

Political Scientists, Barristers Split on Supreme Court Reform

LAWYERS CHARGE ROOSEVELT WILL 'PACK' TRIBUNAL

Political Scientists Defend Measure, Say Proposal Necessitated by Changing Conditions; Will Make Efficient Judiciary.

Favorable reaction and strong opposition were both expressed by law college and political science faculty members of the University when interviewed by a newspaperman on the subject of President Roosevelt's startling new program for federal courts reform.

"A most unfortunate and dangerous proposition," said Dean H. H. Foster of the law college. "Do not let anyone mislead you as to the proposed act with reference to the Federal judiciary. While it contains some needed reforms, its real purpose is to allow the federal executive to pack the Supreme Court in order to carry out the policies of this administration. Two changes of fundamental importance in our governmental structure are involved, (1) the relation of the federal government to the states is to be changed by the enormous enhancement of federal powers, (2) the relation of the judicial department to the other departments of the federal government is to be changed by making the judiciary subordinate to the political department of the government.

Direct Method Better.

"The direct method of constitutional amendment, a method that gives the people of the United States through the legislatures of their several states or through constitutional conventions called for that purpose a chance to pass upon such matters is a far better method for effectuating fundamental changes than the indirect method of whittling away constitutional provisions by court interpretation or by political methods controlling the personnel of the court."

If our government is to con-

tinue to be a government of law and not of men's final interpretations of constitutional limitations it must continue to be left to a non-political body who will determine such matters by abstract principles and not by political exigencies of the moment. The issues involved transcend party politics and also transcend all personalities involved. If such power is granted to Mr. Roosevelt, however well he might use it, the granting of such power will be a precedent fraught with grave danger."

Nutting Questions Interference.

Statement of Prof. C. B. Nutting: "There is much to be said in favor of some of the president's program, but I am dubious about the desirability of interfering with the personnel of the supreme court in the manner suggested."

Prof. Lawrence Vold's statement: "The president's suggested program purports to be based on two theses, that judges of the federal



—Courtesy Lincoln Journal. DAVID FELLMAN, "... infusion of new blood into the judiciary."

courts are frequently too busy, and they are frequently too old to give adequate and prompt attention to the matters brought before them. That judges are too busy with crowded dockets has often been true in the lower federal courts. In recent years, however, the supreme court has kept well up with the work brought before it. That judges are too old does not seem to have heretofore been regarded as a serious problem, as witness the activity of such very old men as Holmes and Brandeis.

Tribunal of Yes Men.

"The president's remedy seems much worse than the problem he points out; in that his remedy would amount to packing the supreme court. That would give us not an impartial court but a tribunal of yes men. If the court packing feature of the president's proposal were to be eliminated, the rest of his proposal might prove very beneficial. I would like to see a provision limiting eligibility to original appointment on the supreme court to the age decade between 40 and 50 years. By that process only relatively young men would receive appointment to the supreme court. By that process each member could then give long and efficient service on the supreme court bench. By that process vacancies in the court would occur only at such rare intervals that no incumbent administration would be likely to have any opportunity to pack the court in favor of its own policies. By that process, therefore, not only would the efficiency of the supreme court be increased, but its complete independence from outside pressure would be further safeguarded."

Congressional Two-Thirds Vote.

"I think the best remedy is to allow any decision of the supreme court to be reversed by a subsequent two-thirds vote of congress," said Prof. Lester B. Orfield, who recently returned from Washington, D. C., where he served last year as a senior attorney for the social security board.

"I am not so sure I like the idea of packing the court. In general the president's idea of speeding up the program of the courts seems commendable, and I also approve of the idea of taking cases from the district courts to the supreme court, where they involve the constitutionality of law. I also think the government should be informed

when questions of this kind arise so that it can appear before the courts properly prepared. I also favor the suggestion to increase the number of federal trial judges, since the number of cases appearing in these courts has shown an increase."

Orfield Sees Even Fight.

Professor Orfield thinks that while the president may win, the contest will be pretty evenly waged. He points out that this idea of packing the court is not new. President Grant once found it necessary to resort to such a method.

