



3 1293 10452 7886



This is to certify that the

thesis entitled

WALTER LIPPMANN'S REACTION TO  
FRANKLIN D. ROOSEVELT'S 1937  
COURT-PACKING PLAN

presented by

Eileen Marie Bowman

has been accepted towards fulfillment  
of the requirements for

M.A. degree in Journalism

Major professor

Date July 27, 1978

135  
1284  
RT56

NOV 1998

036

155

© Copyright by  
EILEEN MARIE BOWMAN

1978



WALTER LIPPMANN'S REACTION TO  
FRANKLIN D. ROOSEVELT'S 1937  
COURT-PACKING PLAN

By

Eileen Marie Bowman

A THESIS

Submitted to  
Michigan State University  
in partial fulfillment of the requirements  
for the degree of

MASTER OF ARTS

School of Journalism

1978

ABSTRACT

WALTER LIPPMANN'S REACTION TO  
FRANKLIN D. ROOSEVELT'S 1937  
COURT-PACKING PLAN

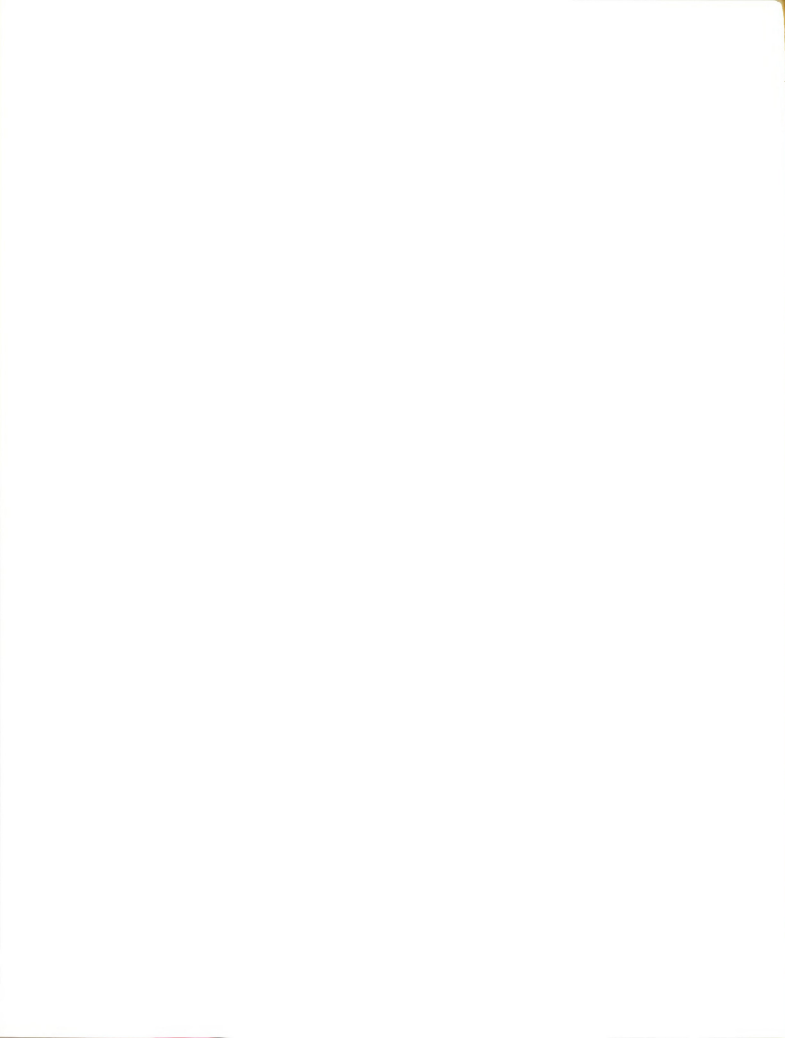
By

Eileen M. Bowman

This thesis is a study of Walter Lippmann's criticism of Franklin Delano Roosevelt's proposal to "pack" the Supreme Court in 1937. Lippmann was prolific on the subject in his column, "Today and Tomorrow," which appeared frequently in the New York Herald Tribune.

The paper begins with the history of Court packing and an introduction to the nine members of the 1937 Court. Lippmann respected the court system and saw Roosevelt's proposal as a threat to democracy.

This thesis explores the events prior to, during, and after the Court reform proposal of February 5, 1937. A study was made of Lippmann's column written immediately before the proposal was announced and the months following. The study also includes a discussion of the possible motives behind Lippmann's criticism of the plan, such as the columnist's background, political leanings, and interest in foreign affairs.



## DEDICATION

For those persons who are dear to me.

## ACKNOWLEDGMENTS

I have taken advantage of family and friends, discussing with them the history, philosophy, writing and politics of 1937. Their contributions to this paper have been greater than each one of them may realize.

At the conceptual stage of the paper, I explained to a friend my proposition, or angle. The resulting discussion caused me to re-route my research. These are the kinds of contributions which see this paper a bound volume. I shall not name each player.

Special thanks should go to Robert V. Hudson, whose page by page scrutiny of my work made him an invaluable adviser.

Also, thanks to Maurice R. Cullen, Jr., whose advice and suggestions were immensely helpful.

Stanley Soffin, John Murray and Madison Kuhn directed me to additional sources which were useful, and I am indebted to them as well.

## TABLE OF CONTENTS

Chapter	Page
I. INTRODUCTION . . . . .	1
Premise . . . . .	1
Justification . . . . .	3
Review of the Literature . . . . .	5
Methodology . . . . .	9
II. THE COURT . . . . .	12
History of Court-packing . . . . .	13
The Nine Old Men . . . . .	15
Lippmann and the Court . . . . .	18
III. PACKING THE COURT . . . . .	21
The New Deal Decapitated . . . . .	21
The President's Mandate . . . . .	26
Creating the Proposal . . . . .	29
The Plan is Announced . . . . .	36
IV. PRESIDENTIAL WATCHDOGS . . . . .	39
Lippmann's Opposition to the Plan . . . . .	43
Roosevelt Cornered . . . . .	51
Reactions to Lippmann's Column . . . . .	57
V. THE DEATH OF THE PROPOSAL . . . . .	60
The Outcome of the Proposal . . . . .	60
Lippmann's Influence on the Outcome . . . . .	67
VI. CONCLUSION . . . . .	71
Behind Lippmann's Criticism . . . . .	71
A Columnist's Prerogative . . . . .	79
SELECTED BIBLIOGRAPHY . . . . .	84

## CHAPTER I

### INTRODUCTION

#### Premise

Walter Lippmann was critical of Franklin Delano Roosevelt's plan to "pack" the Supreme Court of 1937. This thesis will be a study of Lippmann's criticism of the plan, as written in his syndicated column in the New York Herald Tribune in 1937. Lippmann became a columnist for the Herald Tribune on September 8, 1931, his contract allowing him to "write freely upon such topics as he selects, expressing whatever opinions he holds."<sup>1</sup> The column, "Today and Tomorrow," appeared three times and later four times weekly.

