



1926

Americanization Committee

North Dakota Law Review

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effects without proper warrant; 5. Denying the right of trial by jury; 6. Permitting review in a higher court of facts tried by a jury, except according to the rules of common law; 7. Requiring excessive bail, assessing excessive fines, or meting out cruel and unusual punishment.

Then, to make certain the meaning, this special article was inserted: "The enumeration, in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." And to make doubly certain, this provision was also inserted: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

The framers of the Constitution saw clearly that cases would arise demanding interpretation of laws passed under the Constitution. They recalled what William Pitt and Edmund Burke had just said in the halls of the British Parliament. They were reminded by Madison: "It is against the enterprising ambition of this department (Congress) that the people ought to indulge all their jealousy and exhaust all their precautions." And they had before them the Massachusetts statement of the American philosophy of government, made seven years before the writing of the Constitution, namely: "In the government of this commonwealth the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them—to the end that it may be a government of laws and not of men." And so the Founders vested such power of interpretation in the courts.

It is argued, upon the assumption, probably, that conditions and human nature have materially changed, that the proposal referred to in the first paragraph is not intended to weaken or impair the provisions of the Constitution relating to the Federal Courts. But, should it be adopted, the inevitable result would be to make Congress supreme, whatever the intention. That done, there would be NO judicial check to unconstitutional legislation, and rights that you and I and John Doe now have under the Constitution could be wiped out by a temporary majority in Congress. I cannot afford to take that chance. Can you?

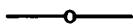
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A CORRECTION

“Kindly allow me to call your attention to the printed stenographic report of my Address of Welcome on page 4 (Dec. 1926 issue of Bar Briefs). The stenographer or some one has made a great many mistakes in reporting what I said: and as some of the mistakes are too serious to be passed up without asking that the same be corrected. I had no opportunity of examining the stenographic report before publication; hence the numerous errors in grammar, diction and sense; and I would be pleased if you would have the matter corrected.

“I will cite you a few of the grave mistakes: “That is why Bismarck looks beautiful, with its shady trees and the large buildings