TRIUMPHANT PLUTOCRACY

The Story of
American Public Life
from 1870 to 1920

By
R. F. PETTIGREW
Formerly United States Senator
from South Dakota

Printed by THE ACADEMY PRESS
112 Fourth Avenue, New York City

Published January 1, 1922.

XIII. The United States Supreme Court

The Convention of 1787 that framed the Constitution of the United States was dominated by lawyers, money-lenders and land owners. It did its work behind closed doors, all members being sworn not to disclose any of the proceedings.

Madison reported the proceedings in long-hand; his notes were purchased by Congress and published in 1837, nearly half a century after the convention had finished its work. These published notes disclose the forces that dominated the work of the convention. All through the debates ran one theme: how to secure a government, not by the people for the people, but by the classes for the classes, with the lawyers in control. This was the burden of the debates, page after page, through all of the 760 pages of the two volumes of Madison Notes.

The Constitution thus framed did not create a government of the people; its whole purpose was to promote and protect the rights of property more than the rights of man. Two extracts from those proceedings illustrate this point; they are typical, and are as follows:

> P. 78. Sherman of Connecticut said: "The people should have as little to do as may be about the Government. They want information and are constantly liable to be misled."
>
> Gerry, of Massachusetts: "The evil we experience flows from the excess of democracy."
>
> P. 115. Mr. Gerry: "Hence in Massachusetts the worst men get into the legislature. Several members of that body had lately been convicted of infamous crimes. Men of indigence, ignorance and baseness

spare no pains, however dirty, to carry their point against men who are superior to the artifices practiced."

Jefferson was not a member of the convention. He was the author of the Declaration of Independence; he was not wanted, so he was sent to France.

There were 55 delegates in that convention. Let us see who they were: A majority were lawyers; most of them came from towns; not one farmer, mechanic or laborer; five-sixths had property interests. Of the 55 members, 40 owned Revolutionary scrip; 14 were land speculators; 24 were money-lenders; 11 were merchants; 15 were slave-holders. Washington was a slave-holder, a large land-owner, and a holder of much Revolutionary scrip.

WHAT THE CONSTITUTION DOES NOT CONTAIN

It is not strange that the Constitution as framed by that convention said nothing about the rights of man. It was made by men who believed in the English theory of government—that all governments are created to protect the rights of property in the hands of those who do not produce the property.

Revolutionary scrip was issued to finance the Revolution, and used to pay for supplies and the wages of the men who did the fighting; it had been bought up by the financiers and great land-owners and their attorneys for about nine cents on the dollar. When the Constitution was adopted, it was made, at once, worth one hundred cents on the dollar.

Thus a Constitution was made, by property interests, for property interests alone. The great "Bill of Rights" had been thrown into the wastebasket.

Jefferson was in France.

THE TEN AMENDMENTS TO THE CONSTITUTION

Against the Constitution, as thus framed, seven of the thirteen states protested, but five of them were

finally induced to ratify in reliance upon the "Bill of Rights" being promptly added by amendments. The first eight amendments were speedily formulated and soon the ninth and tenth were added, to be submitted by the first Congress to the States, and that was promptly done. It is certain that the Constitution could never have been adopted without these amendments for the protection of fundamental human rights.

Thomas Jefferson had returned from France.

AMENDMENT I.

The First Amendment is as follows:

> "Congress shall make no law respecting an establishment of religion, or prohibiting free exercise thereof; or abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

It is amazing that this great basic principle of civil and religious liberty should have been left out of the Constitution as framed by the convention. It could not have been overlooked or omitted by accident; it is obvious that it was done deliberately.

AMENDMENTS II.-VIII.

The next seven amendments protect the people against military rule in defiance of civil authority; against the search or seizure of their persons, homes, papers, etc., except by authority of a warrant duly issued under proper legal restrictions; against being put in jeopardy of trial and conviction; without the alleged charge being investigated and approved by a grand jury, or the taking of life, liberty, or property without due process of law; against trial and conviction except by an impartial jury where the alleged crime was committed, with information as to the

cause and nature of the offence, faced by accusing witnesses, and the right of counsel for defense; against the courts overturning a jury's verdict; against excessive bail, or "cruel and unusual punishments."

Jefferson had returned, and his tongue and pen were in action; the priceless Bill of Rights was thus saved and made a part of our organic law. But Jefferson, with foresighted wisdom, based on a deep knowledge of men and things, knew that it was necessary to protect liberty and all human rights by clear and positive safeguards; therefore, the ninth and tenth amendments were added for this purpose. The Ninth Amendment was as follows:

AMENDMENT IX.

> "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

A wonderfully wise provision; a recognition and declaration of the great fundamental fact that all rights and power are inherent in the people themselves, and are not derived as concessions from usurpers masquerading under the "Divine rights of Kings." But the enemies of human freedom in high places have often betrayed this trust and ignored and trampled under foot this great basic principle of the divine right of the people, as I will show below.

Jefferson also foresaw that the time would come when an ambitious Federal executive, a usurping Federal court, or a reckless Congress would take the position that the people and the States had no power or rights which were not subordinate to the Federal power and authority. He knew that when that time came our great representative Democracy, created by the amended Constitution, would be dead, and that on its grave there would rule, with a tyrant's

hand, the worst autocracy of plutocracy that the world has ever seen. To prevent such usurpation, the Tenth Amendment was submitted and adopted along with the other amendments. It is worded as follows:

AMENDMENT X.

"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."

