PATHFINDER

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EDITORIAL

The Supreme Court

Who are the people displeased by President Roosevelt's proposal to reform the Supreme Court?

They are no inconsiderable group. They include reactionaries who see democracy endangered, Republicans who are looking for an issue to fight over, Democrats who are disenchanted of the New Deal, and liberals who think the President has not gone far enough.

Combined in blocs, they charge, first and foremost, that the President is attempting to "pack" the Supreme Court with six extra members who can be counted on to approve such economic and social legislation as he cares to devise.

Other objections include these:

¶ That the move is dictated by expediency and not by a long-range view and that it comes only because the Supreme Court has decided against New Deal legislation 11 out of 16 times.

¶ That New Dealers are seeking to change the Constitution by means of judicial interpretation.

¶ That the move is merely an artifice designed to get around the adoption of a Constitutional amendment and that it takes advantage of the fact that the Constitution does not specify the number of justices to be named to the high bench.

¶ That the President is guilty of a breach of faith because he did not reveal his intentions to the nation during the election campaign.

¶ That the age of a man means little and that the limit of 70 years is an arbitrary one.

¶ That Justice Holmes was an example of an old man who never saw things through "blurred glasses," that he was the oldest judge ever to sit in the Supreme Court and that at the age of 92 he had one of the keenest legal minds in the country.

¶ That, as the liberals charge, the President's proposal does nothing about the matter of judicial veto and that, with 9 justices or 15, the court still holds the power of declaring

legislation unconstitutional.

The objections come from all sides, conservative and liberal alike. The conservative view is that the stability of the court would be shaken if the President's plan were adopted, and that future presidents would be constantly tempted to "pack" or "unpack" the court and thus throw the system of Constitutional checks and balances out of line. On the other hand, the more radical critics hold that the court should be thrown out entirely because the will of a few men should not obstruct the will of the people.

Looked at as objectively as possible, however, the President's ideas for reforming the Supreme Court are hardly cause for undue excitement. As discussed in the page 3 article of this issue, they have precedent in history. The President might have advanced much more far-reaching proposals. He might have called for a constitutional amendment, and probably considered doing so but decided otherwise because ratification would take too long.

Then, too, Congress might have attempted, and some day may attempt, to make use of Article III of the Constitution. This Article states that the Supreme Court shall have appellate jurisdiction "with such exceptions and under such regulations as the Congress shall make." Some authorities argue that this phrase empowers Congress to bridle the Court and that Congress might even go so far as to pass a measure and declare that that measure could not be ruled unconstitutional.

As for "packing" the court—the fact about this is that it has been done more than once before and that it does not necessarily mean new appointees would decide the way the President wanted them to decide. Frequently in the past, justices have been named whose subsequent decisions were directly opposed to the philosophies of the Presidents who appointed them to the High Bench.

Of course, this is not to argue that President Roosevelt's plan is a good plan, or that "packing" the Court is especially defensible. The point being made is that the President has suggested nothing that is either illegal, unconstitutional or undemocratic. When the more excitable critics charge

that his proposals would hit at the roots of the American form of government, they are speaking nonsense. "Expediency," "artifice," "clever device"—call the plan what you will, but don't confuse it with something that it isn't. The issue has been placed squarely before Congress. There it can be handled in an open and frank manner under regular democratic processes.

Most seasoned opinion will agree to this: the President wishes to apply what he regards as the modern judicial viewpoint to modern conditions. The New Deal has made certain clear departures from rugged individualism, sometimes expounding strange and unconstitutional theories of government. Legislation of a social and economic character has been passed, and some of it has been ruled out by the court, much to the President's chagrin. He wishes to see that legislation upheld and he thinks that one way to insure its being upheld is by appointing new and younger men to the Supreme Court.

There is ample if insufficiently publicized precedent for President Roosevelt's proposal. Whether good or bad, it is legal. Heated accusations without basis in fact should not be made against it. These only obscure the issue and serve no purpose in clarifying a subject that needs clarification. Congress should regard it for what it is instead of for what certain groups would make it out to be. In both the House and Senate, it deserves full examination, careful discussion, and then sensible action either to pass it, modify it or discard it altogether.

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