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On February 5, 1937, President Franklin Delano Roosevelt unleashed a monster that, in the end, would fracture the Democratic Party, claim the life of one Senator and defeat the President at the height of his popularity. The monster was Senate Bill 1392 to reorganize the judicial branch of the government. To answer the question of why he did this, one must look back many months before to the New Deal and the Supreme Court's attitude towards it. Answering the question about the reaction to the bill requires a look into what was proposed and the challenge it presented to the philosophy of separate branches of government and an independent judiciary.

Hints of a possible confrontation of FDR and the Supreme Court came early in his election campaign. In a campaign speech in October of 1932, he claimed that as of 1929 the Republicans had control of all branches of government including the Supreme Court. (Leuchtenburg 348) In his Inaugural Address, March 4, 1933, he said "Our Constitution is so simple and practical that it is possible always to meet extraordinary needs by changes in emphasis and arrangement without loss of essential form." (Leuchtenburg 349) In essence, the President was asking for broad powers and loose interpretation of the Constitution in order to meet the emergency of the Great Depression.

Because of his attitude towards government, many began to label him a dictator. The fact that Hitler and Mussolini were controlling Europe in totalitarian type governments did little to offset these fears. However, FDR considered his plight as one to save democracy in a world that was falling to totalitarianism. He believed that people wanted strong leaders and security and were willing to give up some liberty for stability. He claimed that "...dictatorships do not grow out of strong and successful governments, but out of weak and helpless ones." (Leuchtenburg 142)

Where the issue became clear was in the court cases involving New Deal legislation. For his first term, FDR enjoyed a very workable relationship with Congress. He was able to get his way virtually whenever he wanted. The Supreme Court was an altogether different story. Independence from politics was the ideal for the court. If justices were to render honest decisions,

they needed to be free from manipulation. However, this is not completely possible. The Chief Justice Charles Evans Hughes summed it up pretty well:

> "The court... is inevitably a political as well as a judicial body. If its decisions run counter to the prevailing opinion of the country, there is bound to be criticism. If these decisions are rendered by a divided tribunal, the criticism is bound to be intensified. The American People ... are in general definitely favorable to the principle of judicial review. But at the same time a considerable part of them become inpatient when the Court stands in the political and social order, especially when it is clear ... that questions involved are susceptible of an interpretation more favorable to social and economic adjustment." (Perkins 173)

Here is where the root of the problem lay. The concept of judicial review, although not explicit in the Constitution, had been the tradition in American justice since Chief Justice John Marshall first used it to declare and act of Congress void in the early Nineteenth Century. To add to it, Marshall allowed for a broad interpretation of the document to allow it to keep in tune with the age. Judicial review had not changed, but, in a series of decisions regarding the New Deal, the interpretation had changed. Now the court held to a narrow view, but only by a slight majority of one vote. That vote was held by Justice Owen J. Roberts. (Baker 123-124)

As Hughes warned court decisions that stood in the way of progress brought criticism and decisions made by a divided court brought more intense criticism, his arguments became a painful reality. Another root to the problem was the court itself. The court was badly divided in its views. Four of the justices were heroes of laissez faire government and were conservative to the core. Among these "Four Horsemen" were Justices McReynolds, Sutherland, Van Devanter and Butler. These four could be counted on to vote against any New Deal legislation. Three more of the justices were liberal in their views and would give the New Deal its best chance with the Constitution. These three were Justices Brandeis, Cardozo and Stone. Finally, the two moderates were Chief Justice Hughes and Justice Roberts. Hughes would begin to ally himself frequently with the liberals leaving Roberts with the tie breaking vote in most cases. (Baker 120-123)

It was all of this that set the stage for the great duel between FDR and the Supreme Court. The first set of cases to come before the court involving the New Deal were in January of 1935. In the famous "hot oil" decision, the court ruled 8-1 against section 9(c) of the National Industrial Recovery Act. The case *Panama Refining Co. v. Ryan* came up over the code making authority given the President over oil. Chief Justice Hughes' opinion ruled the section unconstitutional as a delegation of legislative power to the President without guidelines. (Kelly 488-489) This decision involved merely the procedural aspect of the codes and could be corrected. Justice Brandeis was particularly disturbed at the carelessness of the delegation of powers. The Executive Orders were not even published, which could result in government at a whim. This did not invalidate the NRA, however. (Swindler 33) As a result of this case the *Federal Register* was established to publish Executive Orders and oil was back to uncontrolled competition. (Jackson 91-92)

Next came the gold clause cases. There were five cases in all involving the Emergency Banking Act of 1933 and the Gold Reserve Act of 1934., These acts were to halt the runs on banks and restore the economy. They would also help to keep gold from being exported. The dollar was devalued at this time and the gold clauses that had been guaranteed would have been very damaging. In essence, those holding the government bonds and gold certificates could demand the value in gold before the devaluing. This would create economic chaos and cause bankruptcy and nearly a $70 billion debt on the government. (Leuchtenburg 351) FDR believed a system of dollar-to-dollar payment would be fair and make sense, but some holders sued for the full value. Adverse decisions would cause so much trouble, that Attorney General Cummings was prepared to rush a bill through that would give sovereign immunity from suit to the government and attempt to pack the court. (Swindler 35)

This was unnecessary. The court sustained the validity of the acts in 5-4 decisions. This was involving private contracts and gold certificates. In the case of government bonds, Congress could not modify its own bonds; however, a bond holder could not demand more than $10,000 for a $10,000 bond as he was not damaged in receiving an equal amount. The government was content, but the 5-4 decision was uncomfortable. (Jackson 102) The four dissented bitterly to their

decision. McReynolds alleged that "this is Nero at his worst. The Constitution is gone." (Wolfskill 221)

This joy was short lived, however. Soon after, the court in another 5-4 decision invalidated the Railway Pension Act. Several feared the future of the Social Security Act and others feared that Roberts had joined the conservatives for good. (Leuchtenburg 355-356) The 5-4 decision also caused some Senators to propose bills and amendments to end them. Future Justice Hugo Black of Alabama proposed a bill that all laws declared unconstitutional by a lower court be appealed within then days to the Supreme Court. Chief Justice Hughes and Justices Brandeis and Van Devanter suggested that they appear before the Senate Judicial committee to testify that the bill would impair work and not accomplish what it desired. Nothing came of this bill, but the suggestion of the Justices appearing would be remembered later. Senator Norris was particularly distressed by 5-4 decisions and sought an amendment requiring a greater majority of the vote to declare acts unconstitutional. (Swindler 38-39)

Black Monday, May 27, 1935 followed shortly thereafter. In three unanimous decisions the court destroyed the New Deal. In *Louisville Bank v. Radford*, the Frazier-Lemke Farm Mortgage Act was declared unconstitutional. The problem was procedural and caused by poor drafting of the bill, therefore, it could easily be corrected by Congress. However, it denied immediate relief to many farmers trying to pay their bills without losing their land.

