SUPREME COURT CHANGED 7 TIMES

But President Roosevelt's Proposed Increase to Fifteen Justices Would Far Exceed Any Such Alteration in History.

Who will be the new members to join this group, should the President's plan carry through? Left to right, front row: Justices Brandeis, eighty; Van Deventer, seventy-eight; Hughes, seventy-four; McReynolds, seventy-five, and Sutherland, seventy-four. Back row: Roberts, sixty-one; Butler, seventy; Stone, sixty-four, and Cardozo, sixty-six. Mentioned as possible additions to fill in the question marks have been New Dealers Richberg, Wagner, Landis, Frankfurter, Rosenman and Corcoran.

By WILLIAM C. UTLEY

SHOULD President Roosevelt succeed in his proposal to increase the number of justices on the bench of the United States Supreme court, such changes would by no means be without precedent, except in their scope. The number of justices has been changed by act of congress no less than seven times during the 148 years of its existence, but never by more than three justices.

There have been numerous instances of clashes between a President and the Supreme court. Originally the court was composed of six members, but during the time of the clash between Adams and Jefferson in 1801 the number was reduced to six. Under pressure of heavily loaded dockets as the young country was growing, the number was increased to seven in 1807 and 30 years later was increased again to nine. Further expansion resulted in the addition of still another justice, and in 1863 the Supreme court reached its peak of ten justices.

In 1866 the number was reduced again to seven, but in 1869 it went back to nine again; President Grant was at that time popularly accused of having "packed" the court to uphold legislation in which he was interested, but the majority of historians absolve him from any such intention.

Now comes President Roosevelt with his proposal to appoint to each federal court (including the Supreme court) a new judge for each present one who is over the retirement age of seventy but has not retired. Apparently it is beyond the power of congress to require justices to retire at seventy, for the Constitution expressly provides that they shall serve during good behavior.

Appointments Permanent.

There are now nine Supreme court justices, of whom six are past the retirement age. It follows then, that, at the present time, the membership on the Supreme court bench could not be increased to more than 15 under the President's proposal. New judgeships on that and all other federal court benches would be permanent.

To the observer in Washington it seems immediately apparent that one of the President's purposes in securing the proposed legislation is to nullify possible adverse rulings on New Deal acts by older justices who have been in the habit of voting to declare New Deal legislation unconstitutional.

Chief Justice Charles Evans Hughes, seventy-five, has voted sometimes to uphold, sometimes to nullify New Deal acts; he once ran as the Republican candidate for the Presidency. Louis Dembitz Brandeis, eighty, has voted to sustain all New Deal legislation except in the case of the NRA in which the vote was unanimously against. But Justices Willis Van Deventer, seventy-eight; James Clarke McReynolds, seventy - five; George Sutherland, seventy-five; and Pierce Butler, seventy-one, have voted invariably against the New Deal.

The New Deal has suffered defeat in 9 out of 11 major decisions of the court. In at least four cases a change of four votes could have reversed the decision.

Up to June, 1935, the Supreme court had held a total of 73 acts of congress unconstitutional. Fifty-five of these were in the period from 1789 to June, 1924. Then in 11 years, the court held unconstitutional 18 acts.

Decisions Make History.

The court has hardly ever ceased to be the subject of much political speculation and controversy in the "hot stove league." Perhaps this is because the court as an institution is unique among governments, in its function of interpreting and halting encroachments upon the basic law of the country.

"Every decision becomes a page of history," wrote Charles Warren, in his noted work on the Supreme court. "The history of the United States has been written not merely in the halls of congress, in the executive offices and on the battlefields, but to a great extent in the chambers of the Supreme court of the United States."

Historians outline the career of the court by (a) the period of nationalism, from 1789 to 1835; (b) the era of states' rights, from 1835 to 1861; (c) the period of broad interpretation, from 1861 to 1930, and (d) the present period.

The Supreme court met and organized for the first time in the Royal Exchange at the foot of Broad street in New York on February 1, 1790. The number of its justices (five) had been set by the judiciary act of September 24, 1789.

Edicts Free of Politics.

