

SUPREME COURT HISTORICAL SOCIETY

FDR & the Court-packing Controversy

Full Script

Introduction —

In February 1937, President Franklin D. Roosevelt submitted a plan to Congress for increasing the number of Supreme Court Justices from nine to as many as fifteen.

His proposal ignited a political powder keg that would burn into the heat of summer.

Chapter 1: BACKGROUND —

When President Franklin Delano Roosevelt took office on March 4th, 1933, he inherited a nation in distress.

Industrial production was down almost 50%.

Prices and wages had fallen to disastrous levels.

And nearly one third of the labor force was out of work.

It was the Great Depression.

Chapter 2: THE NEW DEAL —

Hoping to bring America out of its economic tailspin, FDR began proposing new governmental regulations on local and interstate commerce.

He championed measures to limit work hours and set minimum wages for labor.

His Agricultural Adjustment Act was designed to raise produce prices by subsidizing farmers not to grow as many crops.

Congress swiftly enacted Roosevelt's recovery initiatives, collectively called 'The New Deal,' and sent relief to many in need.

Chapter 3: JUDICIAL OPPOSITION —

The Supreme Court of the United States soon invalidated many of the president's New Deal measures as unconstitutional. No Supreme Court had ever struck down so many laws so quickly.

An adamantly conservative bloc of Justices known as the 'Four Horsemen' consistently held that governmental regulation of commerce and labor infringed on personal liberties.

They held that Roosevelt's reforms restricted an individual's right to form contracts—in violation of the Fifth and Fourteenth Amendments.

On a nine man court, the Four Horsemen only needed one more vote for a majority. Justice Owen Roberts almost always voted with them.

Often, so did Chief Justice Charles Evans Hughes.

As measure after measure was revoked, including a popular minimum wage law from New York state protecting women and children workers, FDR realized that his New Deal was no match for an old court.

Chapter 4: THE PROPOSAL –

Franklin D. Roosevelt won a landslide reelection in 1936.

To him, this confirmed that Depression-weary Americans wanted his initiatives declared constitutional.

But the Judiciary Branch stood in the way. So on February 5th, 1937, FDR boldly asked Congress for the authority to reform the Supreme Court.

He proposed a plan to appoint an additional Justice for every one not retired by age 70.

This would allow him to promptly handpick as many as six new judges for the bench.

The president argued that the aging court needed more Justices to help with its caseload, because he said its members were “slow and infirm” and behind in their work.

But no one doubted his true agenda. Enlarging the Court from 9 to as many as 15 would effectively outnumber the conservatives on the bench and dilute their power.

Yet FDR carefully pointed out that this was not the first time a president had sought to change the number of Supreme Court Justices. Indeed, the Constitution says nothing about the size of the Court, leaving that decision for Congress to determine.

Congress originally fixed the number of Supreme Court Justices at 6.

Then, it gradually added new seats to the Supreme Court as the country expanded westward.

There needed to be enough Supreme Court Justices to preside over the new judicial circuits because Congress did not provide salaries for circuit judges until 1869 and the Justices did double duty.

In 1807 a seventh Supreme Court seat was added to represent Kentucky, Ohio and Tennessee.

In 1837, Congress added two new justices and 2 new judicial circuits.

A 10th seat was added in 1863 to cover the west coast.

But in 1866 Congress sought to gradually reduce the Court's size to 7 by forbidding replacement appointments when Justices departed. The intent was to give judges much-needed salary raises and to deny President Andrew Johnson the chance to appoint southern sympathizers to the Court.

Finally, in 1869 Congress fixed the size of the Court at 9.

Chapter 5: COURT REACTIONS —

The Supreme Court, which was not at all behind on its docket, was insulted by the Roosevelt administration's proposal.

Chief Justice Hughes fought back. He wrote a letter to the Senate Judiciary Committee assuring them that the Court was “fully abreast of its work” and that there was “no congestion of cases” on its calendar. Hughes complained that the enlargement plan would be inefficient: with “more judges to hear, more judges to confer, more judges to discuss, more judges to be convinced and to decide.”

Even the liberal bloc of Justices opposed the Court-enlargement plan.

To stem criticism, Roosevelt told the public in a radio “Fireside Chat” that he was not trying to pack the Court with partisan Justices.

