The Referendum and the Recall Among the Ancient Romans

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I have been reading lately several books and essays on the initiative, referendum, and recall. Most of them show that fine enthusiasm or that withering contempt which is called forth by the appearance of a new idea on the political horizon. The recall, it seems, was adopted by Los Angeles ten years ago; in Seattle it has been used seven years; Utah has had the referendum for fourteen years; Oregon for twelve; and minute studies have been made of the practical working of these two legislative devices. The conclusions which are reached are a bit confusing to the reader. One writer finishes his article on the experiment in Oregon by remarking, "Both reason and experience demonstrate the practicability and importance of the initiative and referendum," while another tells us that "legislation is being enacted [in Oregon] by minorities to the prejudice of the best interests of the majority." Upon the advantages which the recall has to offer there is even a greater difference of opinion, but most judicious students will probably accept for both institutions the conclusion which President Lowell reaches for the referendum in a recent number of the *Quarterly Review* that "as yet it is too early to say what the effect of the institution will be. A generation must pass before that can be determined."

That is a gloomy prospect for us to face during our declining years, and for our children in their early manhood. If those who believe in the efficacy of these methods of securing popular sovereignty are right, then the state of New York, if it refuses to see the light, will go steadily down into the depths, while, if they are wrong, Oregon and South Dakota will be set back a generation in their political development. With such a dilemma confronting us it seems strange that no attempt has been made to find out if the peoples of antiquity tried these two political devices; but, aside from an occasional airy reference to "ancient Democracies," I find no attention whatever paid to the long experience which Rome had with both of them, for the Romans

practised the recall a century or more, and direct legislation was a part of their system of government even longer. I presume the long stretch of the Dark Ages which separates us from Roman times prevents us from seeing how much there was in them which we can study with profit. It is quite true, of course, that a political system which works well with one people or generation may not be applicable to another, so that if we had a long experience of our own with these two institutions, on which conclusions could be based, it would be a waste of time to look to the history of another people. But, as we have seen, we must wait a generation for the data to collect. Even if the experience which the Roman people had with the recall and the referendum should not help us to solve our problems, the way in which these two methods of enforcing the popular will developed in another democracy may not be without interest. The fact that Rome's territory was as widespread, her population as heterogeneous as our own, makes the comparison of her experiences with ours the more tempting and pertinent. Another striking point of similarity may be found in the political genius of the two peoples.

The Romans showed, as the Anglo-Saxons have shown, skill in adapting means to an end, a high regard for tradition, and a contempt for political philosophy and logic. The fact that our industrial organization, thanks to the use of steam and electricity, is more highly developed than the Roman was does not materially affect the case. The trend of Roman civilization under the late Republic and the early Empire was remarkably like our own. As soon as he had accustomed himself to certain superficial differences, for instance, in the matter of dress, architecture, and manner of life, the American of to-day, if set down in the Rome of two thousand years ago, would have felt himself at home. Mark Twain showed a lively sense of the fitness of things, or rather a true feeling for the incongruous, when he put his Yankee, not in the Rome of Cæsar, but at the Court of King Arthur. The twentieth-century American transplanted to Rome might miss the moving-picture show or the daily newspaper for a time, but, whether his lot was cast in the slums of the Subura or among the smart set on the Palatine, he

would have found the aspirations, ideals, and attitude toward life of the native Roman not unlike his own.

To discuss intelligently the topic which we have in hand, the development of the referendum and the recall among the Romans, it will be necessary to bear in mind some features of their system of government during the last century or two of the Republic.

Almost all Roman magistrates, it will be remembered, held office for a year only. They were grouped in colleges or boards, which comprised from two to forty members. Some of them were primarily executive officials, others judges. They were all chosen by popular suffrage.

Those who had held magistracies became, by virtue of that fact, members of the senate. This organization was the oldest lawmaking body in Rome, but as democratic sentiment developed more and more, the people made good their claim to a larger share in legislation. With this change in method we are especially concerned here in discussing the development of the referendum. In the earliest days it had been the custom of the king, not only to consult the elders in the senate but also to ask for the approval of the people, assembled in the comitium, when the question of declaring an offensive war, or some other matter vitally affecting the community, had arisen. One of these two bodies represented the *mos maiorum*; in the other the current opinion of the day could be had. It was the perennial struggle between aristocracy and democracy, or to adopt the shibboleth of to-day, between those who enjoyed special privilege and the people. The duel was a long, fierce one. It lasted for centuries. When the patrician aristocracy had been worsted, its place in the lists was taken by the nobility. The ultimate outcome was the democratic Empire of Cæsar and his successors. Without implying that the referendum and the recall contributed largely to this result, they were at least milestones marking the progress of democracy toward this goal.