Humphrey's Executor v. United States, the court denied FDR the power to remove a federal commissioner. The case originated with FDR's removal of William E. Humphrey from the Federal Trade Commission. Humphrey, a Hoover appointee, did not agree with FDR's policy and started to obstruct them so Roosevelt removed him. Prior to this time, the court had allowed such actions, however, they changed their attitude and held that the removal was illegal. Being that Humphrey died during the case, it made little bearing on that particular situation. What it did do was publicly chastise the President and he was none to happy. (Jackson 106-108)

The case of *A.L.A Schechter Corporation v. United States*, otherwise called the "sick-chicken" case ruled the NRA as wholly unconstitutional. This case, like the "hot oil" case

originated from the code making sections of the National Industrial Recovery Act. In particular, it involved the live poultry business in New York City. Like other New Deal legislation, this had been drafted poorly and left procedural problems. The Justice Department had been looking for a test case to hold up the NRA, this was not it. It was only slightly connected to interstate commerce. The hope was that the court would pass on the procedural parts and leave the whole law standing. The court did not. In a unanimous decision, the court declared the NRA unconstitutional. (Swindler 39-41) The argument was that it was an illegal delegation of power to the President and that Congress had overstepped its bounds on interstate commerce. (Jackson 113-114)

The President was furious with these decisions. Most unsettling to him was the unanimity of the court. he was quoted as asking "Where was Ben Cordozo? And what about old Isaiah?" (Leuchtenburg 357) Isaiah was a familiar term for Mr. Justice Brandeis. He also made a daring comment to the press. "We have been relegated to the horse-and-buggy definition of interstate commerce." This proclamation created some fervor. Many were fearful that FDR was an imminent dictator. Others were angered by the court and demanded action. FDR decided to wait before making any moves. (Leuchtenburg 357-359)

Another case that dealt a death blow to the New Deal was *United States v. Butler.* In a 6-3 vote, the court nullified the Agricultural Adjustment Act. The AAA was set up to bring agriculture prices back up. A tax was collected and paid as relief when farmers cut back their acreage. This brought up prices. The court's majority condemned it because it was taking money from one group to give to another. This was far reaching because not only did the farmers lose the money, but also the collected taxes had to be refunded. Most of the industries that had paid the taxes had already passed it on to their customers. Stone dissented sharply to this "tortured construction of the Constitution" and proclaimed that the power to tax and spend included the power to relieve "economic maladjustment with conditioned gifts of money." (Perkins 174-176)

Reaction to this case was great. Many called for new justices or for FDR to act against the court. Amendments were suggested to pack the court or require retirement at a set age. The court

was accused of being behind the times. Still FDR waited to act, sensing that the time was not yet right. (Leuchtenburg 366-368) In order to keep industries from being overly enriched by these refunds, the Congress adopted a plan to repay only to those with proof that the tax had not been passed on to their customers. The court agreed to this with McReynolds dissenting. (Jackson 137-138)

The next New Deal act to be tested was the Guffey Bituminous Coal Conservation Act. An uproar occurred over a statement made by the President when this bill was in debate. FDR said to Representative Sam Hill of the House Ways and Means Committee "I hope your committee will not permit doubts as to constitutionality, however reasonable, to block the suggested legislation." (Swindler 46)

This law was tested quickly by *Carter v. Carter Coal Company*. Carter was president and largest stock holder of his company and demanded they disregard this act. The company would not, so he took it to court. For over twenty years, Congress had studied the Coal industry and its problems with labor. Collective bargaining and maximum prices with controlled distribution were thought to be ways to solve these problems. Historically wages were slashed due to cutthroat competition. Coal was also an interstate affair. Several states had attempted to regulate it, but to no avail. They opted to ask for federal help. (Jackson 1653-158)

The act put taxes on the industry with tax breaks to those that accepted the codes. It also established collective bargaining and minimum and maximum prices. The bill was divided into separate parts for prices and labor relations. The labor sections also contained maximum hours of work and minimum wage. Even though seven states filed briefs supporting the act, it was ruled unconstitutional as an infringement on states rights. The labor provisions were beyond federal control because they did not "directly affect" interstate commerce. The majority ruled it totally unconstitutional. Chief Justice Hughes agreed about labor but disagreed about price. Justices Brandeis, Cardozo and Stone all disagreed. (Jackson 159-162)

During this tine, Senator George Norris demanded something be done about the court problem he said:

> Nowhere in that great document is there a syllable, a word, or a sentence giving to any court the right to declare an act of Congress unconstitutional. The members of the Supreme Court are not elected by anybody. They are responsible to nobody. Yet they hold dominion over everybody. (Leuchtenburg 374)

He also called for legislation that would require unanimous decisions to invalidate acts of Congress. His fear that the court would invalidate the Tennessee Valley Authority was wrong, however. It was upheld by an 8-1 decision of the court. However, the courts general trend of decisions caused fear that the Wagner Labor Relations Act was doomed and that government would never be allowed to regulate wages and hours. (Leuchtenburg 374-376) Norris also accused the Supreme Court of being "a continuous constitutional convention." (Swindler 50)

Further problems come with the case of *Morehead v. New York ex. rel. Tipaldo*. This case involved minimum wage for women in New York. In another 5-4 decision, the court upheld its ruling in *Adkins v. Children's Hospital* denying minimum wage because it took away the right to contract. Justice Roberts, the deciding vote, voted against it because, as he later claimed, it did not challenge a reconsideration of *Adkins* but affirmed it. He claimed that he would have gladly voted against *Adkins* if the case had permitted. The opinion by Butler was harsh in stating that no state could legislate minimum wage laws. Hughes dissented and tried to maintain court's dignity. Stone dissented separately and accused the conservatives of voting on their concept of economic wisdom instead of constitutionality. To him, the granting of a review was challenge enough of *Adkins*. (Chambers 49-54)

Reaction to this was great. FDR broke his public silence to proclaim that the court had established "a no man's land where no government - state or Federal - can function." (Swindler 55) Some newspapers, although hostile to the New Deal were critical of this decision. Some called it a new Dred Scott decision and ex-President Hoover called for an amendment to give the state the rights that they thought were already theirs. (Chambers 55) The conservatives were

referred to as "five stubborn old men" that "had planted themselves squarely in the path of progress." (Leuchtenburg 376)

In spite of the great protest against the court, FDR chose to not use it in the 1936 campaign. Although he had been planning action against the court for some time, he wanted to be elected on the new Deal alone. The Democratic platform merely called for a "clarifying amendment" and only "if these problems can not be effectively solved by legislation." (Leuchtenburg 378-379) Even though the Republicans accused him of planning to pack the court, he remained silent. Senator Henry Ashurst of Arizona in reply to this accusation said that "a more ridiculous, absurd, and unjust criticism of the President was never made." (Leonard 150) A few short months later, Ashurst would have to eat those words.