Statement of Prof. L. D. Coffman:

"The whole thing is a question of whether the stated objectives—an improvement in the federal procedure—are the real objectives. I suppose every lawyer is more or less opposed to anything that even looks like a packing of the court to achieve the ends of the party in power. This is not the stated objective, and I would be opposed to the packing of the supreme court for any such reason."

Against Separation of Power.

Prof. J. A. Doyle: "The whole system of government is based upon the separation of power, and while packing the court may be constitutional, I dislike to see it." Professor Doyle, before joining the law faculty at Nebraska, was in the United States circuit court under Judge Woodrough. He feels that there was little congestion of cases in this court and therefore does not understand why the government thinks it is necessary to increase the personnel in the federal courts. What delay did result, he said, was due mainly to the counsel themselves.

Fellman Lauds Proposal.

Prof. David Fellman: "There is apparently little question as to the wisdom of the procedural changes which President Roosevelt has proposed to congress. In fact, they are long overdue. They will promote the efficiency of the federal judiciary, and they will give the law officers of the administration a fair chance to defend national legislation in the courts. The real debate, of course, will center about the proposal dealing with the membership of the supreme court. And it is not clear to me, at this early date, that it is designed to enable the president to back the court. His proposal is open to the interpretation that it will make possible, in the future, a more steady infusion of new blood into the judiciary. In any event I am in sympathy with any plan of reorganization which will tend to give us judges who understand and are prepared to accept the ideals and aspirations of a progressive America seeking to further the ends of social justice. It may be amiss to suggest that we still have a democracy."

Liberal Interpretation.

Prof. Harold Stoke: "The adaptation of the constitution to the changed economic and social conditions can now be made only thru interpretation. The nation has become so diverse in its sectional differences, so complex in its economic structure, with so many lines of cleavage running thru the entire population, that amendments which involve other than technical changes (such as the Lane Duck amendment) are not likely to be ratified. The difficulty of securing the ratification of the



—Courtesy Lincoln Journal. H. H. FOSTER, "... whittling away constitutional provisions."

child labor amendment demonstrates this fact. Hence, like it or not, some system, the president's proposal or some other, of obtaining continually more liberal interpretation of the constitution appears to me to be inevitable."

More Efficient Judiciary.

Prof. Lane Lancaster: "The issues raised by proposals of the president are far too complex to be disposed of in any brief statement. It appears that little fault can be found with the suggestions made for a more efficient administration of judicial business. Any enlargement of the supreme court makes possible, of course, a measure of what is called political control. In a government based upon the theory of popular sovereignty the issue involved here is one which is never far beneath the surface of affairs. It is probably destined to be resolved in favor of the major force in the state. The sole question is whether now is the appointed time to resolve it."

Hollister Intends to Make New Awgwan Cosmopolitan.

(Continued from Page 1.)

of much activity, whatever the source, whether drawn by the Hollister call for reinforcements in the staff or by the lure of the green glass curtains. Crowds swarmed in and out the door, much to the editorial satisfaction, although he admits that it is too early to determine the nature and extent of their accomplishments while on the premises.

A larger number of pictures and a brand new makeup will be additional features of the publication under its new management.

"Over \$3,000 are spent every year in order that Nebraska students may have a humor magazine," the editor declared. "We intend to see that they get their money's worth."

Flood Disaster Results in Crying Need for Sacrifices On Part of Those Outside of the Desolate Area.

(Continued from Page 1.)

first two days of the drive brought results from three campus groups, but since that time the accumulated sum of \$67.15 has remained at a standstill. Organized campus groups total well past the fifty mark, yet thus far only three have signified their intention to cooperate with the Nebraskan in its campaign for funds. The Nebraskan has made its plea for cooperation in this drive and it is renewing its call for flood contributions today under the direction of Editor George Pipal.

Latest statistics on the flood situation show a total of 932,109 persons affected by the disastrous deluge; 774,612 left homeless; 449 concentration camps in operation; 126 field hospitals endeavoring to care for the sick; and 1,300 nurses working night and day in an effort to curb disease and epidemics.

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