This amendment, in such clear and concise language, was the greatest possible victory for preventing encroachments on the reserved rights and liberties of the people and the independence of the States necessary for State sovereignty. It made our Federal Government one of defined, expressed powers, limited definitely to the powers enumerated and granted. One of the great dangers which Jefferson feared, and which he was sure had been forever killed by this amendment, as shown by his later writings, was the usurpation by the Supreme Court of the power to supervise the Executive Department or to declare a law enacted by Congress unconstitutional, or to construe the Constitution so as to take from or add to the powers granted by the States and the people. He knew no such power had been granted to the Judiciary Department and, on the other hand, he knew (though Madison's notes had not then been published) that every effort made by the enemies of Democracy in the Constitutional Convention to get such a dangerous provision in the Constitution had been defeated; yet he determined to affirmatively deny that power and every other power not expressly delegated to each of the three departments respectively of the Federal Government, and this was done by the plain and precise words of the Tenth Amendment.

In this connection, I call attention to Madison's

Notes, p. 533, which show that the proposition to confer upon the Supreme Court the power to declare an Act of Congress void was squarely at issue; and that Maryland, Delaware and Virginia voted aye; while Massachusetts, New Hampshire, Pennsylvania, Connecticut, New Jersey, North Carolina, South Carolina and Georgia voted nay. The proposition was brought up in the convention on several other occasions, but was each time decisively defeated.

While the members of the Constitutional Convention were ultra-conservative, serving property rights with a contempt for human rights, and always trying to hobble and gag the rule of the people, yet they were familiar with the fact that when an English court, about three hundred years before, held an Act of Parliament void, the Chief Justice, Trassillian, had been hanged and his associates on the bench had been banished from the country. They also knew that since that time no English court had dared to usurp such unconstitutional authority. It was this fact, no doubt, which deterred such a Constitutional Convention from conferring upon the Supreme Court the power to declare an Act of Congress unconstitutional.

With the Constitution thus amended, Jefferson declared that the Bill of Rights, buttressed by the Tenth Amendment, were the "two sheet anchors of our Union." He felt sure that a government of, for, and by the people was assured for all time. He saw a great representative Democracy launched, with every delegated power necessary for national purposes, and the rights and liberties of the people enthroned and safe beyond successful attack or encroachment. But he soon had a rude awakening.

THE FIRST ACT OF JUDICIAL USURPATION

Chief Justice Marshall, who was an Englishman, in the case of Marbury vs. Madison, usurped the power to

interpret the Constitution and to instruct another co-equal and co-sovereign department of the Government as to its powers and duties.

Jefferson denounced that decision as a bald usurpation and a glaring unconstitutional encroachment on the powers and duties of another independent department of the Government. He lamented the failure of the House of Representatives to bring the Court to trial under impeachment proceedings. In a letter to Judge Spencer Roane, under date of September 6, 1819, he said:

> "In denying the right they usurp of exclusively explaining the Constitution, I go further than you do, if I understand rightly your quotation, from the Federalist, of an opinion that the 'judiciary is the last resort in relation to the **other departments** of the Government, but not in relation to the rights of the parties to the compact under which the judiciary is derived.' If this opinion be sound, then indeed is our Constitution a complete **felo de se.** For intending to establish three departments, co-ordinate and independent, that they might check and balance one another, it has given, according to this opinion, to one of them alone, the right to prescribe rules for the government of the others, and to that one too which is unelected by, and independent of the nation. For experience has already shown that the impeachment it has provided is not even a scarecrow. . . . The Constitution, on this hypothesis, **is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please.** It should be remembered, as an axiom of eternal truth in politics, that whatever power in any government is independent is absolute also; in theory only, at first, while the spirit of the people is up, but in practice, as fast as that

relaxes. **Independence** can be trusted nowhere but with the people in mass. **They are inherently independent of all but moral law.** My construction of the Constitution is very different from that you quote. It is that each department is truly independent of the others, and has an equal right to decide for itself what is the meaning of the Constitution in the cases submitted to its action; and especially where it is to act ultimately and without appeal."

In a letter to Judge William Johnson, under date of June 12, 1823, commenting on the same decision, he said:

"But the Chief Justice says, 'there must be an ultimate arbiter somewhere.' True, there must; but does that prove it is either party? The ultimate arbiter is the people of the Union, assembled by their deputies in convention, at the call of Congress, or of two-thirds of the States. Let them decide to which they mean to give an authority claimed by two of their organs. And it has been the peculiar wisdom and felicity of our Constitution to have provided this peacable appeal, where that of other nations is at once to force."

In a letter to William Charles Jarvis, under date of September 28, 1820, reviewing a book which attempted to defend this court usurpation of power, he said:

"You seem, in pages 84 to 148, to consider the judges as the ultimate arbiter of all constitutional questions—a very dangerous doctrine indeed and one which would place us under the despotism of an oligarchy. Our judges are as honest as other men and not more so. They have, with others,

the same passion for party, for power and the privilege of their corps. Their maxim is **'bon judicis est amplaire jurisdictionem,'** and their power is the more dangerous as they are not responsible, as the other functionaries are, to the effective control. The Constitution has created no such single tribunal, knowing that to whatever hands confided, with the corruptions of time and party, its members would become despots. It has more wisely made all the departments co-equal and co-sovereign with themselves."

No one ever has or ever can question the truth of this statement that "the Constitution has erected no such single tribunal" to supervise and to veto the acts of the other two "co-equal and co-sovereign departments of our government; therefore Congress inertly surrendered its co-equal and co-sovereign powers when it failed to impeach the Judicial Department of the Government for this contemptuous usurpation of powers, over which the people reserved to themselves elective control.