Franklin Delano Roosevelt won his reelection in November of 1936 in a landslide. he carried 515 of 523 electoral votes and every state except Maine and Vermont. (Jackson 176) The election persuaded the President into action. He viewed it as a mandate from the people to move ahead with his program. Included with this, he assumed, was a mandate to also do something regarding the court question. After the election, he began to consult with Attorney General Cummings as to possible solutions. (Alsop 20-23) The President kept very secretive about his plans and did not even consult many of his closest advisors. Whatever the case, his course of action was being decided. An amendment to the Constitution was not necessary. The problem was in the courts interpretation of it. The Constitution was an "instrument of progress" to meet the needs of the people in an ever changing world. (Swindler 58-59) Another problem with the amendment approach was the time it took. It required the support of three-fourths of the state legislatures. This would take too long and would be too easy to obstruct. He was also afraid that determined forces could block it and claimed "Give me ten million dollars and I can prevent any amendment to the Constitution from being ratified by the necessary number of states." (Burns 295)

Just at the time this was happening, another occurrence was in progress. This would not be revealed until much later, but the court was changing. Whether the change was due to the election results or a matter of principle is difficult to say. However, this change did occur before

the President's plan was revealed. This change would not be publicly revealed until March 29, 1937, but Justice Owen J. Roberts reversed himself on the Tipaldo case in *West Coast Hotel v. Parrish.* In this case, Mrs. Parrish had not received her minimum wage under the Washington State law so she sued for it. The Washington Supreme Court upheld the law and demanded she be paid. It was then appealed to the Supreme Court. Based on *Adkins* and *Tipaldo*, the court was expected to turn it down. Roberts reversed his decision which excited Chief Justice Hughes so much that he nearly hugged the Justice. However, Justice Stone was ill and not sitting in on the case. Hughes held it up until Stone returned on February 1, 1937. This change in the court would have to wait before it was revealed. (Chambers 58-60)

Meanwhile, FDR was still consulting with Cummings over possibilities. Among his possibilities were an amendment, legislation to limit jurisdiction, require more than a majority to nullify acts or pack the court. Amendment was not very likely. Suggestion to require more than a majority vote might be struck down by the court itself. Removing appellate jurisdiction of the Supreme Court was another possibility, but the Constitution itself grants that the Supreme Court has jurisdiction in certain cases, such as those involving states. Finally, court packing, although distasteful at first, was becoming a more appealing option. The only problem was finding a principle by which the court could be packed. The solution to the problem was found one December morning when Cummings came across a proposal in his office. The proposal called for a retirement age of seventy for all federal judges below the Supreme Court. For those that did not retire, a coadjutor would sit with him and have precedent over him. The beauty of this was that it had been proposed to President Wilson in 1913 by his Attorney General, James C. McReynolds. FDR could not pass by this opportunity to use McReynolds own suggestion against him. (Alsop 28-34) In fact, FDR was so pleased with it that he called it the "answer to a maiden's prayer." (Leuchtenburg 394) Cummings suggested that the Supreme Court be included and also wanted to call for a general reform of the judiciary. Roosevelt liked this approach and set Cummings to work immediately. The bill went through twelve drafts in all with many minor changes throughout the process. It called for retirement at seventy or an additional judge would be appointed to assist in

the duties. The member of Supreme Court justices could not exceed fifteen. District Court judges could be moved around to deal with congestion in the lower courts and a proctor would be created to watch the calendars of the courts and make weekly reports to the Chief Justice. In this way, the entire court packing scheme would be cloaked in judicial reform. (Leuchtenburg 394-395)

All of these dealings were done in secrecy. FDR still had not consulted some of his closest advisors. He believed his party was united behind him as a result of the election. He assumed that the Democrats would support his bill when it came into being and did not give them a voice in the planning. Senator Joseph T. Robinson from Arkansas, who would lose his life as a result of this fight, was never consulted , yet as Senate Majority Leader, he would be relied upon to push the bill through the Senate. Fortunately for him, Robinson was a loyal party man and followed his leader even when he disagreed with the course of action. He had further reason to be motivated because he was promised the first vacant seat on the Supreme Court, a life-long ambition of his. However, FDR would not fare so well with other subordinates. (Swindler 60)

Along with the bill, the President wanted an official message to the Congress and a letter from the Attorney General. Cummings got his aides searching for information on ages of justices, increases and decreases in the Supreme Court and the granting of certiorari as compared to the amount to petitions. All of this was requested, yet no explanations were offered. (Leuchtenburg 395)

On January 6, 1937, the President delivered his State of the Union Address. In it, he made veiled threats to the court that few were able to pick up on.

> "The vital need is not an alteration of our fundamental law, but an increasingly enlightened view in reference to it ... means must be found to adapt our legal forms and our judicial interpretation to the actual present national needs of the largest progressive democracy in the modern world ... The judicial branch also is asked by the people to do its part in making democracy successful." (Jackson 178-179)

Inauguration Day 1937 brought with it rain. In administering the oath of office, Chief Justice Hughes is reported to have read the parts about supporting the Constitution slowly and with emphasis. FDR is reported to have done the same with the urge to say

> "Yes, but it's the Constitution as I understand it, flexible enough to meet any new problem of democracy - not the kind of Constitution your Court has raised up as a barrier to progress and democracy." (Burns 291)

His inaugural Address claimed that government was there to meet the needs of the people. If complexities and problems increased, so could the power to govern them. The power to govern should then be given to the ones that the people could change or continue in office at intervals through election. He proclaimed, "I see one-third of a nation ill-housed, ill-clad, ill-nourished." (Burns 292) This was not a call to despair but to hope because something could be done to remedy the situation.

