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The Supreme Court

If any one of our members does not like this little expression and does not regard it as a fairly neutral expression, I apologize, if he will promise to read this statement again.

THE SUPREME COURT

There has been received at ye Editor's desk so much comment on the proposition above entitled, that it is impossible to review them in this small publication for your consideration. Some conclusion, of course, is inevitable as an admitted proposition; six members of the Court are over the prescribed age, the effect of the proposal would be to add six new members to the Court, unless they saw fit to resign or "retire", as it has been described. Again the proposal has been described (not inaptly) as an attempt to "pack" the Court.

Perhaps one can safely quote that remarkable man, James Brice, in his great work "The American Commonwealth", when he referred to such a proposal as "immoral in substance". His comments on the Supreme Court are in Chapter XXIV ("The Work of the Courts",) from which the following quotation is taken (New and Revised Edition, Vol. 1 pages 276-277):

> "The Fathers of the Constitution studied nothing more than to secure the complete independence of the judiciary. The President was not permitted to remove the judges, nor Congress to diminish their salaries. One thing only was either forgotten or deemed undesirable, because highly inconvenient, to determine — the number of judges in the Supreme Court. Here was a weak point, a joint in the court's armour through which a weapon might some day penetrate. Congress having in 1801, pursuant to a power contained in the Constitution, established sixteen Circuit Courts, President Adams, immediately before he quitted office, appointed members of his own party to the justiceships thus created. When President Jefferson came in, he refused to admit the validity of the appointment; and the newly elected Congress, which was in sympathy with him, abolished the Circuit Courts themselves, since it could find no other means of ousting the new justices. This method of attack, whose constitutionality has been much doubted, cannot be used against the Supreme Court, because that tribunal is directly created by the Constitution. But as the Constitution does not prescribe the number of justices, a statute may increase or diminish the number as Congress thinks fit. In 1866 when Congress was in fierce antagonism to President Johnson, and desired to prevent him from appointing any judges, it reduced the number, which was then ten, by a statute providing that no vacancy should be filled up till the number was reduced to seven. In 1869, when Johnson had been succeeded by Grant, the number was raised to nine, and presently the altered court allowed the question of the validity of the Legal Tender Act, just before determined, to be reopened. This method is plainly sus-

ceptible of further and possibly dangerous application. Suppose a Congress and President bent on doing something which the Supreme Court deems contrary to the Constitution. They pass a statute. A case arises under it. The court on the hearing of the case unanimously declares the statute to be null, as being beyond the powers of Congress. Congress forthwith passes and the President signs another statute more than doubling the number of justices. The President appoints to the new justiceships men who are pledged to hold the former statute constitutional. The Senate confirms his appointments. Another case raising the validity of the disputed statute is brought up to the Court. The new Justices outvote the old ones; the statute is held valid; the security provided for the protection of the Constitution is gone like a morning mist.

"What prevents such assaults on the fundamental law—assaults which, however immoral in substance, would be perfectly legal in form? Not the mechanism of government, for all its checks have been evaded. Not the conscience of the legislature and the President, for heated combatants seldom shrink from justifying the means by the end. Nothing but the fear of the people, whose broad good sense and attachment to the great principles of the Constitution may generally be relied on to condemn such a perversion of its forms. Yet if excitement has risen high over the country, a majority of the people may acquiesce; and then it matters little whether what is really a revolution be accomplished by openly violating or by merely distorting the forms of law. To the people we come sooner or later; it is upon their wisdom and self-restraint that the stability of the most cunningly devised scheme of government will in the last resort depend."

Opponents of the President's proposal object to it on the ground that it would make the Supreme Court subservient to the President. And, yet, some of them would substitute, for the President's proposal, one which would make any act of Congress constitutional if, after having been declared unconstitutional by the Supreme Court, it should be reapproved or reenacted by two-thirds of the Congress. A proposed constitutional amendment, having the purpose and effect last mentioned, is now pending. This proposal would substitute a new form of subserviency for that proposed by the President; it would make the Supreme Court subservient to the Congress, rather than to the President.

Any proposal to make the Supreme Court subservient to either the President or the Congress should provide thinking people with food for thought, particularly those who belong to classes who have been subject, in the past, and may, again, be subject to class persecution.

CONSTITUTION PROTECTS MINORITIES

It should be remembered that the provisions of the Bill of Rights in the Constitution were designed to protect minorities