Further on in the same letter, Jefferson says:

"The Constitution, in keeping three departments distinct and independent, restrains the authority of the judges to judiciary organs, as it does the executive and legislative to executive and legislative organs. The judges certainly have more frequent occasion to act on constitutional questions, because the laws of **meum** and **tuum** and of criminal action, forming the great mass of the system of law, constitute their particular department. When the legislative or executive functionaries act unconstitutionally, they are responsible to the people in their elective capacity. The exemp-

tion of the judges from that is quite dangerous enough. I know no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise THEIR CONTROL WITH A WHOLESOME DISCRETION, THE REMEDY IS NOT TO TAKE IT FROM THEM, BUT TO INFORM THEIR DISCRETION BY EDUCATION. THIS IS THE TRUE CORRECTIVE OF ABUSES OF CONSTITUTIONAL POWER. PARDON ME, SIR, FOR THIS DIFFERENCE OF OPINION. MY PERSONAL INTEREST IN SUCH QUESTIONS IS ENTIRELY EXTINCT, BUT NOT MY WISHES FOR THE LONGEST POSSIBLE CONTINUANCE OF OUR GOVERNMENT ON ITS PURE PRINCIPLES: IF THE THREE POWERS MAINTAIN THEIR MUTUAL INDEPENDENCE ON EACH OTHER IT MAY LAST LONG, BUT NOT SO IF EITHER CAN ASSUME THE AUTHORITIES OF THE OTHER."

I have already shown that the Constitution confers no power on the Judiciary Department of the Government to question the legality of an Act of Congress, and that every time the conferring of such dangerous powers on that department was proposed in the convention it was voted down. I have also shown that the states would not, even then, accept the Constitution until the ten amendments were formulated and satisfactory assurances were made that they would be at once submitted for adoption; and also that these amendments, after including the great Bill of Rights, concluded with the most important Tenth Amendment, which affirmatively and positively reserved to the people and to the states all powers and rights not expressly granted to the Fed-

eral Government, and which expressly inhibits the taking away of or the adding of any powers by construction or by implication. On these clear and concise reasons, Jefferson correctly asserts that the power to determine the constitutionality of a law is reserved to the people. They, and they alone, have the power to pass on the legality of any law of Congress, and they can use that power at any and every election.

This is the plain truth of the whole matter.

In another letter, under date of December 25, 1820, to Thomas Richie, commenting on a book by Colonel Taylor, which vigorously criticized the extravagance of the Government and the greatly increased appropriations and taxes called for by the Treasury Department, Jefferson said:

> "If there be anything amiss, therefore, in the present state of our affairs, as the formidable deficit lately unfolded to us indicates, I ascribe it to the inattention of Congress to their duties, to their unwise dissipation and waste of the public contributions. They seemed, some little while ago, to be at a loss for objects whereon to throw away the supposed fathomless funds of the Treasury. . . . The deficit produced, and a heavy tax to supply it, will, I trust, bring both to their sober senses.
>
> "But it is not from this branch of government we have most to fear. Taxes and short elections will keep them right. The Judiciary of the United States is the subtle corps of sappers and miners constantly working underground to undermine the foundations of our confederated fabric. They are construing our Constitution from a coördination of a general and special government to a general and supreme one

alone. This will lay all things at their feet, and they are too well versed in English law to forget the maxim, **boni judicis est ampliare jurisdictionem.** We shall see if they are bold enough to take the daring stride their five lawyers have lately taken. If they do, then, with the editor of our book, in his address to the public, I will say that 'against this every man should raise his voice,' and more, **should uplift his arm.** . . . That pen should go on, lay bare these wounds of our Constitution, expose the decisions **seriatim,** and arouse, as it is able, the attention of the nation to these bold speculators on its patience. Having found, from experience, that impeachment is an impracticable thing, a mere scarecrow, they consider themselves secure for life; they skulk from responsibility to public opinion, the only remaining hold on them, under a practice first introduced into England by Lord Mansfield. An opinion is huddled up in conclave, perhaps by a majority of one, delivered as if unanimous, and with the silent acquiescence of lax or timid associates, by a crafty Chief Judge who sophisticates the law to his mind by the turn of his own reasoning. A judiciary law was once reported by the Attorney General to Congress, requiring each judge to deliver his opinion **seriatim** and openly, and then to give it in writing to the clerk to be entered in the record. A judiciary independent of a king or executive alone is a good thing; but independence of the will of the nation is a solecism, at least in a republican government."

Such criticism of this startling usurpation by the

Judiciary Department and talk of the impeachment of the judges were effective to prevent the court from again usurping the power to declare an Act of Congress void for over fifty years.

THE SECOND ACT OF USURPATION

It was not long, however, before this same court overstepped its defined powers and, in defiance of every principle of law, equity and morals, rendered the notorious Dartmouth College decision, in which it was held that property interests, past, present and future, had vested rights, under a special privilege granted in a private charter, which it was impossible for the people, through legislation, to change, no matter how injurious to the public interests the terms of the charter might be. It has been claimed, in excuse for the Court, that it was hypnotized by the overpowering but false reasoning of Daniel Webster; but, let that be as it may, it is gratifying that such an unsound doctrine, based on such a decision, has been repudiated by nearly every state in the Union, and by nearly every civilized country in the world.

A BALD DEFIANCE OF CONGRESS BY THE JUDICIARY

In 1857 Judge Taney, for a majority of the court, held an Act of Congress in the Missouri Compromise case unconstitutional. There was, however, no indignation or threat of impeachment of the court for this bold usurpation, so ever since the Supreme Court has made a plaything of the acts of Congress as often as it has pleased them so to do. This is what Jefferson said they would soon become bold enough to do if they were not called to account for usurpation of power. It was against the first usurpation by the court that Jefferson said: "I will say that "against this every man should raise his voice, and more, should uplift his arm."

