A member recalled is, however, eligible to be nominated again and elected for the same or any other electoral division.[17]

---

[7] (1936), 1 Ed. VIII, c. 82 (Alta.) s. 4(1).
[8] *Ibid.*
[9] Sec. 5.
[10] Sec. 6(f).
[11] Sec. 6(c).
[12] Sec. 6(g).
[13] Sec. 7.
[14] *Ibid.*
[15] Sec. 9(1).
[16] Sec. 2.
[17] Sec. 3.

The institution of the *Recall* is of very ancient vintage. It is known to have existed in ancient Greece. In more recent times, it has been found in operation in Switzerland and in the early New England colonies. And, still more recently, as pointed out above, the movement for the *Recall* has grown out of a lack of confidence in, and distrust of, existing legislative systems in the American West. "The principle," we are told, "upon which it is based is simple, namely, that elected officers are merely agents of popular will, and that the electors should have an opportunity at all times to pass upon the conduct of their representatives. By this system, its advocates expect to establish that steady popular control over the administration which was fondly hoped would result from the popular election of public officials."[18]

One staunch proponent of the *Recall* advanced the proposition that "it is rather an admonitory or precautionary measure, the existence of which will prevent the necessity for its use. . . . Adoption of the recall is nothing more than the application of good business principles to governmental affairs. Every wise employer reserves the right to discharge an employee whenever the service rendered is unsatisfactory."[19]

Adoption of the *Recall* in a British representative democracy is a step fraught with great significance. It is a definite indication of a revolt, for better or for worse, against the existing order of things. It is much more significant in the case of British legislatures than it is in those of American legislatures. In the case of the former, the unwritten law and custom of the constitution, which on all sides encompasses their powers and activities, has evolved throughout the centuries a certain more or less clearly defined relationship between the electors and their representatives, a relationship which differs rather materially from that which exists between the people and their representatives in the United States. The expressions quoted above[20] by an American Senator are not far removed from a true description of the relationship which exists in the United States—that of employer and employee, master and servant, perhaps, that of principal and a restricted agent.

In England, from early times, an entirely different relationship was evolved. A man may have been elected by a consti-

[18] Beard & Shultz, *Documents on the Initiative, Referendum and Recall*, p. 52.

[19] Jonathan Bourne, Jr., *Functions of the Initiative, Referendum and Recall*, Annals of the American Academy of Political and Social Science, Vol. XLIII, 1912, p. 3 at pp. 13-14.

[20] *Ibid.*

tuency to the House of Commons, but he was elected to represent not that territorial subdivision within which he was elected but the nation as a whole. His duty after election was to exercise his talents and primarily his common sense in the interests of the nation, and without regard to the specific interests of his so-called "Constituents".[21] Thus it was early established that there could be no responsibility by a member of Parliament to his "Constituents" sufficient to vest a right in the latter to demand his recall. That wise Parliamentarian of the eighteenth century, Edmund Burke, made this clear to his electors, and thereafter the principle has never been questioned in England.

Such being the principle underlying the relationship between elector and representative in the British system, it becomes clearer what the attitude ought to be towards any provision for recall of a member by the very "constituents" who elected him. Under the British system there is no special duty owing by the member to the "constituents" of his riding over and above the duty which he owes to the nation as a whole. Consequently, we cannot logically recognize any corresponding right in the aforesaid "constituents" to require the member to do as they bid or be recalled.

A point of interest in the instant Act which should be noted is the failure to provide any means whereby the member being recalled can have his views placed side by side with the complaints against him, so that the electorate may be in a position to choose more or less fairly. In this respect the American provisions for *Recall* almost invariably contain a method whereby the question whether the member should be recalled is submitted to the people, and on the ballot paper there is to be found a short statement of the accusation as well as the defence, and the electors are then better able to weigh the pros and cons.

On the other hand, the provision requiring at least 66⅔% of the electors to join in petitioning for the recall will be apt to render it a more or less idle instrument for exercising the popular will. Corresponding American provisions usually call for no more than 25% of the voters to join in a petition. The representative then has the option of resigning voluntarily or having his name go before the electors along with other nominees in a new election for the office, where ordinary majorities usually govern.

[21] Strictly speaking, this term is inaccurately used to represent the body of electors in a particular territorial subdivision. By using it we are apt to convey the impression that the relationship is one of direct representation and no more, which is not so.

Whatever may be the inherent logical difficulties of the *Recall*, there is, however, something to be said for any thoughtful effort exercised in the direction of solving some of the more flagrant abuses of the Parliamentary system, at a time when democratic institutions everywhere are being cast into general disrepute by persons who hope to gain more from their abolition than from their efficient working. For this reason the instant Act should be watched with at least an impartial interest by all persons concerned with the maintenance and strengthening of Parliamentary institutions in Canada.

MANNIE BROWN.

Toronto.