Robert Scigliano defined court-packing in his book, The Supreme Court and the Presidency:

Court packing has to do with the appointment of justices to the Supreme Court so as to influence the Court's decisions. . . . Court packing is accomplished through means that are considered to be unconstitutional or otherwise improper.<sup>2</sup>

While Roosevelt was not the first president to be charged with attempting to pack the Court, his efforts to

---

<sup>1</sup>New York Herald Tribune, 8 September 1931.

<sup>2</sup>Robert Scigliano, The Supreme Court and the Presidency (New York: The Free Press, 1971), p. 51.

increase its size were clearly intended to influence its decisions in favor of his New Deal programs. Previous efforts to increase the Court membership were related to circuit duties.<sup>3</sup>

Throughout the "age of Roosevelt"<sup>4</sup> Lippmann both criticized and praised the President and his New Deal plans. But in 1937 Lippmann was consistently anti-Roosevelt. From January 1937 to July 1937, when the proposed judicial reform bill was voted on, Lippmann wrote thirty-seven columns on the Supreme Court, sixteen written before mid-March. In those articles dealing with the President's proposal, it is clear that he objected to this administrative move more than to any other action Roosevelt had taken in 1937 just by the number of columns he devoted to the issue.

This study will show whether Lippmann's column might have had any influence on the outcome of the proposal. Also, this thesis will examine whether or not Lippmann's early predisposition to socialist principles and his later rejection of those principles affected his

---

<sup>3</sup>Ibid., p. 52.

<sup>4</sup>The "age of Roosevelt" label was taken from Arthur M. Schlesinger, Jr.'s three volume work on Franklin D. Roosevelt, The Age of Roosevelt: The Crisis of the Old Order; The Age of Roosevelt: The Coming of the New Deal; and The Age of Roosevelt: The Politics of Upheaval. All three volumes were published by Houghton Mifflin Company in Boston from 1957 to 1960.



criticism of Roosevelt's Court-packing plan.<sup>5</sup> Finally, the study will attempt to uncover what motivated Lippmann's 1937 criticism.

### Justification

No study of Lippmann's criticism of Roosevelt's packing plan has been done. Since the press has been responsible for exposing the questionable practices of recent Presidential administrations, the idea of studying a journalist's criticism of one Administration's plans was particularly appealing. The Roosevelt Administration was chosen because of a personal fascination with the politics and practices of the 1930's. Lippmann, 48 years old in 1937, was established, respected, and admired as a political journalist and analyst of the 1930's.<sup>6</sup>

---

<sup>5</sup>For the purposes of this study, the definition of socialism is the same one Lippmann used. In his book, A Modern Reader, co-authored with Allan Nevins immediately prior to the Court conflict, Lippmann wrote: "Socialism is essentially a doctrine and a movement aiming at the collective organization of the community in the interests of the mass of the people by means of the common ownership and collective control of the means of production and exchange." A Modern Reader was published by D.C. Heath and Company, Chicago in 1936. The definition was found on page 225, and was taken from the 14th edition of the Encyclopedia Britannica. When he was beginning his writing career, he explored the meanings of socialism and wrote a book, A Preface to Politics, on the advantages of the theory. However, the brand of socialism he rejected in 1937 is that which is defined above, so this is the intended usage throughout the thesis.

<sup>6</sup>Arthur A. Ekirch, Jr., Ideologies and Utopias: The Impact of the New Deal on American Thought (Chicago: Quadrangle Books, 1969), p. 15.

The President's Supreme Court packing proposal announced early in 1937 is an ideal topic because the proposal was conceived, debated and killed by Congress in a matter of months, defining the research topic specifically and making primary and secondary sources readily available.

Many books have been written on Lippmann. Most of these analyze an aspect of his career or style of writing. They do not discuss in depth the 1937 packing proposal or Lippmann's coverage of Roosevelt.

Walter Lippmann's relationship to President Roosevelt went beyond that of a journalist to a president. Lippmann had been an adviser to Roosevelt in the early thirties,<sup>7</sup> but frequently criticized the President. The two men had shared opinions at various times throughout their lives. By 1937, the relationship of Walter Lippmann to Franklin Roosevelt was of two men with opposing ideas. The relationship being examined includes conservative Democrat to liberal, progressive<sup>8</sup> Democrat; and philosopher to politician.

---

<sup>7</sup>Raymond Moley, After Seven Years (New York: Harper and Brothers, 1939), p. 236; and Schlesinger, The Coming of the New Deal, p. 564.

<sup>8</sup>Schlesinger, The Coming of the New Deal, p. 303. Schlesinger wrote that progressivism is the school of thought organized by the adherents of Theodore Roosevelt in 1912. Its emphasis is on the political and social

### Review of the Literature

The primary sources, those by Lippmann, were most useful. This review of the literature is arranged with an evaluation of some of the primary sources given first.

Many of the secondary sources were indispensable in the attempt to understand the events leading to the 1937 packing proposal. Those secondary sources most often referred to for this thesis are discussed briefly after the primary sources.

Walter Lippmann published one book in 1937 containing fifteen of his "Today and Tomorrow" columns on the Supreme Court. The book, entitled The Supreme Court: Independent or Controlled?, offers no interpretation of the articles.<sup>9</sup> As far as can be determined, this is the only book devoted to Lippmann's articles on the proposal. Lippmann's criticism is quoted in other sources, however.

Selected earlier works by Lippmann proved helpful in creating a picture of the journalist as he was in 1937. Some of these included the journalist's changing views of socialism and of Roosevelt: A Preface to

---

progress of the species, and Schlesinger wrote that many 1912 programs, such as old-age pensions, hinted at the New Deal social reforms, such as Social Security. In short, progressivism is a liberal help-the-masses stance associated with both Roosevelts.

<sup>9</sup>Walter Lippmann, The Supreme Court: Independent or Controlled? (New York: Harper and Brothers, 1937).

Politics, written in 1914;<sup>10</sup> The Stakes of Diplomacy, 1915;<sup>11</sup> Interpretations 1931-1932, 1932;<sup>12</sup> A New Social Order, 1933;<sup>13</sup> The New Imperative, 1935;<sup>14</sup> A Modern Reader, 1936;<sup>15</sup> and Interpretations 1933-1935, 1936.<sup>16</sup>

Biographies about Lippmann and about Roosevelt added to the understanding of the converging conflict between the two men's philosophies.

The 168 Days by Joseph Alsop and Turner Catledge is an authoritative and thorough study of the packing proposal and its subsequent outcome.<sup>17</sup> The book begins with the "birth of the bill," discusses the attacks on the bill (by members of the Court and Congress but not by Lippmann), and traces the events in Congress which killed

---

<sup>10</sup>Walter Lippmann, A Preface to Politics (Ann Arbor: The University of Michigan Press, 1962).

<sup>11</sup>Idem, The Stakes of Diplomacy (New York: The MacMillan Company, 1932).

<sup>12</sup>Idem, Interpretations 1931-1932 (New York: The MacMillan Company, 1932).

<sup>13</sup>Idem, A New Social Order (New York: The John Day Company, 1933).

<sup>14</sup>Idem, The New Imperative (New York: The MacMillan Company, 1935).

<sup>15</sup>Idem, A Modern Reader (Chicago: The D. C. Heath Company, 1936).