THE SUPREME COURT DESTROYS THE TENTH AMENDMENT

The pitiable surrender by Congress to its "co-equal and co-sovereign powers" has emboldened the Supreme Court not only to continue to declare Acts of Congress unconstitutional, but also to go further and wipe out completely the Tenth Amendment to the Constitution. This has been done not only to give to the Federal Government powers never granted by the people or by the states, but also to take from the Federal Government powers clearly granted, when necessary to do so in order to confer special privileges on big property interests. A striking example is the famous, or rather infamous, income tax decisions. In the case of Pollock vs. Farmers Loan & Trust Company, the Supreme Court, after one of its judges, Shiras, had changed his opinion overnight, decided, by a majority of one, that the constitutional power to levy a fair and just tax on incomes, which Congress has exercised for a hundred years, was unconstitutional. This startling decision did not arouse Congress to its duty to impeach the court; but it so aroused the people everywhere that a movement was at once started all over the country which resulted in the adoption of the Sixteenth Amendment to the Constitution.

Judge Shiras was a Pennsylvania lawyer and had for years, so I am informed, been the attorney of many of the chief beneficiaries of his change of position as a judge on this question; but I know a lawyer is the only person who can legally take a bribe—he calls it a fee.

This amendment again conferred upon Congress the power which the Court, by an unconstitutional and revolutionary decision, had attempted to take away. Under the broad terms of this Sixteenth Amendment, which, in specific language, makes all

incomes from whatever source derived, liable for an income tax, Congress passed another income tax law. The court, not daring to again declare an income tax unconstitutional, then proceeded to render a legislative decision in which it holds that an income received in the form of a "stock dividend" is not liable for a tax on such income. This opened the way to relieve all the largest incomes in this country from any tax whatever. All the big corporations at once began declaring stock dividends instead of cash dividends, and thus they are robbing the Treasury of the United States annually of hundreds of millions of dollars, which must be made up and paid by the people of less means and less capacity to pay.

This monstrous decision was rammed through the court by a majority of one, four of the justices dissenting; Mr. Justice Brandeis, in his dissenting opinion, said:

> "If stock dividends representing profits are held exempt from taxation under the Sixteenth Amendment, the owners of the most successful business in America will, as the facts in this case illustrate, be able to escape taxation on a large part of what is actually their income."

How quickly this prophecy was fulfilled is indicated by the volume of stock dividends that have been declared since the court delivered this opinion. Mr. Justice Brandeis, in the same dissenting opinion, adds: "That such a result was intended by the people of the United States when adopting the Sixteenth Amendment is inconceivable."

The same conviction is expressed with pungency by Mr. Justice Holmes in his dissenting opinion in the same case, in which he says:

> "I think that the word incomes in the Sixteenth Amendment should be read in 'a

sense most obvious to the common understanding at the time of its adoption,' . . . for it was for public adoption that it was proposed. . . . The known purpose of this amendment was to get rid of nice questions as to what might be direct taxes, and I cannot doubt that most people, not lawyers, would suppose when they voted for it that they put a question like the present one to rest."

This is a strong and timely indictment of such judicial usurpation.

A MOST BRAZEN DECISION

The Supreme Court, by this decision, had protected their rich friends from paying an income tax, but had not protected themselves, since their salaries from the Government were paid in cash, and not in stock dividends; so another decision was rendered, declaring the income tax law unconstitutional as far as it requires the judges and the President to pay an income tax. This raw personal decision was rendered by Judge Van Devender, a sage-brush lawyer from the cowboy country of Wyoming, who was appointed by Roosevelt, and whose only qualification seems to be that he had been an attorney for the Union Pacific Railroad. I have seen no reputable citizen who has attempted to defend this outrageous decision, rendered in the interests of their own personal pockets.

THE JUDICIARY DRUNK WITH POWER

In short, the court, having become drunk with unrestrained power, has boldly entered the field of legislation, and now does not hesitate to alter, amend, or repeal any act of Congress. The court could not find any grounds on which to declare the Anti-Trust law unconstitutional, so it proceeded to amend the

law. The act makes unlawful "a conspiracy in restraint of trade"; but the court amended it by inserting the word "unreasonable," so restraint of trade is no longer unlawful unless it is "unreasonable" restraint. Highway robbery is no longer a crime unless it is "unreasonable" robbery.

The cases of such judicial juggling with legislation are too numerous to mention; but I will cite one other case which caps the climax of flagrant usurpation—the notorious Steel Trust case. The Steel Trust was indicted and tried for violation of the Anti-Trust law. The evidence of guilt was overwhelming and conclusive. The court admitted it was clear that the Steel Trust had been violating the law in a wholesale manner; yet it held that it was not committing any new acts of lawlessness just at that time, and, therefore, that no good purpose would seem to be served in now punishing the trust for past gross violations of law.

I quote the following from the decision of the court in that case:

> "A holding corporation which by its formation united under one control competing companies in the steel industry, but which did not achieve monopoly, and only attempted to fix prices through occasional appeals to and confederation with competitors, whatever there was of wrongful intent not having been executed, and whatever there was of evil effect having been discontinued before suit was brought, should not be dissolved nor be separated from some of its subsidiaries at the suit of the Government, asserting violations of the Sherman Anti-Trust Act—especially where the court cannot see that the public interest will be served by yielding to the Government's demand, and does see in so yielding

a risk of injury to the public interest, including a material disturbance of, and, perhaps, serious detriment to, the foreign trade.

