

New Mexico Historical Review

Volume 15 | Number 1

Article 4

1-1-1940

New Mexico Editorial Opinion on Supreme Court Reform

Frank D. Reeve

Follow this and additional works at: <https://digitalrepository.unm.edu/nmhr>

Recommended Citation

Reeve, Frank D.. "New Mexico Editorial Opinion on Supreme Court Reform." *New Mexico Historical Review* 15, 1 (). <https://digitalrepository.unm.edu/nmhr/vol15/iss1/4>

This Article is brought to you for free and open access by UNM Digital Repository. It has been accepted for inclusion in New Mexico Historical Review by an authorized editor of UNM Digital Repository. For more information, please contact amywinter@unm.edu, lsloane@salud.unm.edu, sarahrk@unm.edu.

NEW MEXICO EDITORIAL OPINION ON SUPREME COURT REFORM

By FRANK D. REEVE

WHEN PRESIDENT ROOSEVELT launched his program for the reform of the Supreme Court in February, 1937, a conflict broke out in the halls of congress that left its scar on the Democratic party and that might have ended in setting the precedent for a serious modification of our governmental structure. It was said that a large majority of the newspapers of the country opposed the presidential plan. However that may be, it is true that a substantial part of the press in New Mexico was in opposition. Among thirty-two newspapers studied, seventeen or 53 per cent opposed the change with varying degrees of earnestness, ten or 31 per cent were non-committal, and five or 16 per cent favored it. Eighteen of these newspapers favored the Republican party in the campaign of 1936, eleven were Democratic, and three were non-committal. Four of the Democratic papers opposed the court change, four favored it, and three were non-committal. Thirteen of the Republican papers opposed the change in the court, one favored it, and four were non-committal.

The *Albuquerque Tribune* led the discussion with the feeling that the president had not struck at the root of the supposed evil. Instead of lessening the power of judicial review he had remained content with changing the personnel of the court and, as a result, he might expect the plan to be attacked, "and justifiably so, even by friends of the New Deal." And it soon decided that "the plan was just too clever—too damned clever." The idea of restoring a better balance of power between the judiciary and executive was sound, but it was a mistake to swing the pendulum too far back in favor of the executive.¹ The *Roswell Daily Record*

1. February 6, 8 (a Scripps-Howard newspaper).

saw in the plan "an attempt to set aside the protection afforded by the Constitution and force upon the nation the views that he [Roosevelt] and other new dealers hold." Merely forcing new deal views on the country might not be so bad, but the *Record* soon feared something more serious: "the Roosevelt administration is seeking to change the entire form of the American government."²

This serious charge appeared in many newspapers in various wordings. The *Albuquerque Journal* might favor "new blood" on the court, "but in reforming the judiciary, Congress needs to assure that there are safeguards which will prevent any executive now or later from being in a position to acquire dictatorial control over the judiciary."³ And the *Santa Fe New Mexican* saw "perhaps the most insidious attack ever made by a President of the United States." If it were successful, "we shall have just as real a dictatorship as that of Hitler, Stalin or Mussolini."⁴ The *Artesia Advocate* pointed out that the "concentration of power is a temptation to any individual that the founders of this government intended to remove." The *Magdalena News* thought that the "whole move is a dictatorial grasp of power," and concluded that those who made the charge of attempted dictatorship in the campaign of 1936 "must have known what they were talking about." The *Union County Leader* considered the move primarily "one of political expediency," designed to "eliminate the 'brake' provided by the constitution." This paper had been very impatient with the court, but "President Roosevelt has chosen the wrong way; the right way is by amending the constitution."⁵ The "peanut politicians," according to *The Roy Record*, might enact the proposal into law, but pointed out that "there may be a constitution-loving public to be reckoned with later on." On the same day *The Deming Headlight* was willing to "trail along with the vast majority of ordinary citizens who see in

2. February 6, 8.

3. February 7.

4. February 8, 9.

5. February 11.

the proposal so much danger to our governmental structure as to make it highly undesirable.”⁶

In the second week of the controversy *The Albuquerque Tribune* began to “wonder what might happen to ‘certain inalienable rights’ under a precedent, established now because of a benign purpose, if employed by some future leadership of purpose not benign but vicious.” And the *Roswell Daily Record* boiled the question down to a choice between “an independent federal judiciary” or “its subserviency to the chief executive.”⁷ However, not all the editors in New Mexico were worrying about the federal judiciary. The *Evening News-Journal* (Clovis) thought that “the life of the average man is apt to be affected much more by what happens in the precincts of the run-of-mine state and county courts.”⁸ But six days later it believed that “in the face of what is going on in the rest of the world, it would appear that nervousness is justified and caution wise;” hence, the proposal should be studied on its merits. Meanwhile, *The Fort Sumner Leader* had “seen so many remarkably good things inaugurated under the New Deal and carried to completion that we have faith in most anything proposed by the Administration.” This faith was probably not held by everybody. *The Deming Headlight* reported that “In something over 100 interviews during the past week we found but two people who are in favor with the plan.” Among the people consulted, 80 per cent were Democrats.⁹