This address hinted that something was about to happen. One person later said that he didn't "let the cat out of the bag, but you could sure hear the animal meowing." Hatton Sumners of Texas was one who heard the meow and decided to act quickly. He had tried to get a bill through the House of Representatives earlier that would provide full pay for retiring justices and give them a few judicial responsibilities. With this he hoped first to get Justices Van Devanter and Sutherland to retire as well as avoid the possible court bill. (Alsop 29-40)

During the interval between the Inauguration and the presenting of the bill, several Senators suggested amendments. Ashurst, busy working on his proposal, called "court packing" "the prelude to tyranny," yet more words for him to swallow. (Leuchtenburg 396) Senator Burton K. Wheeler of Montana, later to lead the opposition to the court bill, proposed an amendment to override the court's decision by a two-thirds vote of Congress following an intervening election. Yet another called for a two-thirds vote of the Supreme Court to declare a law unconstitutional. The problem with the amendment process was that it also had to be interpreted by the court. (Jackson 179-180)

Meanwhile, the bill itself along with the accompanying message and letter were being perfected. The President was ready to accept the bill, but suggested changes to the Attorney General's letter. Aware of the importance of the message as a state paper, FDR was very particular about it. He called two of his trusted friends, Richberg and Rosenman, to work on it. Now he also had to select the timing of the presentation. The court would reconvene on February 8, so he wanted to propose it before then. However, the annual dinner for the judiciary was scheduled for February 3, so he did not want to let it out before then. Some senators were beginning to notice that something was brewing. The great Republican senator, William Borah of Idaho, who led the fight to defeat the League of Nations, spoke out in the Senate as if he were attacking something that was yet to come. (Leuchtenburg 395-399)

The annual dinner for the judiciary was held on February 3, 1937 as planned. All of the Justices were in attendance except for Brandeis, who made a practice of not attending evening functions, and Stone, who was still recovering form his illness. (Swindler 62) FDR was described as jovial, all the time knowing of his plan. Cummings is reported to have told Rosenman "I wish this message were over and delivered. It makes me uncomfortable; I feel too much like a conspirator." (Leonard 151) After the dinner, FDR casually chatted with Hughes and Van Devanter. Borah, present because he was a member of the Senate Judiciary Committee, commented about the scene. "That reminds me of the Roman Emperor who looked around his dinner table and began to laugh when he thought how many of those heads would be rolling on the morrow." (Leuchtenburg 400)

After this the President was still desiring his message to be stronger, even though it was time to release it. Rosenman said, "It was the only time I recall" that FDR, "seemed worried after deciding upon a course of action." (Swindler 62) He maintained the utmost secrecy until the last moment. On the evening of February 4, 1937 several leaders received a late call informing them to report to the White House for a special meeting at 10:00 A.M. the next morning. The White House mimeographers were to report at 6:30 A.M. in order to run off enough copies of the message, letter and bill. (Burns 293)

At this meeting, many of the leaders that would be expected to support this measure, were informed of it for the first time. This secrecy in planning would hurt the fight for the court bill throughout. However, FDR was not fully aware that his support was waning. FDR was now on his second term and, being that no one expected him to run for a third, his power was not as strong with the Congress. Also the Southern conservatives like Vice-President John Garner of Texas and Pat Harrison of Mississippi had gone a long way in supporting the President; further than there comfort allowed. They were very worried about the President's spending policies. These men held a certain power over moderate New Dealers. At 10:00 A.M., the President wheeled into the room, papers were handed out and he rushed through leaving little time for questions. He also added that an amendment would not work because it would be defeated to easily. He mentioned rumor that the Liberty League in New York had already collected money for such a purpose. He also said that it was within the constitutional power of Congress to enact his bill. (Swindler 63)

His message to Congress simply asked them to reorganize the judicial branch of government, much the same as it had earlier reorganized the executive branch. His suggestion was presented "in order that it (judiciary) also may function in accord with modern necessities." After going through a brief history of the changes in number to the Supreme Court, he stated "The simple fact is that today a new need for legislative action arises because the personnel of the Federal Judiciary is insufficient to meet the business before them." (*Congressional Record*) vol 81 part 1. 877)

His main focus was on age and inability to perform the duties of office. Part of this argument centered on the work load.

> Even at the present time the Supreme Court is laboring under a heavy burden. Its difficulties in this respect were superficially lightened some years ago by authorizing the Court, in its discretion, to refuse to hear appeals in many classes of cases. This discretion was so freely exercised that in the last fiscal year, although 867 petitions for review were presented to the Supreme Court, it declined to hear 717 cases... Many of these refusals were doubtless warranted. But can it be said that full justice is achieved when a court is forced by the sheer necessity of keeping up with its business

> to decline, without even explanation, to hear 87 percent of the cases presented to it by private litigants?
>
> It seems clear, therefore, that the necessity of relieving present congestion extends to the enlargement of the capacity of all the Federal Courts. (*Congressional Record*, vol 81 Part 1. 878)

He also called for:

> ...a constant infusion of new blood in the courts... A lowered mental or physical vigor leads men to avoid an examination of complicated and changed conditions. Little by little, new facts become blurred through old glasses fitted, as it were, for the needs of another generation; older men assuming that the scene is the same as it was in the past, cease to explore or inquire into the present or the future... Life tenure of judges ... was designed to place the courts beyond temptations or influences which might impair their judgements, it was not intended to create a static judiciary. (*Congressional Record* vol 81 Part 1. 878)

The President's attempt to hide the "court packing" in the guise of judicial reform failed in two ways. First, court packing became the only part which people noticed. Second, it showed that the President could be devious. This clever cunning was not a quality that was revered by most. (Perkins 177)

The President ended the meeting abruptly for a press conference, described as his most jubilant ever. White House Correspondents noted that he took several occasions "to laugh uproariously." Clarence Hancock of New York wondered if the President's laughter was because of "the practical joke he intends to play on the Supreme Court or on the American People." (Wolfskill 259) The press was asked to keep secrecy until the bill was presented on Capitol Hill at noon. (Alsop 67)

Reaction to the bill was swift and varied. Many were disgruntled at the fact that they were not consulted. Hatton Sumners, later credited as "the man who killed the court bill", was the first to make his opposition public, right after the meeting. As the Congressmen waited to be driven to Capitol Hill, he said "Boys, here's where I cash in." Later he explained his statement as meaning

that he was going to oppose the bill as a matter of principle, even if it meant he would be committing political suicide (Patenaude 38)

Another Texan soon made a public display of his annoyance with the court plan. Vice-President John Garner first learned of the bill on the morning it was announced. Throughout the meeting he maintained silence and even during the trip to the Capitol. However, as the President's message was being read, he left the Senate rostrum pinching his nose and giving the thumbs down gesture of the Roman arena. (Patenaude 37)

Opposition grew quickly. Sumners, although opposed, made few other public displays. By ignoring the bill, he hoped to give "time to stir up opposition among my colleagues and among the people." (Patenaude 39) Senators Burke and Byrd were against it. The aged Virginian Senator, Carter Glass said,

> "Of course, I shall oppose it. I shall oppose it with all the strength which remains to me, but I don't imagine for a minute that it'll do any good. Why, if the President asked Congress to commit suicide tomorrow they'd do it." (Alsop 70-71)