"In conclusion, we are unable to see that the public interest will be served by yielding to the contention of the Government respecting the dissolution of the company or the separation from it of some of its subsidiaries; and we do see in a contrary conclusion a risk of injury to the public interest, including a material disturbance of, and, it may be serious detriment to, the foreign trade. And, in submission to the policy of the law, and its fortifying prohibitions, the public interest is of paramount regard."

But you must remember the judges are lawyers, and a lawyer is the only person who can legally take a bribe —he calls it a fee.

So the public has been robbed in a wholesale manner, but, inasmuch as the robbers are not just now doing any stealing, and they promise to use some of their stolen money for charity, it is not deemed to be in the public interests to punish them; they are allowed to go scot-free with their ill-gotten gains, and not even put under bond not to violate the law again.

Of course, a court that will render such a line of decisions could be depended on to declare unconstitutional the law passed by Congress making "profiteering" illegal during the war, which thing the court has just done; and now all the profiteers, big and little, who have been indicted for most treasonable profiteering on the Government, contributing to the suffering and death of thousands of soldiers, whose lives otherwise would have been saved, are discharged with honor and are permitted to go scot-free with their blood-money fortunes.

Jefferson is dead; and Congress is composed of lawyers.

HOW ALL THE TEN AMENDMENTS ARE BEING DESTROYED

These cases illustrate how the Federal courts have usurped powers in order to shield and confer special privileges on big property interests, in flagrant violation of the Tenth Amendment to the Constitution. But the courts have gone further, and have attempted to destroy all the ten amendments, which were put into the Constitution to safeguard and protect human rights.

In the Abrams case, recently decided by the Supreme Court, it was held that Mollie Steiner and Abrams and two others were guilty of violating the Espionage Act because they circulated in New York a pamphlet urging the raising of the blockade against Russia. The lower court had sentenced Mollie Steiner to prison for fifteen years—a mere slip of a girl, a little over twenty years of age—and the three men, who had also circulated this petition protesting against the blockade, for twenty years each to the Federal penitentiary. This monstrous decision, which is clearly in violation of the First Amendment—guaranteeing freedom of speech and of the press—and which is also squarely in defiance of the Eighth Amendment, which provided that cruel and unusual punishments shall not be inflicted, was affirmed by a majority of the Supreme Court of the United States. I quote from the dissenting opinion of the court rendered by Justice Holmes and concurred in by Justice Brandeis:

> "To hold such publications can be suppressed as false reports, subjects to new perils the constitutional liberty of the press, already seriously curtailed in practice under powers assumed to have been conferred upon the postal authorities. Nor will this grave danger

end with the passing of the war. The constitutional right of free speech has been declared to be the same in peace and in war. In peace, too, men may differ as to what loyalty to our country demands, and an intolerant majority, swayed by passion or by fear, may be prone in the future, as it has often been in the past, to stamp as disloyal opinions with which it disagrees. Convictions such as these, besides abridging freedom of speech, threaten freedom of thought and of belief. . . . In this case, sentences of twenty years' imprisonment have been imposed for the publishing of two leaflets that I believe the defendants had as much right to publish as the Government has to publish the Constitution of the United States now vainly invoked by them."

Such an infamous and inhuman decision requires no further comment from me.

Similar cases are so numerous in the recent decisions of the Supreme Court that it is astonishing that Congress has not acted to call the offending members of the court to accountability for such flagrant usurpations, in violation of the basic rights of a free people guaranteed by the first and other amendments to the Constitution. The President of the United States should have removed these offending judges for want of "good behavior," which is the constitutional qualification for a Federal judge. A judge should not be permitted to remain on the bench until he commits offenses so great as to make him guilty of the grave crimes named by the Constitution for impeachment. But the offenses here cited amount to "high crimes and misdemeanors," and also to "treason" against free government, and therefore call loudly to Congress to apply the impeachment remedy of the Constitution, since the President has failed to remove them for want of "good behavior."

I will mention one more case: In the Gilbert case from Minnesota, the Supreme Court held outright that the expression of opinion is a crime. In that case, the speaker had simply stated that the people had no voice, really, in the selection of any of their officers, but that they were selected for them; that voting was no particular remedy for any of the evils of which we complain, because the candidates and the platform were prepared in advance by big business interests; and that people could vote or not vote, just as they chose, it making no difference in the result.

The indictment in that case charged that Gilbert in time of war used the following language in a public speech in the State of Minnesota:

> "We are going over to Europe to make the world safe for democracy, but I tell you we had better make America safe for democracy first. You say, 'What is the matter with our democracy?' I tell you what is the matter with it: Have you had anything to say as to who should be President? Have you had anything to say as to who should be Governor of this state? Have you had anything to say as to whether we would go into this war? You know you have not. If this is such a good democracy, for Heaven's sake why should we not vote on conscription of men? We were stampeded into this war by newspaper rot to pull England's chestnuts out of the fire for her. I tell you if they conscripted wealth like they have conscripted men, this war would not last over forty-eight hours. . . ."

It was for expressing these opinions that he was sent to jail for three years and fined five hundred dollars.

What has become of the Bill of Rights guaranteeing "freedom of speech"?

Let us read again the First Amendment to the Constitution:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

When the court convicted Gilbert for the expression of such an opinion, it repealed, by judicial fiat, this amendment to the Constitution.