Meanwhile, impressed by FDR's landslide victory and concerned that Congress with its large Democratic majority would enact his Court proposal, two Justices unexpectedly voted to uphold New Deal initiatives.

Thus on March 29 the Court dramatically reversed itself in upholding the legality of a Washington State minimum wage law for women. Justice Roberts switched his vote from a very similar case from New York decided less than a year before.

Writing the opinion in the case, Chief Justice Hughes said that the due process clauses of the Fifth and Fourteenth Amendments require “the protection of the law against the evils which menace the health, safety, morals and welfare of the people.”

Two weeks later, Hughes and Roberts cast their votes in a landmark case ruling that federal regulation of labor relations was constitutional.

Chapter 6: FDR PERSEVERES —

Other rulings in the spring of 1937 showed the Supreme Court turning around its stance on New Deal initiatives, including upholding the Social Security Act.

It was joked how “a switch in time saved nine.”

But if this ‘switch’ was a tactic to get the president to drop his petition for judicial reform, then it failed. FDR still wanted his six new Justices.

In May, Justice Van Devanter, one of the conservatives, announced his retirement. Congress had quietly passed a law allowing Supreme Court Justices to retire and continue to receive their full salary, just as lower court judges did.

The old conservative bloc had irretrievably lost its leverage.

Still, Roosevelt did not stop pushing Congress to enact a plan for enlarging the court, and his obstinacy made him a target for criticism.

Chapter 7: THE SENATE JUDICIARY COMMITTEE REACTS —

A scathing Senate Judiciary Committee report released in June said that FDR's court bill:

“...should be so emphatically rejected that its parallel will never again be presented to the free representatives of the free people of America.”

Of the ten Senators who signed the report, seven were Democrats.

Detractors made much of this dissension within the president's own party.

To heal the rift,

Roosevelt invited all 407 Democratic Congressmen, including the signers of the report, to a weekend of fun and games on Jefferson Island in the Chesapeake Bay.

It was a brilliant move. After three days of relaxed camaraderie, many were willing to reconsider the president's proposal.

To capitalize on this momentum, the Roosevelt administration revised the bill to authorize the president to gradually appoint one Justice per calendar year for each member of the Court who had reached the age of 75. This would allow him 4 appointees—plus a 5th to fill Van Devanter's open seat.

Chapter 8: A HEATED DEBATE —

The “Great Debate” on the Court enlargement bill finally opened on the Senate floor in July, 1937.

Senate majority leader Joe Robinson of Arkansas led the fight for enacting it. He had helped power many of the New Deal laws through the Senate and was known as “Scrappy Joe” for his talent for strong-arming his colleagues.

Senator Wheeler, the liberal Democrat from Montana, led the fight for defeating it.

But both sides faced a common foe. Washington sweltered in the grip of a killer heat wave, and the Congressmen were condemned to argue in an un-air-conditioned chamber.

Chapter 9: THE END OF THE FIGHT —

Senator Robinson opened the proceedings with a two-hour long speech. He had enough promised votes to pass the court bill, but he wanted a clear two-thirds majority to avoid a filibuster.

He knew his best tactic would be to make the debate into an endurance contest. One third of the senators were over 60, and in no condition to stew in a hot room.

Robinson went long rounds with his opposition, bellowing and stamping his feet like an enraged bull. But strain clearly showed on his reddened face and in the stoop of his shoulders as he fended off assaults to the bill.

His trademark vigor flagged, and when he returned to his apartment that night he dropped dead from the heat and stress.

Chapter 10: BURIAL —

The Great Debate was not yet over, but without Senator Robinson's aggressive advocacy, FDR's judiciary bill was doomed.

Senators who had been only tenuously committed to the plan switched their loyalties, giving the opposition forces an absolute majority for the first time.

At Senator Wheeler's insistence the measure was put to a vote right away. No concessions were made to spare embarrassment to the administration or its supporters.

And so on July 22nd, 1937 —after 168 days— President Roosevelt's plan for enlarging the Supreme Court was defeated.

Senator Hiram Johnson, a Republican from California, summed it up for many when he cried out in Congress, "Glory be to God."

FDR would go on to appoint 8 Supreme Court Justices as vacancies opened during his 12 years in office. They would transform the judiciary into a critical partner in implementing the New Deal.

But his failed Court-packing campaign marked the last time a president asked Congress to change the number of seats on the Supreme Court.