The present chief justice, Mr. Hughes, once said of the court, "at all times it has had the most severe critics." Tradition has it that all decisions are rendered without consideration of political partisanship, and indeed there are more than a few incidents to uphold the tradition. Justices appointed by President Jefferson helped to develop the nationalistic interpretation of the Constitution which he deplored; justices appointed by President Jackson differed with his opinion and wishes in important interpretation, and his own appointees held President Lincoln's legal tender policy unconstitutional.

"Nothing is more striking in the history of the court," wrote Warren, "than the manner in which the hopes of those who expected a judge to follow the political views of the President who appointed him have been disappointed."

Changes in membership of the court began early. In the election of 1800, the Federalists suffered an overwhelming defeat. The lame duck congress, between the time of Jefferson's election and his inauguration, to prevent the new President from filling a vacancy on the bench with one of his own appointees, reduced the number of justices to five. It also relieved Supreme court justices from circuit court duties, established six new circuits with sixteen new judges and attaches, and filled all the vacancies with staunch Federalists. Adams' appointments were confirmed by the senate the day before Jefferson's inauguration.

The next congress, controlled by Jefferson, abolished two terms of court, repealed the judiciary act of the Adams congress, abolished the new circuits and restored the Supreme court to its original membership of six. Ironically enough, it was the Federalist - appointed Supreme court which, in 1803, upheld the constitutionality of Jefferson's repeal act.

This was in the case of Marbury vs. Madison. The former had been appointed to a judgeship of the peace in the District of Columbia by President Adams, but his commission had not been delivered to him at the time of Jefferson's inauguration. He sought a writ of mandamus to compel the secretary of state to deliver his commission. The court ruled that the mandamus was the proper procedure, but that congress in delegating to the Supreme court the power to issue such a writ (by the judiciary act of 1789) had acted in excess of the powers granted to it under the Constitution. This was the first instance in which the court had acted upon the constitutionality of an act of congress, and established its right to do so.

Jackson Battles Court.

The first time that any complete act of congress was actually declared unconstitutional was in the Dred Scott case 50 years later. The court held only four federal statutes unconstitutional during the first 80 years of its existence. By 1825, however, it had under Marshall strengthened the federal structure considerably. It had invalidated 10 laws made by the states as unconstitutional.

During Andrew Jackson's tenure of office the state of Georgia passed a law of division of some land in the state to which the Cherokee Indians held title; the Supreme court decided this was outside its jurisdiction. The state then passed a law requiring all whites in the Cherokee territory to take an oath of allegiance to the state. When two missionaries refused they were imprisoned. The Supreme court issued a writ of error and declared that the statute was unconstitutional because the federal government alone had jurisdiction over the Cherokees and their territory.

The country was growing, and crowded court dockets made it advisable, on the last day of the Jackson administration, to increase the number of justices to nine (there were then eight, one having been added in 1807). As the West began to expand another justice was added in 1863.

During the reconstruction period in 1866 President Johnson was on trial on impeachment charges, his leniency toward the South having angered party leaders. Congress passed a statute returning the number of justices to seven. Johnson vetoed it, but the reduction was carried over his veto. A bill requiring a two-thirds vote of the court to declare a law unconstitutional failed to pass in congress about that time; it had been drawn in the fear that the court would declare the reconstruction laws invalid.

Grant Appoints Two.

President Lincoln clashed with Chief Justice Taney when, soon after Fort Sumter was attacked, John Merryman, a Confederate lieutenant, was arrested on charges of aiding the enemy. Taney gave him a habeas corpus to get released from Fort McHenry, but the officer in charge, acting under the President's instructions, refused to obey the writ. Taney ordered the arrest of the officer, but the civilian who bore the writ was refused admission to the fort. Taney wrote an opinion declaring that a writ of habeas corpus could not be suspended.

The number of justices was increased from seven to nine shortly after Ulysses S. Grant became President. The court, by a vote of 4 to 3, held unconstitutional the legal tender act which was passed during the Civil war; there were two vacancies on the bench at that time. The day the opinion was delivered by Chief Justice Chase, President Grant nominated two new members, and soon after the court ordered that the "greenbacks" case be re-argued.

There was a great storm of indignation when the new justices joined with the three who had voted to uphold the act, and the legal tender act was declared constitutional.