Hear Judge McKenna roar, and hear the other little judges join in the chorus:

> ". . . The war . . . was not declared in aggression, but in defense, in defense of our national honor, in vindication of the most sacred rights of our nation and our people." (Words of President Wilson in his War Message to Congress, April 2, 1917.)
>
> "This was known to Gilbert, for he was informed in affairs and the operations of the Government, and every word that he uttered in denunciation of the war was false, was deliberate misrepresentation of the motives which impelled it, and the objects for which it was prosecuted. He could have had no purpose other than that of which he was charged. It would be a tragedy on the constitutional privilege he invokes to assign him its protection."

This language of the court needs no comment, because it shows on its face utter want of judicial reasoning; it is not expressive of any legal principle; it is an assertion of naked power, avowedly guided by emotion.

Here is a court—the Supreme Court—the court of last resort, depriving an American citizen of his liberty, and founding their opinion on emotion and hysteria;

on instinct without logic, without sense or reason, overturning the Constitution and violating their oath of office, while Congress fails to act because it is composed of lawyers.

It is needless to cite or examine other decisions of a court which has become so irresponsibly drunk with usurped power as to render two such monstrous decisions. They are flagrant violations of the basic guarantees of the Bill of Rights and the ten amendments, and are revolutionary in the extreme. It is such treasonable judicial tyranny as this that breeds anarchy.

Let us read again the earnest and warning words of Jefferson:

> "The judiciary of the United States is the subtle corps of sappers and miners constantly working underground to undermine the foundations of our confederated fabric. . . . I will say, that against this every man should raise his voice, and, more, should uplift his arm."

But Jefferson is dead, and Congress is composed of lawyers who are the attorneys of big business. A lawyer is the only person, whether a judge or Congressman, who can legally take a bribe—he calls it a fee.

Against this ugly and most dangerous thing, I, as one American citizen of this generation, have been and will continue to raise my voice. It must stop; if neither the President nor Congress will exercise their constitutional power and duty to remove such judges for such inhuman usurpations, the people will uplift their arm.

WHAT IS THE MATTER WITH THE U. S. COURTS?

In answer to that question, Jefferson said that the judges of the United States courts "are as honest as other men, but not more so"; that they have the same passions for party and for power; that their power is all the more dangerous because they are appointed and are not responsible, as the officials of the legislative and executive departments are, to elective control; that,

when on the bench they become indoctrinated with the false and dangerous English doctrine, that "it is the part of a good judge to enlarge his jurisdiction," which is squarely prohibited by our Constitution. JEFFERSON FURTHER POINTED OUT THAT SUCH JUDGES, AS SOON AS THEY SHALL FEEL THAT THERE IS NO DANGER OF IMPEACHMENT BY CONGRESS, "WILL BECOME BOLD ENOUGH TO USURP POWER AND BECOME DESPOTS TO DESTROY OUR LIBERTIES." IT WAS FOR THESE REASONS THAT JEFFERSON WARNED THE PEOPLE OF OUR COUNTRY THAT "THE JUDICIARY OF THE UNITED STATES IS A SUBTLE CORPS OF SAPPERS AND MINERS CONSTANTLY WORKING TO UNDERMINE THE FOUNDATIONS OF OUR CONFEDERATED FABRIC."

These were Jefferson's fears after he saw the Supreme Court, composed of men of average ability and honesty, usurp power for the first time to wipe out the Tenth Amendment to the Constitution. What would he say if he could see the kind of men who now fill most of the Federal Judiciary, and the flagrant lengths of usurpation and despotism to which they have gone to serve mammon and to trample upon the rights and liberties of the people?

I am of the opinion that the Supreme Court of the United States, by a long line of decisions, has become ridiculous, absurd and contemptible. They cannot go to any greater length and, if Congress was not composed of lawyers, the Supreme Court would be abolished at once. They should be impeached for high crimes and misdemeanors, and banished from official life forever. If the present court is impeached it will not remedy the evil. The only remedy is to abolish the courts created by Congress and thus reduce the Supreme Court to impotency.

One of the additional things which is the matter with the Federal courts is an evil which has developed under our modern reign of plutocracy in the selection of attor-

neys of corporations and special privilege, who are obviously disqualified to be judges because they are necessarily prejudiced in favor of the ever-increasing selfish demands of big business and, therefore, prejudiced against the rights and welfare of the general public. In fact, as a rule, corporation lawyers who have spent their lives conniving with cunning skill to enable the great combinations to evade the law of the land, alone are selected to be judges of the United States courts.

The judges of the United States courts are advanced in years before they are appointed, having spent their lives in the employ of the exploiters of the people of the United States. They all believe that property rights are sacred and not human rights.

A concrete illustration of this state of affairs arose in New York in 1895. The General Traffic Association, which was a combination of all the railroads between New York and Chicago, was attacked by the United States District Attorney for the Southern District of New York on the ground that it was a combination in violation of the Sherman Anti-Trust Law. Mr. McFarland, the United States Attorney for the Southern District of New York, appeared before the Interstate Commerce Committee of the United States Senate and, under oath, made the following statement:

> "When the case came up, Judge LaCombs stated in his opinion he was disqualified to hear the case, or any proceedings in it, as at that time he owned bonds or stocks in some one of the railroads, and he also stated that he understood that most, if not all, of the judges of that circuit were under the same disqualification."

It was finally decided that Judge Wheeler, the District Judge of the Vermont District, was apparently the only judge in the circuit who was not under a disqualification similar to that which Judge LaCombs had

stated he was under, namely, the holding of some bonds or stock of the railroads. The case was finally tried before JudgeWheeler, and as he was a creature of the political system then in vogue, that is, had been appointed through the influence of the senators from Vermont, one of those senators—Edmunds, of Vermont —was employed by the railroads as one of their attorneys and filed a brief in the case.