<sup>16</sup>Idem, Interpretations 1933-1935 (New York: The MacMillan Company, 1936).

<sup>17</sup>Joseph Alsop and Turner Catledge, The 168 Days (Garden City, New York: Doubleday, Doran and Co., 1938).

the proposal. Both authors were columnists in 1937, Alsop with the Herald Tribune and Catledge with the New York Times. The title refers to the number of days the proposed bill lived from the day Roosevelt announced the plan to Congress on February 5 until July 22, when the bill was killed by a Senate vote. It was the most useful reference for background and a history of the events as they occurred.

A three volume work by Arthur M. Schlesinger, Jr., The Age of Roosevelt, was instrumental in providing an understanding of the New Deal and Roosevelt's policies and philosophies.<sup>18</sup> The Politics of Upheaval is the third in the series Schlesinger wrote and examines closely the period leading up to the 1936 election. The Supreme Court's reaction to the New Deal is carefully documented in this volume.<sup>19</sup>

Dean Alfange's book, The Supreme Court and the National Will, written before the proposal, described the status of the Court prior to Roosevelt's judicial reform plan. The Supreme Court's voting record on New Deal

---

<sup>18</sup>Schlesinger, The Age of Roosevelt.

<sup>19</sup>Schlesinger, The Politics of Upheaval, pp. 468-496.

policies is included in this book, which was important to the construction of Chapter III.<sup>20</sup>

An objective, detailed rendition of the sequence of events, February through July of 1937, is presented in Leonard Baker's book, Back to Back: The Duel between FDR and the Supreme Court.<sup>21</sup> A more subjective version of the events was written by Rosalie Gordon and titled Nine Men Against America.<sup>22</sup> Written after the fact (1958), Ms. Gordon's version deserves scrutiny since her adamance is so evident. This volume was useful for fresh insight, however.

An Administration point of view is presented in The Struggle for Judicial Supremacy: A Study of a Crisis in American Power Politics.<sup>23</sup> Robert Jackson wrote this book in 1940 when he was Solicitor General of the United States. Jackson had been the Assistant Attorney General in 1937 and was later to become one of Roosevelt's appointees to the Court in 1941.

---

<sup>20</sup>Dean Alfange, The Supreme Court and the National Will (Garden City, New York: Doubleday, Doran and Co., 1937), pp. 211-231, 237-239.

<sup>21</sup>Leonard Baker, Back to Back: The Duel between FDR and the Supreme Court (New York: The Macmillan Company, 1967).

<sup>22</sup>Rosalie M. Gordon, Nine Men Against America (New York: The Devin-Adair Company, 1958).

<sup>23</sup>Robert H. Jackson, The Struggle for Judicial Supremacy (New York: Vintage Books, 1941).

George Wolfskill and John A. Hudson wrote a book containing criticisms on Roosevelt, arranged by topic. The evidence supporting the ideas in Chapter IV of this thesis was largely gathered from their book, All But the People: Franklin D. Roosevelt and his Critics.<sup>24</sup>

Many books were available on the 1937 Supreme Court, the history of the Supreme Court and the New Deal. Much of the information within all of these books did not coincide. Therefore it was necessary to consult old Congressional Records to discern how many and which New Deal bills had been nullified between 1933 and 1936 and which members of Congress supported Roosevelt.

### Methodology

The historical method of research was used for this study. The historiography is based on Robert Jones Shafer's book, A Guide to Historical Method and on William L. Rivers' book, Finding Facts.<sup>25</sup> Shafer's book is an advanced historiographer's guide, more detailed in methodology than Rivers' book. Finding Facts was useful as basic research guide to libraries and documentation.

---

<sup>24</sup>George Wolfskill and John A. Hudson, All But the People: Franklin D. Roosevelt and his Critics (New York: The MacMillan Company, 1969), pp. 172-199, 297-319.

<sup>25</sup>Robert Jones Shafer, ed., A Guide to Historical Method, rev. ed. (Homewood, Illinois: The Dorsey Press, 1974); William L. Rivers, Finding Facts (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1975).

Sources were categorized into these topical groups: (1) background on Lippmann; (2) history of the Supreme Court; (3) background of the New Deal; (4) media criticism of Roosevelt and his New Deal; and (5) the 1937 Packing Proposal. Within each category, the sources were further divided into contemporary and non-contemporary works. The contemporary sources were written at the time of the Supreme Court crisis. The non-contemporary sources were written before or in retrospect of the crisis and provided useful background and insight to the topic.

While the contemporary sources comprise the emphasis of the thesis, the primary works, those Lippmann wrote in 1937, comprise the evidence which supports or fails to support the propositions presented.

The Michigan State University Library provided most of the sources used, under such headings as Walter Lippmann, Franklin D. Roosevelt, the Supreme Court, the New Deal, Socialism, Justices, the Presidency and Critics of the Presidency. Also, reference guides to 1937 periodicals and to the New York Herald Tribune were helpful. The MSU Arts, Maps and Microfilms Library contained the microfilm copies of Lippmann's 1937 column "Today and Tomorrow" and the Public Documents Library secured transcripts of the Senate Judiciary Committee Hearings, the 1937 Congressional Records, and 1937 Court case histories.



In subsequent chapters of the thesis, the issues discussed will be: (1) the history of Court-packing and a brief discussion of the 1937 Court members; (2) the 1937 Court's voting record, leading into why Roosevelt wanted change; (3) the creation of the Court-packing proposal; (4) the announcement of the proposal and Walter Lippmann's reaction; (5) an analysis of Lippmann's influence on the outcome of the proposal; (6) the President's and other critics' reaction to Lippmann in 1937; and finally, (7) an analysis of the motivation behind Lippmann's criticism of Roosevelt in 1937.

## CHAPTER II

### THE COURT

The Supreme Court was established as a tribunal of justices on June 5, 1787 at the first Constitutional Convention. The justices are appointed by the President with the advice and consent of the Senate, as set up by that Convention. The Judiciary Act of 1789 established the Supreme Court as a six-man tribunal--one Chief Justice and five Associate Justices. Thus Congress had asserted the power to determine the size of the Court, and the size of the Court has changed during various administrations. But the Supreme Court had consisted of nine members for 100 years before Roosevelt attempted to enlarge it in 1937.

Walter Lippmann responded to Roosevelt's attempt to change the Court with such fervor that some background on the 1937 Court members and a brief history of Court-packing is necessary to establish the context. The analysis of Walter Lippmann's criticism is based on the fact that Roosevelt's plan was actually unprecedented and unjustifiable.

History of Court-packing

"As the term has been generally used in American politics, Court-packing is accomplished through means that are considered to be unconstitutional or otherwise improper."<sup>1</sup> Since Roosevelt knew he was not the first president to attempt packing the courts, he felt he had precedents to justify his 1937 attempt.<sup>2</sup> When Attorney General Homer S. Cummings had the Justice Department research judiciary reform, the history of Court-packing was laid upon Roosevelt's desk.<sup>3</sup>

Within every administration there has been some friction between the three branches of government. In at least four administrations, this friction became a public conflict, resulting in a change, or attempted change, in the division of power.<sup>4</sup> The four Presidents were Thomas Jefferson, Andrew Jackson, Abraham Lincoln, and Franklin Roosevelt. The Roosevelt conflict is the most infamous.