The Justices found out in an interesting manner. Only Brandeis knew before hand. Thomas Corcoran, one of the Presidents young advisors, had gotten permission to reveal it to the old liberal before it was released. Brandeis told Corcoran in no uncertain terms that he opposed it and sent a message to FDR that he was making a grave mistake. (Leonard 133) The rest of the court were presiding over a case, when a page slipped in behind their dais and handed each one a copy of the papers. The lawyer at the bar stopped his arguments as the Justices flipped through them. The Court was not terribly surprised by this. It was rumored that Roberts claimed he would resign if this bill were enacted into law. For all purposes, however, the justices did not publicly react. (Swindler 66)

The real trouble with FDR's presentation of the bill was his generalizing of the issue. Instead of playing off the stubborn reactionary judges, he accused all judges of inefficient and inadequate discharge of their duties. Brandeis was both alienated and hurt by the bill. At 80,

Brandeis was not only the oldest of the justices, he was also the most liberal. In fact, he is often referred to as the First New Dealer of them all. However, FDR's indirection in the attack would be a set back in the fight. (Jackson 261)

Several factors worked together to defeat the Senate bill 1392. The President's overconfidence and his attempt to lead the fight his way was a major influence. He refused to hear negative reports and throughout was reputed to say "The People are with me. I know it." (Alsop 74)

Failure to recruit valued leaders also caused problems. Senator Norris, although eventually he would support the bill, at first claimed he was not "in sympathy" with the court plan. Wheeler, too, a noted liberal, was not taken in and would later take the lead against the bill. O'Mahoney, Connally, Burke and Clark were still others that joined the opposition. Another valuable asset to the opposition was the Republican conspiracy of silence. Senate Republican leaders McNary, Borah and Vandenburg decided to allow the Democrats to do all the fighting. They also had to silence other party leaders such as Alf Landon and Herbert Hoover. Although this was not easy, they managed to keep quiet and never gave the opposition the "curse of reaction." (Burns 297-298)

The President's refusal to talk about amendments also hurt the court fight. When Vice-President Garner approached FDR on the issue, he was laughed off. (Alsop 78) Norris wondered what stance he would have taken on the bill if Harding had proposed it, amendment was much more agreeable to him than the bill. Even the passing of Sumners' retirement bill, did nothing to placate FDR. (Swindler 68-69)

Sumners' decision to stand against the bill probably did it the most damage. As Chairman of the House Judiciary Committee, he could hold the bill up in the House and kill it. The only way the bill could start in the House, then, was with a public display of administration strong-arming. This would not be desirable. (Alsop 88) Sam Rayburn strongly suggested the bill start in the Senate. If the House had passed the bill first, as was expected, the psychological effect on the uncommitted Senators would be strong enough to pull it through the Senate as well. The impact of

Sumner's decision was important because it was not expected and FDR's greatest support was in the House. (Patenaude 39-40)

Another defection from administration forces was that of Senator Joseph C. O'Mahoney of Wyoming. O'Mahoney had been a faithful party man and had campaigned for FDR in 1932 and also helped in the 1936 reelection. He had for quite some time suggested an amendment requiring a unanimous vote of the Supreme Court to nullify an act of Congress. In an address, he said:

> ...the Constitution creates a government of three co-ordinate branches ... the judicial, therefore, is only one-third of the whole... When two of the co-ordinate branches of government have deliberately come to the conclusion that a particular law is necessary in the public interest that law should not be permitted to be overthrown by less than the full vote of the third branch. (Gressley 188)

His record had been one of loyal service with handsome rewards, yet he left the flock for a while. The reasons were his principle and his economic philosophy. He wanted to see the AAA in operation and to challenge judicial review, but did not like the court plan. He was disturbed greatly by the secrecy of the President in planning and the subterfuge using the age and workload issues. He claimed the reasons for reform had "fooled no one, and now threatens to imperil his entire liberal program." And also "the whole mess smells of Machiavelli and Machiavelli stinks!" (Gressley 187-191) These statements were made to his close friends. However, he made no public display of his adversity to the bill until later.

Other sources of opposition were newspapers and letters flooding in to Washington. FDR expected the papers to react, but he was shocked by the national reaction. Letters coming into Congress were 9 to 1 against the plan (Alsop 71-73) He also made another tactical mistake, he assumed the opposition would talk itself out and he kept silent. He was waiting for the moment he could make one or two quick orations and save the day. This did not work. His delay merely gave the opposition more time to consolidate its forces. By the time FDR did make speeches on the court bill it was too late. (Alsop 109-113)

FDR missed another opportunity to destroy the opposition with his refusal to accept compromise. If he had suggested that the Congressmen propose an alternative that would solve the problem, the opposition would disappear. Many amendments were suggested yet none of them had a strong enough popularity to pass. If the President had made a suggestion for them to select and agree upon an amendment, they would have been hopelessly splintered, yet he did not. (Swindler 70)

Finally, FDR came out to speak at the Democratic Victory Dinner on March 4, 1937. He now gave up his facade of judicial inefficiency and struck at the heart of the matter, the need for a more liberal interpretation of the Constitution. He outlined many of the problems facing the country and the need for government to be able to solve these problems. He closed with "If we would keep faith with those who had faith in us, if we would make democracy succeed, I say we must act - NOW!" (Burns 299-300)

He followed this up a few days later with a Fireside Chat over the radio. He claimed that the court was not doing its part and that it must be saved.

> "You who know me will accept my solemn assurance that in a world in which democracy is under attack, I seek to make American democracy succeed." (Burns 300)

Following this, speakers were also dispatched to the nation and Senators were coerced to support the bill. Some were convinced by patronage and others by political machines in their home districts. (Burns 300)

Opposition speakers also made addresses whenever possible. The Senator that led the opposition movement, Burton K. Wheeler, attacked all the points of FDR's bill. He argued that the Supreme Court had been current in their work for eight years and that fifteen members would slow it down. If additional judges were needed, Wheeler also wondered why nine vacant lower court seats had not yet been filled. If age was the question, why did this bill not make provisions against it? According to this bill, the President could appoint a 69 year old man to the court. If age

was the question perhaps a limit of 50 to 60 should be set. Also two of the greatest liberals were on the court late in life. The late Justice Oliver Wendell Holmes was on the bench until he was 90 and Brandeis was still presiding at 80. The age of these men did not effect their liberalism. Furthermore, many appointments to the Supreme Court such as Hughes and Roberts did not vote as they were expected to vote. Wheeler concluded by saying, "I am opposed to the executive branch of the Government usurping the powers either of the legislative branch of the Government or the judicial branch of the Government - and the proposal of the administration had for its purpose only that." (*Congressional Record* vol 81 Part 9 appendix)

