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The Constitution - Guarantee of the Bill of Right

Legislature of Illinois, for enacting a law which had the effect of recalling all of the Circuit Judges of the state, adding five new judges to the Supreme Court and imposing upon the judges of the latter court the performance of the duties which had theretofore been performed by circuit judges can well be cited here. A protest signed by Mr. Lincoln (then a member of the Legislature) and others was presented to the Legislature, condemning the action of the majority of that body by whose votes was passed the act in question, and giving the reasons for this disapprobation, among which were the following:

> It violates the great principles of free government by subjecting the judiciary to the legislature.
>
> It is a fatal blow at the independence of the judges and the constitutional term of their office. . . . .
>
> It will give our courts a political and partisan character, thereby impairing public confidence in their decisions.
>
> It will impair our standing with other states and the world.
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> It is a party measure for party purposes, from which no practical good to the people can possibly arise, but which may be the source of immeasurable evils.

In notes for a speech or debate with Judge Douglas about October 1st, 1858, in referring to the law adding the five judges to the Supreme Court of Illinois, he said: "I remind him of a piece of Illinois history about Supreme Court decisions—of a time when the Supreme Court of Illinois, consisting of four judges, because of one decision made, and one expected to be made, were overwhelmed by the adding of five new judges to their number; that he, Judge Douglas, took a leading part in that onslaught, ending in his sitting down on the bench as one of the five added judges. I suggest to him that as to his questions how far judges have to be cathecized in advance, when appointed under such circumstances, and how far a court, so constituted, is prostituted beneath the contempt of all men, no man is better posted to answer than he—."

These statements, it seems to me, should forever set at rest any ideas that Mr. Lincoln might have approved of the proposals now made by President Roosevelt.

THE CONSTITUTION—GUARANTEE OF THE BILL OF RIGHT

As promised in the last issue I now call to your attention for consideration, on the President's proposals, the Bill of Rights embodied in the Constitution, and one may wonder whether the guaranties of the Bill of Rights would continue to be "guaranties' 'or be anything more than mere admonitions or "counsels of perfection", if the Supreme Court, which was designed to be, and through the century and a half of its existence, has been their vindicator, should be made subservient to either the President or the Congress. These guaranties are as follows:

1. "No religious test shall ever be required as a qualification to any office, or public trust under the United States." (Art. VI.)

2. "Congress shall make no law respecting an establishment of religion or preventing the free exercise thereof; or abridging the freedom of speech or of the press." (First Amendment.)

3. "No soldier shall in time of peace be quartered in any house without the consent of the owner." (Third Amendment.)

4. "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated." (Third Amendment.)

5. "No person . . . shall be . . . deprived of life, liberty or property without due process of law." (Fifth Amendment.)

6. "Private property (shall not) be taken for public use without just compensation." (Tenth Amendment.)

7. "Neither slavery nor involuntary servitude, except as a punishment for crime . . . shall exist within the United States, or any place subject to their jurisdiction." (Thirteenth Amendment.)

8. "The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color or previous condition of servitude." (Fifteenth Amendment.)

In addition to the foregoing which are limitations upon the Federal government, are the following two guaranties, which are limitations upon the States:

(a) "No State shall make or enforce any law which will abridge the privileges or immunities of the citizens of the United States." (Fourteenth Amendment.)

(b) "No State shall deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction, the equal protection of the laws." (Fourteenth Amendment.)

Fanatical Civil War Days

One may wonder, also, what would have happened if the Supreme Court had been subservient to either President or Congress during the fanatical days that followed the Civil War, when various States sought to impose test oaths upon their citizens, which would have proscribed non-combatants, such as the physician, the nurse and the chaplain, who had given medical assistance or religious consolation to soldiers of the Confederacy. These test oaths, which would disqualify such persons from office or the pursuit of lawful vocations were, at the suit of a Catholic priest whom they deprived of the right to exercise his priestly vocation, held, in **Cummings v. Missouri** (71 U. S. 277), to violate

the above mentioned provision of the Bill of Rights which declares that "no State shall pass any bill of attainder or ex post facto law" and, thereby, make unlawful what had not been unlawful when done.

One may wonder what would have happened if constitutional guaranties were dependent for their vindication upon a political or servile court, in the era of hysteria that followed the World War when attempts were made, in various States, to regiment the children of the country, to compel their education in State schools conforming to State standards, and to substitute the guardianship of the State for the guardianship of the parent. Fortunately, however, the Supreme Court was neither political nor servile, but fearless and independent, and it thwarted these attempts in the foreign language cases (**Meyer v. Nebraska,** 262, U. S. 390; **Bartels v. Iowa,** 262 U. S. 404), and in the Oregon School Law case (**Pierce v. Society of Sisters,** 268 U. S. 510.)

What has happened before may well happen again. Governor Pierce of Oregon, who was responsible for the Oregon School Law, is now a member of the House of Representatives. Who is to say that his views have changed, or that he would not advocate a similar measure if there were a public clamor for its enactment, and he were aided and abetted by a sufficient number of Senators and Representatives who entertained similar views?

The plight of the Church in Mexico should be an object lesson to all Americans. That plight is due to a lack of constitutional government, a bill of rights and a free and courageous court to make both effective.

Let us in America learn from the sufferings of our neighbors in Mexico, and cling tenaciously to our time honored and oft proven bulwark of constitutional liberty—the Supreme Court of the United States.

RESULT OF OUR REFERENDUM

The referendum of our members on the President's proposals resulted in the following vote:

QUESTION ONE: **a.** With respect to appointive power of President to the Supreme Court of the United States... Yes, 79, No. 347; **b.** With respect to appointive power of President to the United States Circuit Courts of Appeals, District Courts and other Federal Courts. Yes 116, No 301.

QUESTION TWO: On empowering Chief Justice to assign Circuit Court Judges and District Court Judges outside of their districts. Yes 224, No 189.

QUESTION THREE: On apportionment of administrative assistant by Supreme Court. Yes 225, No 191.

QUESTION FOUR: On notice to Attorney-General of pendency of constitutional questions. Yes 245, No 166.

QUESTION FIVE: On authority of Attorney-General to appeal directly to Supreme Court. Yes 255, No 161.