Thomas Jefferson began to impeach district judges in 1803 and moved on to Supreme Court justices in 1805.

---

<sup>1</sup>Robert Scigliano, The Supreme Court and the Presidency (New York: The Free Press, 1971), p. 51.

<sup>2</sup>Joseph Alsop and Turner Catledge, The 168 Days (Garden City, New York: Doubleday, Doran and Co., Inc., 1938), p. 34.

<sup>3</sup>Ibid.

<sup>4</sup>Scigliano, p. 23.

The Jefferson administration repealed a reform bill which was passed in 1801. The bill had reduced the size of the Supreme Court and created the circuit court system.<sup>5</sup>

Jefferson's conflict was based on his opinion of the "class" of justices and lawyers. He also thought the judges twisted interpretations of laws, particularly the Sedition Act trial convictions which had transpired in Adam's administration. Jefferson therefore entered office opposed to the Justices' previous role in upholding the constitutionality of the Sedition Act. He was determined to see that during his administration the Supreme Court was in accordance with his views and that the Executive Branch was supreme to the other two branches of government.<sup>6</sup>

Andrew Jackson's conflict with the Supreme Court in 1832 arose because Jackson had refused to acknowledge one of the Court's decisions. The Georgia Supreme Court had ruled against a group of white missionaries in Indian territories in that state, based on Georgia's desire to push out the Cherokee nation. The United States Supreme Court ordered the missionaries released, and Jackson's

---

<sup>5</sup> Ibid., pp. 30-33.

<sup>6</sup> Ibid., pp. 24-26.

supposed remark was, "Well, John Marshall has made his decision, now let him enforce it."<sup>7</sup>

Abraham Lincoln increased the number of Supreme Court justices from nine to ten in 1863, after Congress created a new circuit for Oregon and California. Therefore, he appointed a new justice. Soon afterward, Chief Justice Roger B. Taney died, affording Lincoln another appointment, and Lincoln was accused of packing the Court,<sup>8</sup> but the Court actually remained a nine-member tribunal. Lincoln's conflict with the judiciary also encompassed friction between the Executive and the States' courts.

Roosevelt, cognizant of past presidents' conflicts with the Court, searched for a way to confront the Court,<sup>9</sup> and history provided the groundwork for the court reform bill of 1937.

#### The Nine Old Men

The nine members of the 1937 Supreme Court had an average age at appointment of 58 years, the oldest Court in American history. By 1937, the average age of the Justices was 72.

---

<sup>7</sup>Ibid., p. 36.

<sup>8</sup>Merlo J. Pusey, The Supreme Court Crisis (New York: The MacMillan Company, 1937), p. 57.

<sup>9</sup>Scigliano, p. 48.

Justice Louis Dembitz Brandeis was the oldest member of the 1937 Court at 80. Willis Van Devanter was 78. James C. McReynolds, George Sutherland, and Chief Justice Charles Evans Hughes were 75. Pierce Butler was 71, Benjamin Nathan Cardozo was 67, and Harlan Fiske Stone was 64. The youngest member of the Court was Owen Josephus Roberts, 62.

Justices by custom are lawyers.<sup>10</sup> "The entire philosophy, interest, and training of the legal profession tend toward conservatism," Robert Jackson said in his 1941 analysis of the 1937 Court crisis The Struggle for Judicial Supremacy.<sup>11</sup> And the 1937 Court was by no means a completely liberal Court. More often than not, Justices Van Devanter, McReynolds, Sutherland and Butler voted conservatively. Three of the justices, Brandeis, Cardozo and Stone were frequently liberal voting members. However, since Chief Justice Hughes and Associate Justice Roberts were neither consistently conservative nor liberal, but tended to be moderate, the Court cannot be characterized as conservative.

Robert Scigliano said that it is an exaggeration to say that the Roosevelt administration suffered its constitutional defeats at the

---

<sup>10</sup>Robert H. Jackson, The Struggle for Judicial Supremacy: A Study of a Crisis in American Power Politics (New York: Vintage Books, 1941), p. 313.

<sup>11</sup>Ibid.

hands of the Court's four conservatives (Butler, McReynolds, Sutherland, and Van Devanter) aided by one or both of its moderates (Hughes and Roberts), while it was defended against judicial extremism by its three liberals (Brandeis, Cardozo, and Stone).<sup>12</sup>

In fact, the vote in each of the New Deal-related cases showed no consistent pattern, and in more than half of its invalidations of national laws, the Court was unanimous in its decisions.<sup>13</sup>

The nine judges of the 1937 Court were appointed by five different Presidents. It is evident, therefore, that the 1937 Court was not chosen in anticipation of the many social reform bills which made up the New Deal. Proponents of Roosevelt's judicial reform plan went so far as to claim the 1937 Court was packed, and the President was "merely seeking to unpack it."<sup>14</sup>

President Taft appointed Willis Van Devanter to the Court in 1910, and President Wilson appointed Justices McReynolds in 1914 and Brandeis in 1916. These appointments obviously were not made in anticipation of Roosevelt's New Deal.

Though both Sutherland and Butler were regarded as conservative and appointed by President Harding in

---

<sup>12</sup>Scigliano, p. 48.

<sup>13</sup>Ibid.

<sup>14</sup>Pusey, p. 40.





1922, it is doubtful that Harding was attempting to pack a 1937 Court.

Associate Justice Harlan Fiske Stone, known as an outspoken liberal,<sup>15</sup> was appointed by conservative President Coolidge in 1925. Finally, President Hoover's three appointments vary in their leanings. Hughes and Roberts were moderates, appointed in 1930, and Cardozo, a liberal, in 1932. Therefore, the 1937 Court was not composed against the New Deal.

#### Lippmann and the Court

The competency of "nine old men" as justices was an issue which Roosevelt capitalized on. In a Herald Tribune column, "Change By Usurpation," Lippmann wrote, "By an act of lawless legality he [Roosevelt] would force two-thirds of the justices to choose between resigning and being branded publicly as senile."<sup>16</sup> Lippmann believed that the six justices over 70 were valuable to the Court because of their experience and independence of mind, as indicated by their voting record. To get rid of the "old men" and appoint young justices would result in a Court of men with no self respect, he asserted. He wrote in the same column that any man who would consent to

---

<sup>15</sup>Ibid., p. 42.

<sup>16</sup>New York Herald Tribune, 11 February 1937.

become a member of the new Court, as Roosevelt wanted it, would have to be willing to bend to the President's will.<sup>17</sup>

Another argument Roosevelt used against the Court was that its work load was too much for it.<sup>18</sup> But Franklyn Waltman of the Washington Post examined the "backlog" in the Supreme Court, as well as the lower courts, and disclosed that the personnel of the federal judiciary were quite capable of getting their work done on time. Lippmann reported Waltman's findings in his "Today and Tomorrow" column.<sup>19</sup>

Part of the reorganization bill (the contents of which will be discussed in subsequent chapters) proposed that the justices retire on full pay, free of income tax and exempt from any risk of salary reduction in the future.<sup>20</sup> Lippmann's reaction was dramatic:

Some harsh insinuations have been made against the nine old men but this is surely the most cynical. For it implies that the justices do not appreciate the gravity of the issue which the President has raised, and that Congress can bribe them to get off the bench even if it does not dare to oust them.<sup>21</sup>

---

<sup>17</sup> Ibid.