In early days, as we have seen, only measures vitally affecting the community were submitted to the people; later, proposals of a less important character also were brought before them. As yet all bills required the approval of the senate to become laws, but by legislation of the fourth century B.C., and notably

by the Hortensian Law of 287 B.C., this restriction was removed, so far as the more democratic assembly of all the people was concerned, and henceforth the enactments of that body, whether approved or not by the senate, became the law of the land. This constitutional victory proved of little immediate value to the democracy. Within six years after the passage of the Hortensian Law Rome was involved in a long series of desperate wars with Pyrrhus, with Carthage, and with Macedonia, which did not come to an end until Carthage had fallen in 146 B.C. The danger which threatened the whole state brought all factions together in support of the existing régime. Domestic affairs were pushed into the background. This was no time to experiment with a new legislative device. Furthermore, much of the legislation of this century and a half had to do with the conduct of the various wars, and in this field the democracy freely recognized the superior competence of the senate. Things went on, therefore, after the passage of the Hortensian Law as they had done before its enactment. Under the traditional method of procedure only a magistrate could submit a measure to the people, and the influence of immemorial practice was so strong and the control of magistrates by the senate was so complete, that an official rarely brought a matter before the people without consulting the senate in advance. I have said rarely, because some half dozen instances are known toward the end of the period of the Great Wars when an executive ventured to submit a matter to popular vote which the senate had not previously discussed, but most of the proposals introduced in this way failed of enactment because a majority of the people voted against them, or because the senate blocked them by a technical device.

Except in one important particular, then, which we shall notice in a moment, the usual legislative methods in Rome were the same for a hundred and fifty years as they are in those states of this Union where the referendum has been adopted. Bills could be passed either by the senate or by direct legislation. Most of the laws which governed the Romans had the sanction of the senate only, just as most statutes in our referendum states are enacted by the legislature. But measures in which the com-

munity felt a lively interest were laid before the people also as they are to-day in South Dakota and Colorado. In one important respect the ancient system differed from the modern in its operation. The formal institution of the initiative based on the presentation of a petition signed by a certain percentage of voters was unknown under the Roman constitution. But a similar result was secured by another device The ten tribunes had the right to sit in the senate and veto any action of that body, and usually some one of them could be found to give expression to the opposition of a reasonable number of voters, and block any action which the senate contemplated in opposition to popular sentiment. If no tribune objected, the action of the senate was accepted as binding in law. When it was felt that a measure should be submitted to popular vote, a magistrate was instructed so to submit it. As in our referendum states, the proposed measure was published a certain number of weeks before the day of voting came, and the Roman people were required to vote "Yes" or "No" on it, without the privilege of introducing amendments. Even the type of questions which could not be submitted to direct legislation suggests our own practice. Appropriation bills, for instance, and urgent matters were reserved for the senate, as they are reserved for the legislature with us in the states where the principle of direct legislation has been adopted.

In all respects save one, then, the ancient institution of the referendum resembles the modern. The point of difference between the two lies in the fact, as we have seen, that under the Roman practice all measures, with a few negligible exceptions, were initiated in the senate, whereas with us measures do not require the preliminary action of the legislature. Even this distinction was obliterated in the fateful tribunate of Tiberius Gracchus in 133 B.C. Finding that he could not secure the support of the senate for an agrarian bill on which he had set his heart, Tiberius brought it before the people, against the wish of the senate, and secured the passage of his proposal in the popular assembly. By this step the development of the referendum in its modern form was complete. The precedent which was thus set by Tiberius Gracchus was followed by his brother,

Gaius, ten years later, in the measure which he introduced for social reform, and by the democratic leaders, Mamilius, Appuleius, and Sulpicius, in the years from 122 to 88 B.C. But with the dictatorship of Sulla a reaction came. The exclusive right of the senate to initiate legislation was reaffirmed. The rising tide of democratic sentiment, however, broke down this bulwark of conservatism ten years later, and from 70 B.C. to the downfall of the Republic almost every year witnessed the passage of measures by direct legislation, without the approval, and indeed against the bitter opposition, of the senate. Among them were the bills which gave Pompey his extraordinary commissions to carry on the wars against the pirates and against Mithridates, and conferred on Cæsar his provinces in the North. It was the grant of these unprecedented powers which prepared the way for the coming of the Empire.