O'Mahoney was opposed to the bill because, for one, it contained no permanent provision to "infuse new blood." If no more than fifteen were allowed, the problem could repeat itself with fifteen instead of nine. The bill also did nothing about judicial review. Another problem was that the bill gave no assurance that the courts under this system would uphold the New Deal. O'Mahoney believed that the President's unwillingness to compromise could eventually result in the defeat of the New Deal. (Gressley 191) Furthermore, O'Mahoney was displeased by the President's method of secrecy and muscle play. He thought that something should be done about the Supreme Court, but he did not want to see the balance of power between the three branches of government undermined. He still pressed for an amendment that would give FDR substantively what he wanted, but to no avail. FDR still believed that the people of the United States were backing his plan. (Gressley 192-194)

Agriculture was an expected area of support that did not come through either. FDR had expected to see the farmers rally behind the bill due to the AAA decision; he was wrong. Some farmers were glad that they were no longer being regulated. Still others were outraged by the court's decision, yet their conservatism and reverence for the court itself would not permit them to support the bill. Henry Wallace, the Secretary of Agriculture, worked hard to get the Grange and the Farmers Union to support the bill. O'Neal, the head of the Farm Bureau Federation, although personally for the bill, could not give the support of the Federation. Most of the farmers viewed the court bill as a threat to liberty and refused to support it. (Alsop 116-117)

The Senate Judiciary Committee opened its hearings in March as well with the administration leading. The first to take the Stand was Attorney General Cummings, Cummings still favored the indirect approach even though it had been abandoned by the others. He made his argument on the efficiency question. (Burns 301) Corcoran, working for the administration, attempted to get both sides to limit the length of the hearing so a vote could be taken early. The opposition knew that they had better chances of success if they delayed. Corcoran ended the administration's case in two weeks. This was a serious mistake because the opposition did not limit itself and captured the newspaper headlines for the rest of the hearings. After Cummings had finished his remarks, Senator Borah asked his a question in reference to the split court problem. The argument was that with six new justices, there would be no more 5-4 decisions. Borah questioned, "Suppose after the six additional members of the Supreme Court are appointed, the Court should divide seven to eight, this entire plan would fall, would it not?" O'Mahoney followed the point up by getting Cummings to concede that the Court could split 8-7 against FDR. Cummings responded, "That might happen. I said it might happen ... if the liberals should turn out to be conservatives, but I would not expect any such result." (Baker 149-150)

Assistant Attorney General and future Justice Robert H. Jackson followed Cummings, but used the direct approach challenging the judiciary.

> "Our forbears knew the story of judicial abuses and tyranny as well as the story of legislative and executive abuses. These checks and balances were therefore embodied in the Constitution to enable Congress to check judicial abuses and usurpations, if the same should occur. If there are abuses in the court ... their continuance can only be due to default in the exercise of checks and balances placed in the hands of Congress and the executive. (Johnsen 172)

Jackson then went over a history of Congress and the court from the "midnight judges" of 1801 through Grant's alleged court packing up to the recent bill. He also noted that in the first 71 years of existence, the court nullified only two acts of Congress. In the second 71 years of existence, the court nullified sixty, one-third of which occurred the decade before the New Deal. He

challenged judicial review as having become a veto and pointed that in recent cases some of the justices had accused others of acting on economic wisdom in their decisions instead of constitutionality. He also argued strongly against 5-4 decision in which merely one man decided the fate of the entire nation. (Johnsen 174-191)

The opposition was fueled with help from the American Bar Association. The ABA sent some of its best lawyers to provide questions of constitutionality. Further aid to the oppositions arguments came from the justices themselves. Wheeler recalled an earlier incident in which the Chief Justice had requested to appear before the committee to challenge a bill, Wheeler requested that he appear now. At first, Hughes was willing, but, after consulting Brandeis and Van Devanter, he was convinced that he should not. Wheeler was eager to get the court to come out against the bill and paid a call on his friend Justice Brandeis to discuss the matter. Brandeis suggested a letter from the Chief Justice indicating that the court was fully abreast of its work. In fact, Brandeis had Wheeler phone the Chief Justice from his home to request it. After initial hesitation, the Chief Justice agreed and set to work immediately. Being that this occurred on a Saturday and Wheeler was opening the oppositions arguments on Monday, Hughes was unable to contact all of his associates. He did, however, get Brandeis and Van Devanter to approve the letter and presented it to Wheeler on Sunday afternoon. (Alsop 123-126)

The letter from the Chief Justice, struck down each of the President's original arguments.

> "Under our federal system, when litigants have had their cases heard in the court of first instance, and the trier of facts... has spoken and the case on the facts and law has been decided, and when the dissatisfied party has been accorded an appeal to the Circuit Court of Appeals, the litigants so far as mere private interests are concerned have had their day in court.
>
> If further review is to be had by the Supreme Court it must be because of public interest in the questions involved... I think that it is the view of the court that if any error is made in dealing with these applications it is on the side of liberality." (Johnsen 268-271)

This answered the charge that the Supreme Court was refusing numbers of cases so that it could lighten its work load. In response to the idea that additional justices would make the Supreme Court more efficient, Hughes dissagreed sharply.

> "An increase in the number of justices of the Supreme Court... would not promote the efficiency of the court. It is believed that it would impair that efficiency so long as the court acts as a unit. There would be more judges to hear, more judges to confer, more judges to discuss, more judges to be convinced and to decide. The present number of justices is thought to be large enough so far as the prompt, adequate and efficient conduct of the work of the court is concerned. I understand that it has been suggested that with more justices the court could hear cases in divisions. It is believed that such a plan would be impracticable. A large proportion of the cases we hear are important and a decision by a part of the court would be unsatisfactory... judicial power of the Untied States shall be vested in 'one Supreme Court' and such inferior courts as the Congress may from time to time ordain and establish. The Constitution does not appear to authorize two or more Supreme Courts or two or more parts of a Supreme Court functioning in effect as specific courts." (Johnsen 271)

Hughes' letter had a devastating effect on the court bill. It showed no real problem with the court performing its duties. He regretted not getting all of the justices approval before presenting it. Justice Stone was the only justice upset by the letter. He felt that the court should not be involved in the fight (Pusey 775-756)

Senator Connally of Texas took advantage of his position on the Senate Judiciary Committee. He was sympathetic to the opposition witnesses and critical of the bill's supporters. He believed that the average voter would support FDR and wanted to drag out the proceedings as long a possible so that the opposition could "sell their case" to the public. He also invited several Texans to speak out against the plan. C. Perry Patterson, chairman of the Department of Government at the University of Texas at Austin, said "I consider the President's proposal as unconstitutional in spirit and in fact, if not in law, as inadequate if there is a court problem, and as a dangerous precedent." (Patenaude 43-46)