<sup>18</sup> Samuel I. Rosenman, ed., The Public Papers and Addresses of Franklin D. Roosevelt, 1937 vol. (New York: The MacMillan Company, 1941), p. 48.

<sup>19</sup> New York Herald Tribune, 2 March 1937.

<sup>20</sup> Rosenman, p. 50.

<sup>21</sup> New York Herald Tribune, 2 March 1937.

Roosevelt's justification for Court-packing was based on historical precedents and the incompetency of the justices. But underneath these reasons was the Court's voting record on New Deal measures. The friction between Roosevelt and the judiciary branch increased significantly with each New Deal measure nullified, and the President became anxious to change the Court.

## CHAPTER III

### PACKING THE COURT

#### The New Deal Decapitated

Roosevelt was feeling continual frustration as some of his later New Deal plans were systematically nullified.<sup>1</sup> From 1803 to 1937, seventy-five cases involving federal legislation had been declared unconstitutional by the Supreme Court, and ten of those cases arose in two years, from 1934 to 1936, of Roosevelt's Administration.

Some of the cases involved were the National Industrial Recovery Act, the Agriculture Adjustment Act, the Municipal Bankruptcy Act and the Frazier-Lemke Farm Mortgage Act, all New Deal bills.

In two blows, the National Industrial Recovery Act was done to death; monetary legislation escaped, but barely; relief to farm debtors was set aside; railroad retirement pensions fell before a sharply narrowed definition of federal power over interstate commerce; and a new ruling limiting the President's power of removal of his appointive officers was promulgated.<sup>2</sup>

---

<sup>1</sup>James MacGregor Burns, Roosevelt: The Lion and the Fox (New York: Harcourt, Brace and Company, 1956), p. 295.

<sup>2</sup>Robert H. Jackson, The Struggle for Judicial Supremacy (New York: Vintage Books, 1941), p. 87.

To paraphrase Dean Alfange in The Supreme Court and the National Will, it looked like the Supreme Court was "decapitating" the New Deal.<sup>3</sup>

In October 1936, Roosevelt assured the public that it was no longer going through a crisis and that "happy days are here again." But just a few months later at his victory dinner in Washington, Roosevelt attempted to arouse the fears of the people, to enable the President to act with immediacy, as if a crisis situation existed.<sup>4</sup> Americans had apparently sensed they were past the crisis and began again to question and criticize the President and his New Deal measures. The Court acted accordingly.

Now Roosevelt sensed that the Hughes Court was making the very existence of the New Deal, as well as of its state counterparts, doubtful, and he felt compelled to act.<sup>5</sup>

On February 6, 1937, the day after he publicly announced his judicial reform plan, the New York Herald Tribune devoted a large portion of the paper to analyzing

---

<sup>3</sup>Dean Alfange, The Supreme Court and the National Will (Garden City, New York: Doubleday, Doran and Company, 1937), p. vii.

<sup>4</sup>Merlo J. Pusey, The Supreme Court Crisis (New York: The MacMillan Company, 1937), p. 83.

<sup>5</sup>Robert Scigliano, The Supreme Court and the Presidency (New York: The Free Press, 1971), p. 48.

the Court plan. Articles discussing the justices and analyzing the events which led up to the President's desire to put his own men on the Court filled the front section. The article below capsulized the fate of the New Deal legislation:

Washington, Feb. 5--Three New Deal victories in the Supreme Court since the November election brought the Administration's score in that tribunal to five victories and eleven defeats. It has won all the litigation involving Administration laws since President Roosevelt was returned to the White House.

The recent victories involved arms embargo against the sale of munitions for the Chaco war, legislation forbidding transportation of prison-made goods into States that bar their sale and a 50 per cent tax on profits made by silver traders before the 1934 silver purchase act was passed.

Here is the record since the Roosevelt administration came into power:

#### WON

Gold devaluation case, 5 to 4. For: Justices Hughes, Brandeis, Stone, Roberts, Cardozo. Against: McReynolds, Van Devanter, Butler, Sutherland.

T.V.A., 8 to 1. Only McReynolds dissented.

Arms embargo for Chaco War, 7 to 1. McReynolds dissented. Stone, ill, did not vote.

Prison labor, 8 to 0.

Silver profits, 8 to 0.

#### LOST

N.R.A., 9 to 0.

A.A.A., 6 to 3. For: Stone, Brandeis, Cardozo. Against: Hughes, Sutherland, McReynolds, Butler, Van Devanter, Roberts.

Federal regulation of "hot oil" shipments, 8 to 1. All but Cardozo against.

Conversion of building and loan associations to Federal charters when opposed by states, 9 to 0.

Dismissal of the late William E. Humphrey by President Roosevelt as a member of the Federal Trade Commission, 9 to 0.

Original Farm Mortgage moratorium act, 9 to 0.

Original railway pension act, 5 to 4. For: Hughes, Brandeis, Stone, Cardozo. Against: Roberts, Sutherland, McReynolds, Butler, Van Devanter.

Securities and Exchange Commission's attempt to compel J. Edward Jones to testify about a proposed stock issue withdrawn before registration became effective, 6 to 3. For: Brandeis, Cardozo, Stone. Against: Hughes, McReynolds, Van Devanter, Sutherland, Butler.

Municipal bankruptcy act, 5 to 4. For: Cardozo, Hughes, Brandeis, Stone. Against: McReynolds, Van Devanter, Sutherland, Butler, Roberts.

A.A.A. processing taxes impounded in Federal courts, must be refunded, 9 to 0.

Roosevelt's answer to this "decapitation" of his New Deal was in his message to Congress--pack the Court. The Brookings Institution published a volume in 1937 entitled "The Recovery Problem of the United States." The volume discussed the unbalanced budget, the inflationary movement, the reduction of working hours, the threat of "ill conceived" industrial legislation, and the unstable international situation. Court-packing was not offered as a solution to any problem the United States might be facing.<sup>6</sup>

Lippmann had gone from disfavor to favor and back again in his written opinions of Roosevelt as President. He had written this praise of Roosevelt after his 1931 nomination: "When cynics ask what is

---

<sup>6</sup>Pusey, The Supreme Court Crisis, p. 85.

the use we can answer that when parties can pick a man like Frank Roosevelt there is a decent future in politics."<sup>7</sup>

In 1933 and 1934, Lippmann's columns in the Herald Tribune had been very favorable regarding Roosevelt and the New Deal. "In the early New Deal period Lippmann wrote many times in favor of government intervention to secure the economic well-being of the people."<sup>8</sup> That would soon change. By 1934, Lippmann was beginning to show skepticism for social reform; it was reflected in his writing.<sup>9</sup> He called himself a liberal, but Roosevelt's brand of liberalsim in 1935 was extremely different from Lippmann's. The journalist wrote in his "Today and Tomorrow" column of August 20, 1935 that Roosevelt had substituted "some kind of planned collectivism for a free economy."<sup>10</sup> It was collectivism that Lippmann described as the "supreme economic evil" in

---

<sup>7</sup>Arthur M. Schlesinger, Jr., The Age of Roosevelt: The Crisis of the Old Order (Boston: Houghton Mifflin Company, 1957), p. 362.