The recall had a shorter history. It is confined mainly to the last century of the Republic. To understand how it came into existence, one must bear in mind the Roman theory of the magistracy. In modern times our elective officials are delegates, like the members of our Electoral College, or they are entrusted with large discretionary powers, like our executive officers and the members of the Congress. In very early times neither of these views corresponded to the Roman conception of the magistracy. For the Roman the powers of the magistrate were coördinate with those of the people. However, as the theory gradually developed that the people were the sole source of authority, the doctrine of the responsibility of magistrates found its advocates. Two serious obstacles stood in the way of the full acceptance of this view. One difficulty lay in the fact that a magistrate, on taking up his duties, was vested with absolute power, the *imperium*, as the Romans called it, and the removal from office of such an official is unthinkable. But, like other autocrats, the Roman magistrate had to respect tradition, and traditional limitations on the exercise of his authority grew with time and became a part of the constitution, so that his powers were materially restricted and his prestige lowered. The importance of his office was also seriously affected by the establishment of the tribunate and by the right which the incumbents of that

office had to block the action of a magistrate. The other consideration which prevented the Romans for many centuries from accepting the principle which underlies the recall was purely practical. They did not like to interfere with the orderly transaction of public business by removing an executive from office.

Tradition tells us that at the very beginning of the Republic, Brutus removed from office his colleague in the consulship, but no credence can be put in this story. Perhaps the bringing of charges against a magistrate at the end of his term of office may be regarded as the first step which the Romans took toward recognizing the principle of the recall. Livy and other ancient writers report several cases of this sort as early as the fifth century B.C. We are told, for instance, that Appius, after his stormy career as a decemvir, was charged with misconduct in office, and that Camillus, the victor at Veii, was indicted in 391 B.C. for his unfairness in distributing the spoils of war; but these stories are probably inventions of a much later date. We seem to be on surer ground, however, when we come to the case of Lucius Postumius Megellus, who was tried in 293 B.C. for not having confined his operations when consul in the previous year to the province assigned him by the senate. By a trick he escaped condemnation, but, two years later, when he was consul for the third time, having little for his soldiers to do, he employed 2,000 of them on his own lands, and at the expiration of his term of office he was brought to trial and condemned. Publius Claudius Pulcher was the consul who commanded the Roman fleet in the disastrous naval battle with the Carthaginians in 249 B.C. off Drepana. Thinking that the chances favored him, he had engaged the enemy, although the auspices were unfavorable. When he returned to Rome he could not be indicted because he had lost the battle; he would not have been indicted if he had won a victory, even if it had been won after the sacred chickens had refused to eat, but he was brought to trial for disregarding the auspices and thereby losing the battle. As a result of the trial he was fined 1,000 *asses* for each ship which was lost, or 100,000 *asses* in all. In 211 B.C. Gneius Fulvius, an ex-prætor, was charged with unsoldierly habits,

and, feeling sure from the temper of the people that he would be convicted, went into exile.

The first attempt to remove an official from office occurred in 209 B.C. It was directed against Marcus Claudius Marcellus who had not succeeded in making head against Hannibal, but it failed of success. A similar move against the proconsul Scipio in 204 B.C. was likewise without result, but in 137 Marcus Æmilius Lepidus was removed from his proconsular command in Spain. Two things are noteworthy in connection with these cases. All the officials concerned were charged with committing offences in the performance of their military duties, and the first official to be recalled was not one of the city magistrates, but a proconsul, the incumbent of an office which did not belong in the original political hierarchy.

After it had been once granted that charges based on incompetence or neglect in the conduct of military affairs could be lodged against officials, it was natural to indict them for political misconduct, when political feeling ran high. Such a situation arose in 169 B.C. when the censor, Gaius Claudius Pulcher, was charged during his term of office with having disregarded the intercession of a tribune, and his colleague Tiberius Sempronius Gracchus was accused of interrupting an official meeting of the people over which the tribune was presiding. Both censors agreed to stand trial, and escaped conviction by a narrow margin. It is significant that the first sure instance of an attempt to recall a civil magistrate was directed against an official who, like the proconsul, was allowed large discretion in the performance of his public duties because of the nature of his office. Strangely enough this movement to displace the censors emanated, not from the masses, but from the capitalists, who were offended by a decision of the censors concerning the letting of contracts. In the case of both censors, however, the technical charge was based on an offence against the tribune, who represented in a peculiar way the rights of the people. The action taken against the censors of 169 was technically an impeachment trial. Testimony was presented and arguments for the prosecution and defence were heard, but the proceedings were very brief, appeals were made to political passion, and the jury was a meeting of all the

voters in attendance, perhaps several thousand in number. The trials of magistrates at the end of their terms of office were conducted before tribunals of the same sort.