The court also dealt another series of death blows to the court plan. As stated earlier, *West Coast Hotel v. Parrish* brought the overturn of the *Tipaldo* and *Adkins* cases. It also gave a broader interpretation to the commerce clause; one of the reasons FDR launched this plan in the first place. The Chief Justice held up the delivering of the opinion, however, until the time was right. He did not want to appear coerced. (Alsop 140-141)

March 29, 1937 has been dubbed White Monday, the day the court saved itself. In a unanimous decision the court upheld the Railway Labor Act, giving railroad workers collective bargaining. (Chambers 63) In *Wright v. Vinton Branch*, another unanimous decision upheld the revised Frazier-Lemke Act. The court also revealed its reversal of *Adkins* and *Tipaldo* and upheld a federal tax on firearms. These decisions indicated a favorable outcome for the Wagner Labor Relation Act. (Swindler 74-75)

Two weeks later, April 12, 1937, the court upheld the Wagner Acts to an astonished crowd. This decision was a reversal of the stand the court had taken up until that time. It was clear that now the Supreme Court was allowing the government the power it had desired for so long. (Alsop 145-146) These decisions showed that Hughes and Roberts were aligned, possibly permanently, with the liberals. Although FDR was finally getting the authority he wanted from the court, the success was bittersweet. When questioned about the decisions, he chuckled and said "We are now in Robert's Land". This was a play off of his earlier "no man's land" comment and also showed his distaste that the fate of governmental policies could be decided by the vote of one man. (Burns 303-304)

These decisions sparked a new interest in compromise. The administration would now have an even more difficult task of recruiting supporters. Due to the changes in the court, the problem of the reactionary court, had solved itself. This had been FDR's greatest argument. Senator Byrnes was hopeful of compromise and asked "Why run after a train after you've caught it?" He felt that, since FDR had his liberal court, he could claim victory and take a compromise. However, FDR was not so sure that this was the "train" that he wanted." He feared the court would just as easily reverse itself again once the pressure was gone and he also wanted to teach the

rebellious Congressmen a lesson. The upcoming cases involving Social Security would be a test ground. (Alsop 152-154)

The Social Security Act decision would end any idea of a court problem. The act provided for old age benefits as well as unemployment compensations. The court, with four justices dissenting, decided that unemployment was a sufficient enough problem for the government to regulate. The act did not take away state sovereignty. Both state and federal governments could work together to solve the problems. The old age sections were upheld in the general welfare clause. The court had changed its opinion without changing its personnel. (Jackson 221-234).

On May 18, 1937 two events coincided that were more nails in the court plan's coffin. It was no secret that Justice Van Devanter wanted to retire, but fear of not receiving compensation kept him from leaving the bench. The late Justice Holmes had had difficulty in receiving his payments after retiring. Sumner's retirement bill having been enacted, gave him the desire to step down. Senator Borah, an intimate friend, talked Van Devanter into resigning to coincide with the adverse report of the Senate Judiciary Committee. (Pusey 760-761) The committee had been pretty evenly divided throughout. Senators McCarran, O'Mahoney, and Hatch held the swing votes. McCarran could have been committed to supporting the bill earlier if he had been pressed by the administration, but he was not. McCarran and O'Mahoney were both outraged as well by Postmaster General Farley's comment that they would support the bill because they would need help to get legislation they desired passed. All three senators desired some sort of compromise. Hatch proposed that the age be changed to 75 and only one additional judge could be appointed in a given year. Refusal to accept compromise lead to these three men opposing the bill and the bill was voted against 10-8. (Alsop 184-197)

The retirement of Justice Van Devanter brought with it a delicate problem. It was well known that Senator Robinson had been promised the first vacancy on the court. Shortly after the news reached the Senate, Senators lined up to congratulate the next justice to the Supreme Court, or so they thought. The reality of having to appoint Robinson caused confusion. Robinson, at 65, was not "new blood" and his conservative past as a Southerner would make FDR's case look

foolish. He had always been a faithful party man, but it was feared the might revert to his conservatism. The safety afforded by the position of Justice of the Supreme Court would be a possible place for him to do so. (Pusey 761)

FDR could have also used this situation to his advantage, but failed to do so. The good feeling created by the possibility of Robinson's elevation to the Court could have been capitalized on to pass a compromise through Congress and give the President two or three new justices. FDR was still determined to pass the original bill and would not accept this. Unfortunately for FDR, the situation left him confused about what to do, so he delayed announcing Robinson's appointment. Robinson felt slighted and for two weeks did nothing for the bill. This two week period was crucial and ill feelings developed before the President was willing to compromise. (Alsop 211-213)

Finally, FDR was agreeable to compromise and relinquished the reign of control to Robinson. He let Robinson know that he could count on a seat on the high bench, but he would need to get FDR a few additional justices. Robinson got to work immediately, tasting the fulfillment of the life-time dream. The only problem was that this plan rested completely on Robinson, without his leadership it was doomed to failure. (Burns 306-307)

Another serious problem happened in June. Vice-President Garner left Washington D.C. for Texas. Garner was more upset about the President's spending policies and FDR's failure to act against the sit-down strikes that were causing problems in Texas,among other states, than the Vice-President was with the court plan. He had never before taken a vacation during a session of Congress and his departure brought many rumors of party disunity. FDR was personally upset at him for leaving when he was needed most. The President wrote him requesting his return, but to no avail. Garner remained in Texas until the end of the court fight. FDR did not forget this. (Patenaude 47-48)

Once Robinson was in control, he began to find an appropriate compromise. Two proposals seemed popular. The first, proposed by Senator Andrews, called for ten justices to represent each district and the Chief Justice at large. However, it was not as good as the other proposal because some did not like the "pork barrel" quality of it. Robinson also would not have

been allowed a seat under this plan since Justice Butler was from the same district as he was, so this plan was not accepted. The other possibility was Hatch's proposal of a retirement age at 75 and allowing only one justice to be appointed within any given year. Senator Logan was set to work drafting the bill. He was finished by July 1, and Cummings approved of it. Cummings had been critical of all compromises, but this one maintained the principle of his bill so it was acceptable. (Alsop 222-224).