<sup>8</sup>David Elliott Weingast, Walter Lippmann: A Study in Personal Journalism (New Brunswick, New Jersey: Rutgers University Press, 1949), p. 34.

<sup>9</sup>Ibid., p. 38.

<sup>10</sup>Ibid. Weingast defines collectivism as the governmental administration of large sectors of human affairs, the centralization of power. This implies a subscription to the ideals of socialism, withholding the approval of revolutionary means to realize these ideals.



his book The Good Society, published in 1937.<sup>11</sup> Just before the 1936 election, Lippmann declared himself for Alf Landon.<sup>12</sup> This was the setting when the Court-packing plan evolved.

### The President's Mandate

After the 1932 election, Roosevelt's popularity was such that he acted and the people backed him. Referring to early New Deal measures when Roosevelt had no opposition, Alfange wrote, "What was functioning in Washington at the time when these measures were enacted was not congressional government but a presidential dictatorship founded on consent, acquiescence or mere tolerance."<sup>13</sup>

In the 1936 election, Roosevelt carried 523 electoral college votes to Landon's eight and more than half of the popular votes.

It was a stunning victory. And no matter how it was intended by the voters, Franklin Roosevelt interpreted it as a blank check, not only as a personal mandate for himself but also as an endorsement for whatever action he chose to take against the Court.<sup>14</sup>

---

<sup>11</sup>Walter Lippmann, The Good Society, 1st ed. (Boston: Little, Brown and Company, 1937).

<sup>12</sup>New York Herald Tribune, 8 September 1936.

<sup>13</sup>Alfange, p. 229.

<sup>14</sup>Leonard Baker, Back to Back: The Duel between FDR and the Supreme Court (New York: The MacMillan Company, 1967), p. 46.

Roosevelt reasoned that the people would back him in any legislative move he made.<sup>15</sup> "No doubt he expected his remarkable popularity to carry the country with him along the proposed short-cut to new federal power."<sup>16</sup>

Roosevelt's second campaign platform, read at the Democratic Convention in Philadelphia in 1936, was based on continuing to solve recovery, unemployment and inflation problems. "We have sought and will continue to seek to meet these problems through legislation within the Constitution," he stated.

If these problems cannot be effectively solved by legislation within the Constitution, we shall seek such clarifying amendments as will assure to the legislatures of the several States and to the Congress of the United States, each within its proper jurisdiction, the power to enact those laws which the State and Federal Legislatures, within their respective spheres, shall find necessary, in order adequately to regulate commerce, protect public health and safety and safeguard economic security. Thus we propose to maintain the letter and spirit of the Constitution.<sup>17</sup>

Roosevelt made no mention of the Supreme Court reform proposal in his platform, although he was already thinking of Court reform. On February 28, 1937, a member of Roosevelt's platform committee, Senator Walter F. George of Georgia, mentioned the conspicuous absence of

---

<sup>15</sup>Walter Lippmann, The Supreme Court: Independent or Controlled? (New York: Harper and Brothers, 1937), p. 65.

<sup>16</sup>Pusey, The Supreme Court Crisis, p. 2.

<sup>17</sup>Ibid., p. 65.

the plan in Roosevelt's nomination speech. "An increase in the number of justices of the Supreme Court had been suggested before the Convention met in Philadelphia," George said in a radio broadcast. "During the memorable campaign that followed no responsible voice in any quarter was raised for the legislation which is now demanded of the Congress."<sup>18</sup>

Roosevelt had been given no mandate from the voters on specific issues but was acting as if he had been given a blank check by the people.<sup>19</sup> David Lawrence commented:

The President would be right in assuming that the American people bestowed on him a general grant of leadership, but he cannot by any stretch of the imagination assume justly that they gave him a mandate to undermine the strength of our judicial system or to impair the effectiveness of a life tenure assured to judges by the Constitution.<sup>20</sup>

On February 13, 1937, Lippmann's column in the Herald Tribune was about Roosevelt's intention to solve problems constitutionally, and he quoted Roosevelt's inaugural address. Lippmann concluded his column by saying that Roosevelt was asking something which Americans were not expecting when they voted him into office;

---

<sup>18</sup> Ibid., p. 66.

<sup>19</sup> Alfange, p. 228.

<sup>20</sup> David Lawrence, Supreme Court or Political Puppets? (New York: D. Appleton-Century Company, Inc., 1937), p 3.

something not mandated a president. Lippmann believed that Roosevelt was asking for more power than any other President had dared. As Lippmann put it:

He would have gone further toward his objectives, and he would have gone faster, if he had done what democracy requires of its loyal servants, had laid his plans candidly before the people and had used honest argument to obtain their consent.<sup>21</sup>

Regarding Roosevelt's mandate, Lippmann again quoted the inaugural address in which the President stated he would try to draft constitutional laws for the New Deal or to amend the Constitution. Lippmann objected to the fact that there was "not a word, not a hint, about the need for 'reorganizing' the judiciary, about the law's delays, about the age and the infirmity of the judges." The columnist wondered whether Roosevelt would have cared to run for reelection on a platform which contained the packing proposal.<sup>22</sup> Clearly, Lippmann concluded, whatever plan Roosevelt was to present before Congress was hardly excusable because of an imaginary blank check of endorsement from the people.

### Creating the Proposal

Roosevelt had been moving toward a showdown with the Supreme Court since January 1935 when the Court had

---

<sup>21</sup>New York Herald Tribune, 13 February 1937.

<sup>22</sup>New York Herald Tribune, 23 February 1937.



been considering several cases challenging the government's power to repudiate its gold-support of the dollar.<sup>23</sup> He was prepared to defy the Court if they ruled unfavorably, Schlesinger wrote in The Politics of Upheaval, but the Court upheld the gold support policy. However, Roosevelt "was under no illusion about the Constitutional status of the rest of his program."<sup>24</sup> Thus began the construction of a way to challenge the Court.

Presidential appointments to the Court had averaged two or three justices per term since 1837 when the Court again became a nine-member tribunal.

"Roosevelt was left to wonder, not without some cause, whether he would get any in two terms."<sup>25</sup>

A President's political influence in legislative matters has been much greater when he appoints political or personal friends to the Court.<sup>26</sup> Roosevelt felt that he needed influence on New Deal legislation, which was not faring well.<sup>27</sup> In 1932 Lippmann wrote:

---

<sup>23</sup> Scigliano, p. 48.

<sup>24</sup> Arthur M. Schlesinger, Jr., The Age of Roosevelt: The Politics of Upheaval (Boston: Houghton Mifflin Company, 1957), p. 260.

<sup>25</sup> Merlo J. Pusey, Charles Evans Hughes, vol. 1 (New York: Columbia University Press, 1963), pp. 749-750.