Most persons, of course, believed that Grant had intentionally packed the court to secure this decision, but historians do not agree

What Irvin S. Cobb Thinks about

The Drift of Scotland.

SANTA MONICA, CALIF.—So high an authority as the Associated Press gives out a dispatch stating that Scotland is drifting toward America at the rate of eight feet a year.

This would be an excuse for the unthoughted to say that the Scots always had a reputation for being close and now are becoming still closer.

Irvin S. Cobb

To me, though, the main question is whether Scotland is going to bring England along with her. Among themselves, at least, the Scots have always had the reputation of bringing England along through the centuries. And if you don't believe it ask any true Scot. He stands ready to offer supporting dates, names and statistics.

By the way, I've noticed one outstanding difference between the two greatest groups of the Celtic race. To an Irishman's face you can joke about Ireland and he remains calm. But poke fun at an individual Irishman and you are hunting for trouble — and probably will soon be hunting for a doctor. Inversely you may jibe a Scot and get away with it. But just say the least little thing in derision of his native land and you'd better start running.

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So-Called Modern Art.

I GUESS I must belong to a most ancient species—indeed, an almost vanished species. It's true I'm not quite old enough to remember when they shot Indians where the city hall now stands and Peggy Hopkins Joyce was called Love Apples. But I do date back to where a painting was expected, remotely, at least, to resemble the object it purported to represent.

I lived through the early stages of the artistic revolt—primitives, ultramodernistics, post-impressionists, cubists, dadaists and so on—without ever becoming reconciled to the prevalent idea that a canvas apparently depicting a bundle of laths coming undone was supposed to be a nude lady's portrait, or that a spirited rendition of a yellow cat having an epileptic fit in a mess of tomato soup was an Italian sunset.

Lately I've seen examples of the latest school — the surrealistic school. And if the practitioners of this form of beauty are artists, then I'm a kind-faced old Swiss watch mender. They're actually giving certain of these geniuses medals. What they ought to give 'em is something for their respective livers.

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Uncle Sam the Spendthrift.

WELL, we were good fellows while we had it, weren't we? We destroyed our forests. Result: Up water courses.

We indulged in an orgy of so-called "reclamation" schemes to drain unneeded swamplands, thereby destroying the breeding grounds and the natural resting places of emigrating wild fowl so that the once vast flocks are gone, probably forever.

We wasted our heritage of wild game, formerly a great factor in food supply aside from being a source of healthful joy to gunners. We needlessly polluted our streams.

But we're a resourceful race; give us credit for that. Now, through speed madness and drunken driving, we're preying merrily on human life. It's getting so that the citizen who insists on dying a natural death, instead of waiting for some mad wag of a road-hog to mow him down, can be regarded only as a spoilsport.

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Cruelty to Wild Life.

SOMETIMES women are almost as inconsistent as men—which is a frightful indictment to bring against any sex.

As a boy, I remember being severely lectured by a lady for robbing birds' nests— a lady whose nodding hat was crowned with at least four stuffed meadowlarks.

A few years ago, I saw women prominent in humane movements and good deeds, like that woman of the Scriptures who was called Dorcas—saw these women wearing the smuggled and forbidden aigrettes of the snowy heron, even though they must have known that each pitiable feathered wisp meant a cruel murder and a brood of fledglings left to starve. I still see these aigrettes being worn—against the law of the land and the greater law of common humanity.

And only lately, at a meeting to forward the prevention of cruelty to dumb beasts, I saw women swathed to their earlobes in furs of mink and otter. Seemingly they had forgotten that the animals whose pelts they wore had died in steel traps by slow degrees of infinite torture. Or maybe they didn't care.

IRVIN S. COBB.

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Pattern 5738

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Unicameral Legislatures

Four states have tried the unicameral (single house) legislature: Delaware, until 1776; Pennsylvania, until 1790; Georgia, 1777-1789, and Vermont, until 1836. Nebraska's unicameral legislature convened for the first time in January of this year.

Wisdom From Oneself

Unless you grow wise of yourself you will listen in vain to the wise.—Publius Syrus.

Steadfast Morality

Morality is morality; there can't be any dispute about it, in spite of slick and false reasoners.