

# DAILY PEOPLE

VOL. 11, NO. 334.

NEW YORK, TUESDAY, MAY 30, 1911.

ONE CENT.

EDITORIAL

## RECALL THEM ALL!

By DANIEL DE LEON

**A**SSOCIATE JUSTICE JOHN M. HARLAN'S dissenting opinion in the Standard Oil case, formally filed by him on May 25, contains this passage:

“On reading the opinion just delivered the first inquiry will be, that, as the court is unanimous in holding that the particular things done by the Standard Oil Company and its subsidiary companies in this case were illegal under the Anti-Trust act, whether those things were in reasonable or unreasonable restraint of interstate commerce, why was it necessary to make an elaborate argument, as is done in the opinion, to show that according to the ‘rule of reason’ the act passed by Congress should be interpreted as if it contained the word ‘unreasonable’ or the word ‘undue’? . . . I have the authority of this court for saying that such a course on its part would be ‘judicial legislation.’”

The facts upon which the conclusion is planted—the fact that the court unanimously found the Standard Oil Company guilty of violating the express language of the Anti-Trust act, and the other fact that, the first fact notwithstanding, the same justices, Harlan excepted, decided that the word “unreasonable” or the word “undue” should be inserted in the act of Congress and the same interpreted as if those words were there,—those facts are undeniable: they are explicit statements in the court’s decision. The conclusion—that the court’s conduct is “judicial legislation,” that is, a usurpation of legislative functions by a judicial body, in other words, a violation of their oaths of office by all but one of the Justices of the Supreme Court of the United States—that conclusion is unshakable.

Such an utterance, made by no less a functionary than one of the members of the Court itself, is tantamount to an impeachment of the intellectual rectitude, or the intellectual soundness, or both, of all the other members of the Court.

What business have these judges to continue in office? Why not recall them for dishonesty, or incapacity, or both?

But what about Justice Harlan himself? With intellectual crookedness he certainly can not be charged. In point of honesty, his decision is the personification of Honesty. Can the same be said of his intellectual virility? Hardly. Of course his intellect does not slip in the style and manner of his colleagues'—supposing their ailment is simply mental imbecility. Nevertheless, limping his mentality does.

Justice Harlan's position is not that the Anti-Trust act is defective and an economic absurdity in fact, and yet a law to be obeyed so long as it stands unrepealed by the only power to repeal it—Congress. No. Justice Harlan's position is that the Anti-Trust act is not only law—and as such to be obeyed; but that it is wise—and as such to be venerated. Such a posture betrays mental weakness. As well venerate some act of Congress that declares sun and moon eclipses unconstitutional; as well venerate some act of Congress intended to prevent horns from growing on a cows head; as well venerate any act of Congress, that contemplates the prevention of biologic, as venerate an act of Congress cast in the mold of the belief that it can prevent socio-economic evolution.

The concentration of productive power that finds its highest expression in the Trust is a socio-economic law that is fundamental, cardinal, hence, irresistible. That law makes for production that is toilless, in an abundance that raises human existence to the plane of civilization, because it is the plane of economic freedom. Nor is this fact at all affected by the evils that at present accompany the Trust. These the economist, who is a scientist, and lawyer, who is a jurist, knows are transitory evils—the consequence, not of concentration, but of private ownership and bound to disappear with the advent of the Industrial or Socialist social system.

The Judge who is not aware of this socio-economic set of laws lacks the grasp because he lacks the foundation for his profession. He also should be recalled.

For all these reasons, and applying the several reasons to the several Justices of the Supreme Court of the United States, according as the reasons may fit the offense in each separate instance, all the Justices of the Court should be RECALLED.

Transcribed and edited by Robert Bills for the official website of the Socialist Labor Party of America.  
Uploaded April 2012

[slpns@slp.org](mailto:slpns@slp.org)