<sup>26</sup> Scigliano, p. 153.

<sup>27</sup> Burns, p. 295.



In the vast range of his powers there are few in which the president exercises so far-reaching an influence on the nation's history as in the selection of judges of the Supreme Court.<sup>28</sup>

On November 4, 1936, Roosevelt decided to ask his friend and adviser, Attorney General Cummings, to develop a plan to stop the "decapitation" of the New Deal and possibly enable Roosevelt to appoint some of his own men to the Court. Roosevelt was "determined to pull the Supreme Court from its lofty perch and engage it in a political duel."<sup>29</sup>

In November, four alternative ways to engage the Court in such a "duel" were presented to the President: (1) a Constitutional amendment could be proposed, specifically enlarging the federal powers of the courts; (2) a statute could be proposed to require more than a mere majority of the justices to invalidate an act of Congress; (3) a statute could be proposed to limit the Court's jurisdiction; or (4) a statute could be proposed to enable the President to enlarge the Court.

After examining these alternatives, Cummings and Roosevelt agreed that an amendment would be a slow process, and if it ever got through thirty-six of the forty-eight

---

<sup>28</sup>Walter Lippmann, Interpretations 1931-1932 (New York: The MacMillan Company, 1932), p. 323.

<sup>29</sup>Baker, Back to Back, p. 6.





state legislatures, Congress would tear it apart.<sup>30</sup> Also, both men expected that the bill Democratic Senator George W. Norris of Nebraska had sponsored to require more than a majority of the justices to invalidate an act of Congress was going to be ruled unconstitutional; so that alternative was eliminated.<sup>31</sup> Regarding the proposal to limit the Court's appellate jurisdiction, or removing the Court's appellate jurisdiction of important New Deal measures, there was a precedent. President Jefferson "had exempted his repealer of the Federalist Midnight Judges law from review by the Court."<sup>32</sup> But Cummings and Roosevelt believed that the lower courts might be just as hard on the New Deal measures as the Supreme Court was. The Constitution gave the Supreme Court jurisdiction in certain cases, anyway.<sup>33</sup> So they opted for Court-packing.

On November 18, 1936, the President met with Cummings again and asked that he draft several bills for judicial reorganization. Roosevelt then left on a South American trip, taking along with him a volume of proposed

---

<sup>30</sup>Joseph Alsop and Turner Catledge, The 168 Days (Garden City, New York: Doubleday, Doran and Company, 1938), p. 28.

<sup>31</sup>Ibid.

<sup>32</sup>Ibid., p. 29.

<sup>33</sup>Ibid.

amendments and a volume of proposed bills which he had ordered prepared by the Justice Department.<sup>34</sup>

The President returned to Washington on December 15, unsatisfied with any of those alternatives. At this time, Roosevelt gave Cummings the entire responsibility of finding a way to pack the Court while he prepared for his second inauguration. Cummings suggested that the plan be sandwiched between overall judicial reform.<sup>35</sup>

Finally, based on a bill sponsored by Justice McReynolds in 1913, Cummings found a way. McReynold's bill recommended that

when any federal judge, except justices of the Supreme Court, failed to avail himself of the privilege of retiring at the age provided by law, the President should appoint another judge to preside over the affairs of the Court and have precedence over the older one.<sup>36</sup>

Thus Cummings had his Court-packing bill, simply by expanding the words to encompass the Supreme Court. This would allow Roosevelt to appoint six new justices.

While other members of the Cabinet and the Justice Department worked on alternatives, Cummings and Roosevelt decided on this Court-packing plan in December of 1936. Many people credited with creating the plan,

---

<sup>34</sup>Ibid., p. 30.

<sup>35</sup>Ibid., p. 32.

<sup>36</sup>Ibid., p. 33.

presidential advisers Thomas G. Corcoran, Benjamin V. Cohen, and Felix Frankfurter, Solicitor General Stanley Reed, Assistant Attorney General Robert H. Jackson, and others actually knew nothing of the already conceived plan until February 1937.<sup>37</sup>

Lippmann did not specifically know of this Court-packing plan, but he had been writing in anticipation of one. His first column in 1937 was entitled "The Constitution and the Court."<sup>38</sup> The process of finding a solution which would enable Roosevelt to pack the Court had been a lengthy one. Columnists such as Lippmann were aware that something was brewing, even if Roosevelt did omit mention of the Supreme Court from his campaign and inaugural speeches.

Cummings and the Justice Department had been working on the problem for several months before the proposal was announced. Lippmann devoted a column to the question, "Did the plan suddenly evolve, or had it been in the making for quite some time?" The answer was obvious. He quoted Roosevelt's justification of the need for the reform bill, "The amendment process requires too much time for the country's needs and security," and answered the question of how suddenly the plan had evolved

---

<sup>37</sup>Ibid.

<sup>38</sup>New York Herald Tribune, 9 January 1937.

with his own question: "Did he [FDR] reach that conclusion on the boat to Buenos Aires?"<sup>39</sup> This was in reference to the fact that Roosevelt was on his South American trip until mid-December. Lippmann correctly supposed the bill had indeed been under consideration for some time before he left on the trip.

So the message before Congress on February 5, 1937 came as no surprise to many people, including Lippmann. The day before the formal announcement of the plan, Lippmann discussed the "storm brewing over the judiciary." He felt that the constitutionality of either an amendment or a proposal would be doubtful and added that "no one could draft an amendment which legalized all that the New Deal has done and would like to do, and still leave even the appearance of a Federal government of limited powers."<sup>40</sup>

Perhaps significantly, when Roosevelt was sworn in for a second term in office, it was a rainy, dreary day in Washington, D.C.<sup>41</sup> The storm brewing over the judiciary did not end that January day.

---

<sup>39</sup>New York Herald Tribune, 4 March 1937.

<sup>40</sup>New York Herald Tribune, 4 February 1937.

<sup>41</sup>Burns, p. 291.



### The Plan is Announced

The bill put before members of Congress on February 5, 1937 concerned overall judicial reform. But Roosevelt was not concerned with the lower courts. His main concern was with the nullification of his New Deal by the Supreme Court. His primary concern was in packing the Supreme Court with "half a dozen of his own appointees."<sup>42</sup>

The major points of the bill, as they applied to the Supreme Court, were:

1. The President may add a judge to the Court for each judge over 70 years of age who has not retired within six months of becoming 70.
2. The number of judges shall be permanently increased by the number appointed under (1).
3. The number of judges which is at least two-thirds of the number of which the Supreme Court of the United States consists shall constitute a quorum of such court.

On that same day, Roosevelt read a message to Congress, explaining why he thought the proposal was necessary. "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," he said. "A growing body of our citizens

---

<sup>42</sup>Scigliano, p. 44.





complain of the complexities, the delays, and the expense of litigation in United States Courts."

