with judges in England as compared to the United States, it was stated that here judges do not make law. On the contrary they do make law and perhaps even more than the American courts. There is, however, a vital difference. When an American court makes an obnoxious ruling, there is no remedy for it; when an English court makes a ruling that meets with popular disfavor, a bill is introduced in Parliament enacting the contrary, and that stands as the Supreme law.

Englishmen point out that Parliament is already swamped with business; that in legal matters judges are the best qualified to make laws anyhow, and that in nine cases out of ten this extra-Parliamentarian law is most satisfactory. The same might be said of America. The rub comes in the tenth case where the British have a remedy and we have none.

In England, Parliament, under the people is supreme. Historically, it is the descendant of the folkmoot and, actually, it is today regarded as the legal gathering of the entire people of the land. Naturally, then, it is supreme, for even the worst Tories seem to realize that in the last analysis government does derive its just powers from the consent of the governed. It took the American Revolution to teach them that.

In America, the people chose, for good or ill, to repose the supreme power not in a body of men but in an instrument. In England, Parliament is the embodiment of the voice of the people; in the United States, it is the Constitution.

That Constitution provided that the three great divisions of government—executive, legislative, judicial—should be equal. How then do we get the spectacle of the judicial branch overriding and setting aside the work of the legislative? Nothing could really be more simple. If the Congress pass a law which the Constitution does not permit it to pass, Congress is not a law-making body but a set of men illegally representing themselves as such, and any man, if he believe such to be the case, is perfectly justified in refusing assent to such a law.

He is, therefore, arrested and brought before a court. His defense is that Congress has exceeded its authority in passing such an act and that that act is not law. The court examines the case and sustains the defense. There its authority ends. Even tho this court were the Supreme Court, it cannot take the bill off the statute books. It can only say that all executive action under it is unauthorized.

Nothing could be more natural than this process, or more inevitable. Since the people set up a Constitution and made Congress subject to it, some one must decide when and how far Congress has exceeded its Constitutional powers. The courts are indeed well fitted for this, in general. It has been assumed in the past that something partaking of the nature of a court must exist where such matters can be adjudicated, and all remedies proposed for the excessive and overweening power of the courts have been aimed at their appointment, term of office, etc.

There is, however, another tribunal before which Constitutional disputes may come for settlement—a power superior not only to Congress and the Federal judiciary but to the Constitution—the people of the United States.

If the Constitution really is the living voice of the sovereign people, who, better than the people, can say what that voice means?

The method of procedure is a matter of detail once the principle is accepted. As an example of how it might be managed, consider this: If Congress in two successive sessions pass a bill which the Supreme Court holds unconstitutional, a deadlock exists between two equal powers. Recourse must, therefore, be had to their common master—the people.

I believe that this stupendous and far-reaching change in our government is possible by a mere act of Congress. The Ninth Amendment to the Constitution declares, "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people." The Tenth declares: "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."

Clearly the power to interpret the Constitution was not "delegated to the United States." Clearly also, this is evidently not a matter for State action, for we should have forty-eight separate interpretations possible. The only logical result seems to be that the power of interpreting the Constitution is reserved to the people.

It only remains to set up the machinery for this interpretation.

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NEWS NARRATIVE

The figures in brackets at the ends of paragraphs refer to volumes and pages of The Public for earlier information on the same subject.

Week ending Tuesday, April 9, 1912.

End of British Miners' Strike.

Subsequent to the cable dispatches noted last week, there came dispatches reporting an adverse referendum vote by the rank and file of the strikers, those published on the 3rd putting the vote then heard from at 123,000 for returning to work under the terms of the Parliamentary minimum-wage bill, and 135,000 in the negative. This adverse majority of 12,000 was reported on the 4th as having risen to 43,000. Nevertheless, the executive committee of the Miners' Federation recommended resumption of work, and its recommendation was adopted on the 6th by the Federation by a vote of 440 to 125. The controversy at the conference of the Federation was bitter, but the moderates won because 60,000 striking miners had already returned to work and as many more were expected to do so within the next two or three days. [See current volume, page 323.]

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