Judge Wheeler decided the case in favor of the railroads. An appeal was taken by the United States to the Circuit Court, and then Judge LaCombs stated, from the bench, that he was now qualified to try the case because he had disposed of his stocks and bonds in the defendant railroads. He thereupon affirmed the decision rendered by Judge Wheeler and the case went to the Supreme Court of the United States. The Supreme Court reversed the decision, but, as several years had elapsed since the case was commenced, the railroads had found out another way to do it, so it created no embarrassment for them whatever.

Very prominent lawyers in more than one circuit have told me that when a circuit or district United States judge had a son, who had been graduated and was ready to practice law, it was quite common for the judge to call upon some law firm employed by some trust or combination and say that his son was now ready to enter upon the practice of law, and ask if they knew of an opening, and of course the answer was:

"Send him right over here—we have been looking for just such a man."

So, in many cases, the United States judge sits upon the bench, himself having been graduated from the office of attorney for some great industrial combination, and listens to the reading of a brief, prepared by his own son, in the interest of the corporation for whom the judge has served before he went upon the bench.

Thus we see today a Federal judiciary is composed, very largely, of corporation lawyers, who have spent

their lives conniving in the interests of the great corporations whose attorneys they were, and who without scruple have done whatever their clients demanded in order to carry their point and more successfully exploit the people of the United States. When such lawyers get upon the bench their former practice and training asserts it self in every act. Such men are disqualified to sit on a jury, and all the more are they disqualified to sit on the bench. Chief Justice White is a man of little ability and no genius. He was a Louisiana lawyer and attorney for the sugar interests; he was elected to the U. S. Senate in 1890 and was assigned to the Committee on Public Lands. I was a member of that committee, so I became very well acquainted with White as a senator. He was a man of very ordinary capacity and in no way qualified for the Supreme bench, and indeed so much so that I was very much surprised when Cleveland even made him Associate Justice of the Supreme Court in 1894.

The lawyers who serve monopoly and special privilege try to create the impression that the Supreme Court is infallible; that its decisions are the final law of the land, even when in violation of the Constitution, and that no one must criticize or question the sanctity of the court. Yet the present Supreme Court of the United States is a most ordinary body of men. No matter who their predecessors were, they certainly were not selected because of their wisdom, genius or learning. They are a long way from being infallible. In fact, the records of the Supreme Court show that they are exceedingly and wilfully fallible. In all our history, no judge ever voted **other than with the political party from which he came.**

In short, the obvious and ugly truth is that the United States courts have become the greatest enemy to justice, and the greatest menace to a free government.

THE REMEDY FOR JUDICIAL USURPATION AND TYRANNY

The time has come when this growing and overshadowing evil must be checked. There are today but two checks on the Federal judges. First, the power of impeachment, which the Constitution vests in Congress; second, the power of removal, which the Constitution vests in the President, by and with the advice and consent of the Senate.

To impeach a judge and remove him from the bench by that means makes it necessary for the House of Representatives to formulate and present impeachment charges, and to convict the judge of treason or of high crimes and misdemeanors, and by a two-thirds vote of the Senate. Congress has never exercised that constitutional power and duty, and probably never will, unless there shall be a revolution at the polls, on that specific issue, against some judge or judges, whose corruption and guilt are known to all men.

The other check, the power of the President to remove a judge by and with the advice of the Senate, would be very effective if we had a President who would exercise the power when and where it is needed.

It is a common error that Federal judges are appointed for life. The words of the Constitution are that the President, by and with the advice and consent of the Senate, has the power to appoint judges "who shall hold their offices during good behavior"; the commission which every judge holds today so reads.

Thus the Constitution clearly puts the Federal judges in a class by themselves, and requires of them a higher degree of accountability than is required of other Government officials. Other public officials, from the President down, cannot be removed from office until they can be convicted, by a two-thirds vote of the Senate, of being guilty of the "high crimes" which are prescribed for impeachment. But a Federal judge may not stay on the bench until he has reached that degree

of known unfitness; he must live and act on the bench, and off, up to the high standard of "good behavior" which he was deemed to possess by the President and the Senate when he was appointed and confirmed. When a judge ceases to be a man of "good behavior," such as he was required to possess to qualify him for appointment as judge, he at once becomes disqualified, under the Constitution, to serve longer on the bench. Since the Constitution does not prescribe some other way of determining want of "good behavior," that power remains inherently in the appointing powers, and Congress may, by law, define what is bad behavior, if Congress chooses to do so. Therefore, the President, by and with the advice and consent of the Senate, has vested in him primarily the constitutional power and duty to determine when a Federal judge becomes disqualified to serve for want of "good behavior." The procedure is simple: The President, having determined that a certain judge no longer measures up to the standard of "good behavior," so informs the Senate, when nominating his successor. If the Senate concurs and confirms the nomination, then the judge in question is pro-tanto removed for want of "good behavior," and the new judge takes the office thus vacated. It is most remarkable that no President has, so far, ever exercised this plain constitutional power when the frequent occasion for its exercise has made it a most vital presidential duty.

If we can ever elect a President who will remove judges who shall fall below the standard of "good behavior," which the Constitution makes an essential qualification for a man to continue to serve as judge, then the people will be able to exert at each presidential election their reserved power for the correction of judicial usurpation and abuses.

When neither of these constitutional checks on the judiciary is exercised, then the Federal judges, realizing that they are free from any kind of check or restraint, and responsible to no one, boldly usurp power

and become despots of the most vicious and dangerous kind. This is the condition today, and this is what is the matter with the Federal judiciary.

There is a growing popular demand for an amendment to the Constitution to make the judiciary department of the Government responsible to the people, as are the executive and legislative departments. But that is a slow and uncertain remedy.