Here we see, then, two independent lines of political tradition, under one of which the precedent has been set of punishing for official misconduct, at the end of his term of office, a magistrate with civil functions; under the other an official, whose duties are largely military, may be deposed from office. Only the fires of revolution were needed to weld these two lines into one and establish the principle of recall for any official on political grounds. That point was reached under the stress of the agitation for economic reform in the tribunate of Tiberius Gracchus in 133 B.C. That great tribune had proposed a bill which provided for the resumption by the state of certain public lands, occupied by private citizens, and their assignment in homestead lots to the needy. The measure was bitterly opposed by the well-to-do, and their opposition found expression in the attitude of Gracchus's colleague, Octavius, who exercised his right as a tribune, vetoed the measure, and thus prevented the will of the people from becoming effective.

We have a lively account of the events which followed, in Plutarch's life of Tiberius: "But when the senate assembled, and could not bring the business to any result, through the prevalence of the rich faction, he then was driven to a course neither legal nor fair, and proposed to deprive Octavius of his tribuneship, it being impossible for him in any other way to get the law brought to a vote. At first he addressed him publicly, with entreaties couched in the kindest terms, and taking him by his hands, besought him, that now, in the presence of all the people, he would take this opportunity to oblige them, in granting only that request which was in itself so just and reasonable, being but a small recompense in comparison with those many dangers and hardships which they had undergone for the public safety. Octavius, however, would by no means be persuaded to compliance; upon which Tiberius declared openly, that, seeing they two were united in the same office, and of equal authority, it would be a difficult matter to compose their difference on so weighty a matter without a civil war; and that the only remedy

which he knew, must be the deposing one of them from office. He desired, therefore, that Octavius would summon the people to pass their verdict upon him first, averring that he would willingly relinquish his authority if the citizens desired it. Octavius refused; and Tiberius then said he would himself put to the people the question of Octavius's deposition, if upon mature deliberation he did not alter his mind; and after this declaration, he adjourned the assembly till the next day.

"When the people were met together again, Tiberius placed himself on the rostra, and endeavored a second time to persuade Octavius. . . . Octavius, we are told, did seem a little softened and moved with these entreaties; his eyes filled with tears, and he continued silent for a considerable time. But presently looking towards the rich men and proprietors of estates, who stood gathered in a body together, partly for shame, and partly for fear of disgracing himself with them, he boldly bade Tiberius use any severity he pleased. The law for his deprivation being thus voted, Tiberius ordered one of his servants, whom he had made a freeman, to remove Octavius from the rostra, employing his own domestic freed servants in the stead of the public officers. . . . . This being done, the law concerning the lands was ratified and confirmed, and three commissioners were appointed, to make a survey of the grounds, and see the same equally divided."

Here at last we have all the elements of the recall, a charge based on a magistrate's official action, no judicial procedure, and removal from office by a vote of the people. The action set a precedent of tremendous importance, and Tiberius in a few days felt the need of defending it. Fortunately Plutarch has preserved for us a part of his defence. I wish it were possible to give the entire extract, but I must content myself with a few quotations from it. "'A tribune,' he said, 'of the people, is sacred indeed, and ought to be inviolable, because in a manner consecrated to be the guardian and protector of them; but if he degenerates so far as to oppress the people, abridge their powers, and take away their liberty of voting, he stands deprived by his own act of honors and immunities, by the neglect of the duty for which the honor was bestowed upon him. . . . . He who

assails the power of the people, is no longer a tribune at all. . . . For the tribunes, as well as the consuls, hold office by the people's votes. . . . We esteem him to be legally chosen tribune who is elected only by the majority of votes; and is not therefore the same person much more lawfully degraded, when by a general consent of them all, they agree to depose him?' " These are the arguments which we hear to-day in support of the same procedure. Cicero and other ancient authors tell us that Tiberius came under the influence of Greek teachers, and some modern writers have supposed that he imbibed this doctrine of popular sovereignty from them, but our analysis of the earlier period seems to show that the full recognition of this theory was the natural outcome of the precedents which had been set during the preceding century.

It is an interesting coincidence that these two doctrines of the referendum and the recall reached their fully developed form at the same moment, in the time of Tiberius, and that from his tribunate we date the beginning of the Revolution. The coincidence is one of historical interest, but of course does not justify us in assuming that the introduction of these two political devices in the present day will lead to equally radical results.

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