During the third week of discussion the opposition was still pronounced, but some slight support did appear for the plan. *The Union County Leader* believed that “The president should not attempt to railroad through legislation as important as this is without submitting the proposal to a vote of the people.” And *The Herald* (Hot Springs) thought that “he [Roosevelt] is taking us for a ride that will only end in a military dictatorship. . . .” *The Aztec Independent-*

6. February 12.

7. February 16, 18.

8. February 18.

9. February 19.

Review defined freedom simply as "access to a free and impartial court to decide the rights of the individual and the rights of government." *The Mountainair Independent* reasoned, however, that congress has the right to increase the membership of the court; therefore, such legislation does not strike at the foundation of the government and does not prove that the president wanted to become a dictator. But it reserved the right to examine more closely the wisdom of the proposal. This favorable sentiment was supported on grounds much broader than constitutional law when *El Defensor del Pueblo* introduced the law of nature: "Si, como es bien sabido, que se hace necesario este programa para lo que se trata es de restituir la nación y conservar la subsistencia de todos . . . las agrupaciones en general, y siendo la propia conservación la primera ley de la naturaleza, se desprende que el presidente está obrando en obediencia de esa ley redentora."¹⁰

Two weeks later *The Mountainair Independent* stated that, "As we see it, the Supreme Court, through its interpretations of the law and the Constitution, looking always to the past for guidance and precedence in such interpretations, has allocated unto itself powers which make it no longer an equal and coordinate branch of the government, but instead allow it to transcend and completely override the Executive and Legislative branches of the Government, so that neither the Court nor the other branches of the Government are any longer amenable to the wishes of the people." Therefore, it is not criminal to suggest a change.¹¹ This sentiment found support in the columns of *The Silver City Enterprise* which did "not subscribe to the idea that the addition of six new members to the supreme court would nullify the Constitution, nor would it be packed with 'spineless puppets'." New judges would interpret the law with the "view toward strengthening the Constitution rather than to nullify or destroy it." But the *Santa Fe New Mexican* saw

10. February 24, 25, 26.

11. March 11.

in the plan an "admission of fear of a popular vote. All the executive can do is to maintain the ridiculous claim that the people already have endorsed his plan."¹²

The silence of some newspapers during this controversy might be attributed to the state of mind that *The Fort Sumner Leader* found itself in: "We have an idea that [after] all the bunk explanations we've read pro and con the supreme court situation appeared about as muddled to other people as to the writer."¹³ The *Evening News-Journal*, if not muddled, was still thinking that it was "probably far more important that we do something effective about our local governments. . . ." And *The Daily Current-Argus* (Carlsbad) "had not taken sides editorially in the issue because, frankly, we were not sufficiently informed to draw definite conclusions."¹⁴

Meanwhile, *The Albuquerque Journal* was favoring a constitutional amendment as "the safer, the American and Democratic method." *The Magdalena News* was claiming that "It is becoming increasingly plain to all thinking men that this country is being governed by a madman; a fanatic; a visionary embryo dictator, . . . never apparently satisfied until the power of life and death of every citizen is placed in his hands." And the *Farmington Times Hustler* thought that "the supreme court argument is well into its silly stages, with a justice discarding his robes of judicial dignity to make political remarks at a public meeting. . . . That boner sort of evens things up with one the president pulled when he condemned the advanced old age of the justices as undesirable to his policies, only to be reminded that the oldest justice of the nine was the most liberal of the lot." The proposal of Senator Hatch to retire one justice each year found favor with the *Evening News-Journal*.¹⁵

The month of April was marked by a decrease in editorials, but a continuation of disagreement about the court

12. March 12.

13. March 12.

14. March 13, 30.

15. March 24, 25, 26, 27.

reform plan. *The Lovington Leader* believed that the "court will never command the respect it should have when it is presided over by men whose active lives are already passed." But *The Herald* thought that "The presidential veto should be abolished."! *The Roy Record* favored the Hatch compromise. And *The Daily Current-Argus* suggested that an amendment limiting the term of supreme court justices to ten years was a feasible plan.¹⁶

In May, *The Herald* still believed that the president "is fully determined to make himself the Mussolini of America. . . ." A month later the *Evening News-Journal* and *The Gallup Independent* concurred in the opinion that "The instinct for democracy as against personal rule is all-powerful in this country. The people's distrust of power concentrated in one pair of hands is ineradicable, and the man who gets such power in his hands, or even seems about to get it, is riding for a certain fall."¹⁷

When Senator Robinson died in July, *The Albuquerque Journal* and the *Evening News-Journal* thought "It would be most fortunate for the nation if the fight for the court bill would be abandoned." And *The Mountainair Independent* finally decided that the presidential plan "was a political error."¹⁸

The storm that arose in the newspapers of New Mexico around the proposal of President Roosevelt to materially alter the distribution of power within the federal government, rose to a peak in March and then subsided rapidly. The verdict of the editors was largely unfavorable. It is reasonable to conclude that any proposal to change the structure or powers of government by a method that is contrary to the spirit if not the letter of the constitution will meet with an unfavorable reception in the same group. And if editorial opinion is a reflection of public opinion, the same might be said of the people in general. At any rate, despite

16. April 2, March 31, April 2, 22.

17. May 19, June 22, 28.

18. July 15, 16, 22.

the criticism that can be made of the system of checks and balances in the American government, it still retains its hold on the minds of many of those who count in the body politic, even at the expense of their party loyalty.