Robinson also suggested that FDR plan a weekend excursion for the Democratic Congressmen to Jefferson Island. This was a weekend of relaxation and light conversation. It had been planned to end party strife. It did not. (Burns 308)

On July 6, 1937, the last great campaign for the court bill began in the Senate. Robinson was determined to get the compromise through. He began to talk to Senators and tried to convince them. He opened the debate very emphatically. The opposition normally let him make his speeches uninterrupted, but changed their tactics this time. They began to badger him with questions and this began to work him into a frenzy. Days became exhausting for him as he attempted to carry out his normal duties as well as the court fight. On the other hand, the opposition had several leaders and were more able to convince wavering senators. (Alsop 254-257)

On July 9, the opposition began its arguments by admonishing the administration for its treatment of the courts. Senator O'Mahoney gave an eloquent speech on July 12, claiming that the bill was not a personal question. The real question was should any President be granted as much power as FDR wanted.

> "(It) should not be entitled 'a bill to reform the judiciary,' as it is sometimes called in the public press. It should be called a bill to centralize the administration of justice and to give the central establishment at Washington greater control over the local administration of justice than it has ever had in the democracy." (*Congressional Record* vol 81 Part 6 7038)

Furthermore, he argued that the proposed idea would be a revolutionary change that would be passed down to the following generations. They would be forced to operate under it.

> "Good Presidents come and good Presidents go, and bad President come and bad Presidents go, and the power that is proposed to be vested by this bill in any occupant of the White House could be used by a man, if he were so minded, to wreck every vestige of human liberty under the stars and stripes." (*Congressional Record* vol. 81 Part 6 7038)

He also questioned appointing only one justice a year. He was curious as to what would happen in a situation where more than one justice would need to be appointed due to death, resignation or reaching the retirement age. (*Congressional Record* vol. 81 Part 6 7038)

Two days later, July 14, Joe Robinson was found dead in his hotel room by the maid. Apparently, he had been studying the *Congressional Record* from the day before, his heart had been giving him problems from all the stress of the fight. (Alsop 266-267) The loyalty that had tied senators to supporting the bill as a favor to Robinson disappeared. Many made a rush away from the bill. Vice-President Garner joined the funeral delegation in Little Rock, Arkansas and took a survey of the Senators on the trip back to Washington. He determined that "the jig was up." When he met with the President, FDR asked him for his appraisal of the situation. He asked, "Do you want it with the bark on or off, Cap'n?" FDR asked for it "the rough way." (Burns 308) After Garner told him he was beaten, FDR instructed the Vice-President to make the best possible compromise he could. Garner informed Wheeler, "Burt, you can write your own ticket." (Alsop 283) When asked what he meant by the phrase, Garner said that he intended Wheeler to come up with a compromise that would not be too humiliating to the President. The majority of the senators were for recommitting the bill to the Senate Judiciary Committee. In this way, it would be given a painless death. The concessions were that the bill would not involve the Supreme Court, there would be no proctor or "roving judges." (Alsop 283-285) FDR was upset by this, he was certain that Garner had done little to press for a better compromise. On August 7, 1937 an emasculated bill bearing little to no resemblance to the court plan was passed quickly through the Senate. (Patenaude 50)

The struggle for the court bill was a very interesting chapter in the history of America. It was also a very miscalculated risk for Franklin D. Roosevelt. He has been described as a tragic hero in the case of the court fight. (Alsop 13) Certainly FDR was shocked by the outcome of the court fight. Prior to this, he had enjoyed almost dictatorial control over Congress. His landslide victory for reelection in 1936 convinced him that the people had endorsed him to lead them wherever he would. It seemed clear to him that this call to action meant to remove the barriers to his programs. This included action against the court's nullification of the New Deal. Several different plans were considered and this one seemed feasible. It seemed logical and inevitable to him that he should follow this course of action. (Leuchtenburg 400) The November reelection seemed to give him a "blank check". However, he was shocked when he attempted to cash it in, "only to find that his check had bounced." (Gressley 186)

The response came from an America not ready to do away with its traditions. The traditions of judicial review and separate, independent branches of government were foundations upon which America was built. When it became apparent that FDR was attempting to bring all of the branches of government around to his line of thinking, it brought cries that he was becoming a dictator. Other parts of the world had fallen to authoritarian governments to combat the Great Depression. Americans, ever fearful for their liberty, were not in sympathy with these forms of government. In reaction to the bill, students of Yale and later Columbia, Princeton and New York, established "Roosevelt for King" clubs and suggested that the Supreme Court be abolished. The ornate building which housed the Supreme Court could then be converted into a palace for Franklin I. (Wolfskill 263)

Many feared the effect a bill like this would have on the American system. Professor McClosky described the plan as follows:

> "It was, as it was called, a 'court-packing plan,' and its passage would set a precedent from which the institution of judicial review might never recover. It is not too much to say that the ambiguous and delicately balanced American tradition of limited government was mortally endangered by this bill... Even the five or six judges

> who had provoked this threat must have slept rather uneasily for a few months. (Leonard 149)

The results of a precedent like the court packing bill could be devastating if someone malevolent were placed in the White House. If the demands of the majority were met by the results of each election, the minority would be in danger of not having their rights protected. Corruption could also ensue and be followed by instability. Such a course could have turned the United States into the likeness of Latin American countries. (Johnsen 314-315)

Many factors joined to defeat the court bill. FDR's poor planning and overconfidence, the subterfuge by which the plan was presented, the silence of the Republicans, the fracturing of the Democrats and, most importantly, the switch of the court's opinion. Although Roberts claimed that his change of position was only out of principle, it is certain that his changed decisions did not occur until after the reelection of FDR. It is impossible to judge what caused Roberts to change, but this change brought the court more in line with the public opinion and more inclined to allow for a broader use of power to meet changing needs. (Chambers 71-73)

In the end, both sides could claim victory in this battle. FDR had his liberal court and was able to make an appointment. Hugo Black, the senator from Alabama, was appointed to replace Justice Van Devanter. Congress and the court could claim victory because they were able to resist the demands of an immensely popular President and defeat him. Most of those involved were not eager to see the President humiliated, but they were concerned with maintaining democracy. FDR had claimed he was attempting to make American Democracy succeed, but his demands for power made many think otherwise. The system by which America chose to govern itself ran against resting too much power in one individual. This is precisely why three explicitly separate branches of government were established with checks and balances to keep each other from usurping too much authority. True, FDR sought to challenge the interpretation of the Court and not the right of the court to interpret the Constitution. However, the way he attempted to accomplish this was not the best way to act. It would have set a dangerous precedent that could enable one with less than good intentions to seize control. (Leuchtenburg ed. 143)

The flexibility of the Constitution to meet ever changing and more complicated problems was also challenged. The outcome of this was much better than the outcome for FDR. Through this challenge, the Constitution was allowed the ability to meet these changing needs. The elasticity given the Constitution by its framers has enabled this great document to adapt and be modified to meet changing needs. FDR's challenge of the Supreme Court was yet another test of the great principle of the separation of powers in the Constitution.

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