AN IMMEDIATE REMEDY THAT WILL BE EFFICIENT

There is, however, an immediate remedy before us, without amending the Constitution, which shall be effective to check and cure most of the evils and abuses from which we now suffer. It is simply to repeal the act of Congress creating all United States courts inferior to the Supreme Court, thus abolishing all Federal courts inferior to the Supreme Court, and thus confining the operations of the Supreme Court to its original jurisdiction, as clearly defined by the Constitution. The language of the Constitution is as follows:

> "The judicial powers of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. . . . In all cases affecting ambassadors, other public ministers and consuls, and those in which the State shall be a party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction both as to law and facts, with such exceptions, and under such regulations as the Congress shall make."

It is clear that if Congress will repeal the act creating the United States courts inferior to the Supreme Court, then the Supreme Court will be at once stripped of all appellate jurisdiction from the circuit and district courts. This will leave in the State courts the

constitutional jurisdiction which Congress has conferred upon the inferior United States courts. This will take from the Supreme Court the opportunity to use the judicial legerdemain by which it has contrived to usurp the power to declare acts of Congress unconstitutional and to render legislative decisions. There will then be no hocus-pocus by which the court can get an act of Congress, before it to be repealed, amended or juggled. This will be perfectly safe, and is indeed the only way to safety; because if Congress shall make a mistake about the Constitution, the people can correct it at the next election; but if the Supreme Court makes a mistake, or is corrupt as it surely must have been in the cases herein cited—the income tax and in many other grievous cases—then the unanimous vote of the whole electorate is powerless to correct it until the Constitution is amended. It took the people twenty years to do that in the income tax case, and now the Supreme Court has attacked and tried to destroy the Income Tax Amendment to the Constitution. Such usurpation will never stop unless this remedy is applied.

Last April I sent the following letter to every member of Congress and to every judge of the Supreme Court:

"Washington, D. C., April 10, 1920.

"I enclose a pamphlet which I prepared some years ago with regard to the United States courts. I will be much pleased if you can find time to read it. You know the Supreme Court of the United States is provided for in the Constitution, but its original jurisdiction is limited to controversies between states and to the consular and diplomatic service, though Congress may provide certain appellate jurisdiction; and that afterwards Congress, by an act, provided for the United States

Circuit and District Courts. It is through this congressional act that constitutional questions have been raised so as to reach the Supreme Court.

"The framers of the Constitution never intended that the courts should have power to nullify an act of Congress, by declaring it unconstitutional. That was supposed to be the only ground for veto by the President. But the courts have usurped this authority and in the recent decisions they have nullified the Constitution and usurped legislative functions by declaring that it is not expedient to dissolve the steel trust, although its conduct is in plain violation of the statutes; and in the Abraham case they have sent three men to prison for twenty years for doing what the minority opinion of the court says they had a perfect right to do. As a result of these decisions, Senator LaFollette and perhaps others have proposed an amendment to the Constitution of the United States changing the method of selecting our United States judges. I submit that an amendment to the Constitution is not necessary. Besides, that method of securing relief from such obvious usurpations of power is slow, difficult and possibly impossible of accomplishment. Now, what I propose and all that is necessary, is that Congress repeal the law creating United States district and circuit courts, and leaving the cases hereafter that arise between citizens of the United States to the courts of the various states for final decision. This will leave the Supreme Court clothed simply with authority and jurisdiction given them by the Constitution.

"Courts of the various states are elected by the people. There is no place in a democracy for officials appointed for life; and when they

usurp power and authority and violate the Constitution and assume legislative powers, it becomes intolerable.

"Very truly yours,
"R. F. PETTIGREW,
"Raleigh Hotel."

The Supreme Court, as I have shown, was created by the Constitution, while the United States circuit and district courts have been created by an act of Congress.

These inferior courts were established by Congress upon the theory that a citizen of one state could not get justice in the courts of another state. We all know that a citizen of Massachusetts can secure justice in the courts of Illinois. If a citizen of the United States goes to a foreign country, he and his property submit to the courts and laws of the country where he happens temporarily to reside, and, therefore, there is no reason why these United States courts should exist.

These courts do not properly belong to our system of Government. There is no place in a representative republic for an officer who can usurp power and become a despot. Therefore, these courts should be instantly abolished, and in their place courts substituted that are elected by the people subject to recall; that is, courts of the several states.

If the people are capable of enacting laws, they are capable of saying what they meant by those laws when they enacted them; and the right to recall an unfaithful servant ought to be as great on the part of the people as upon the part of an individual.

Abraham Lincoln, in a speech at Cincinnati, on September 15, 1859, declared:

"The people of these United States are the rightful masters of both Congress and the courts, not to overthrow the Constitution, but to overthrow the men who pervert the Constitution."

Lincoln said, in his first inaugural address, March 4, 1861:

> "This country with its institutions belongs to the people who inhabit it. WHENEVER THEY SHALL GROW WEARY OF THE EXISTING GOVERNMENT, THEY CAN EXERCISE THEIR CONSTITUTIONAL RIGHT OF AMENDMENT, OR THEIR REVOLUTIONARY RIGHT TO DISMEMBER OR OVERTHROW IT."

The Federal courts are perverting the Constitution; they are undermining the foundations of free government; these usurpations and despotism must be stopped. This question is so important and so fundamental that immediate action, in my opinion, must be had to take the Government out of the hands of the lawyers and the judges, and restore it to the people, if we wish to prevent a revolution in this country.

The United States courts, created by act of Congress, can and should be abolished by act of Congress.

They do not belong to democratic institutions.