Roosevelt added, "A constant and systematic addition of younger blood will vitalize the courts and better equip them to recognize and apply the essential concepts of justice in the light of the needs and the facts of an ever-changing world."<sup>43</sup> In the same speech, the President said the proposed changes did not raise any issue of constitutional law. Yet it was the constitutionality of the proposal that many of Roosevelt's critics objected to.<sup>44</sup>

Congress had been pushing New Deal measures through without much debate or deliberation. Therefore, it was up to the Supreme Court to examine and decide on the Constitutionality of each New Deal measure. The Court received the criticism and was under a terrific amount of pressure. Lippmann wrote that

because the legislative branch has ceased to be a deliberative body, and has lost the balance normally provided by an effective opposition, the judicial branch is being burdened with a responsibility it ought never to have to bear. The Courts are in a jam.

---

<sup>43</sup> Samuel I. Rosenman, ed., The Public Papers and Addresses of Franklin D. Roosevelt, 1937 vol. (New York: The MacMillan Company, 1941), pp. 52, 55.

<sup>44</sup> George Wolfskill and John A. Hudson, All But the People: Franklin D. Roosevelt and his Critics (New York: The MacMillan Company, 1969).



Lippmann did not believe that Court-packing was a solution and thought the Court was doing work it should not have to do and taking criticism for it.<sup>45</sup>

The afternoon of February 5, "blazing headlines carried the news to the people," and Roosevelt read the editorial columns the next morning in bed. Roosevelt was worried; the proposal "split the American people neatly in half," and the President needed the popular majority behind his plan--a majority that could mobilize Congress into action.<sup>46</sup> The plan announced, public leaders reacted.

---

<sup>45</sup>New York Herald Tribune, 4 February 1937.

<sup>46</sup>Burns, p. 295.

## CHAPTER IV

### PRESIDENTIAL WATCHDOGS

Walter Lippmann had been criticizing Roosevelt and his New Deal for four years before the Court-packing plan was announced. Therefore, Lippmann was known as a critic of Roosevelt's plans.<sup>1</sup> It was no surprise, then, when Lippmann lashed out against the judicial reform bill in his "Today and Tomorrow" column.

Roosevelt, and those who supported his policies, knew of Lippmann's stand on most of the New Deal measures.<sup>2</sup> The reactions of Congressmen, journalists and the President to Lippmann's comments were as noteworthy as Lippmann's reaction to the President's plan.

By the end of April 1937, Roosevelt was cornered. The judicial reform bill evidently would not pass, and the President felt that the influence of journalists such as Lippmann. Roosevelt tried to win popular support for his plan with his radio "fireside chats." He realized

---

<sup>1</sup>David Elliott Weingast, Walter Lippmann: A Study in Personal Journalism (New Brunswick, New Jersey: Rutgers University Press, 1949), p. 39.

<sup>2</sup>George Wolfskill and John A. Hudson, All But the People: Franklin D. Roosevelt and his Critics (New York: The MacMillan Company, 1969).



that he could influence Congress if he had the people behind him on this issue.<sup>3</sup> He had held several press conferences in March and April, the dominant subject of each being judicial reform. But he could not ignore the presence of influential writers like Lippmann.

In 1937, few journalists supported Roosevelt and his New Deal plans. Well-known critics included Dorothy Thompson, Heywood Broun, Stanley High, Mark Sullivan, David Lawrence, and Henry L. Mencken, as well as Lippmann.<sup>4</sup> Despite the fact that Roosevelt felt he could justify his motives, he had come under heavy attack by journalists after his February 5 message before Congress.

George Wolfskill and John Hudson's book on Roosevelt's critics contained this analysis of the journalists:

It was columnists and editorialists, people like Mencken, who made life miserable for Roosevelt. Mencken's project of beheading Roosevelt was no one-man show. The woods were full of Menckens. He had help, lots of it, from that special breed of journalists who had their own byline (and maybe their picture) on the editorial page, men of divine inspiration who could resolve any problem of state in one column of newspaper type. Men like David Lawrence, editor of U.S. News; Frank Kent, columnist for the Baltimore Sun; Westbrook Pegler, syndicated columnist for

---

<sup>3</sup>James MacGregor Burns, Roosevelt: The Lion and the Fox (New York: Harcourt, Brace and Company, 1956), p. 295.

<sup>4</sup>Wolfskill and Hudson, pp. 172-199.



Scripps-Howard newspapers; Walter Lippmann, special writer for the New York Herald Tribune, all waged relentless war on the New Deal.<sup>5</sup>

The press had been wary of Roosevelt and except for the brief "honeymoon" period right after his first inauguration, it was more critical than laudatory of Roosevelt and his New Deal. By the 1936 election, Roosevelt's rapport with the press had significantly deteriorated from the relationship he had enjoyed in 1932.

Press support Roosevelt did have had come from smaller and southern papers. But by 1937, southern Democrats also opposed much of the New Deal, fearing a program "that seemed to do violence to states' rights, to the traditional race arrangement, and the rigid power structure in the southern states."<sup>6</sup>

Large papers such as the New York Times, the New York Herald Tribune, the Chicago Tribune, and the St. Louis Post-Dispatch were usually anti-administration.<sup>7</sup> Roosevelt attributed this opposition of the larger papers to the theory that as newspaper owners become richer, they lose contact with the common people, and "soon the

---

<sup>5</sup>Ibid., p. 174.

<sup>6</sup>Ibid., p. 317.

<sup>7</sup>Ibid., p. 298.



check book and the securities market supplant the old patriotism and the old desire to purvey straight news."<sup>8</sup>

Although Roosevelt won the 1936 election by a landslide, a study done after the election of the leading 150 daily newspapers showed that 80 endorsed Landon in 1936, 55 endorsed Roosevelt, and 15 endorsed neither candidate.<sup>9</sup>

After the Court plan was announced, the press became dramatic: "Warnings of dictatorship and prophecies of ruin filled editorial pages."<sup>10</sup> The conservative press was filled with negative reactions, and the "middle-of-the-road" newspapers, which had before criticized the reactionary Supreme Court justices, now pictured these justices as virtuous and godly. Even the liberal press was shocked by the plan.<sup>11</sup>

Roosevelt had been holding semi-weekly press conferences since his first election. The one in which he announced the reorganization plan to the press was

---

<sup>8</sup>Arthur M. Schlesinger, Jr., The Age of Roosevelt: The Coming of the New Deal (Boston: Houghton Mifflin Company, 1957), pp. 563-565.

<sup>9</sup>Wolfskill and Hudson, p. 184.

<sup>10</sup>Ibid., p. 195.

<sup>11</sup>Ibid.



on February 5.<sup>12</sup> There was no discussion of the message afterward, but one reporter asked, "Mr. President, this question is for background, but is this intended to take care of cases where the appointee has lost mental capacity to resign?" Roosevelt's response was to end the press conference. The President could "tongue-lash those who wrote uncomplimentary things about him. At press conferences he would occasionally tell them to put on dunce caps and stand in the corner or he would 'award' them Iron Crosses."<sup>13</sup>

The next press conference concerning judicial reform came just one week later. The President explained to the newsmen that judicial reform had been planned for over a year and a half, though it may have taken most people by surprise.<sup>14</sup>

#### Lippmann's Opposition to the Plan

The first column Lippmann wrote after the proposed bill was read before Congress appeared in the Herald Tribune on February 9, 1937. The column, entitled "The Seizure of the Court," lambasted Roosevelt's plan to

---

<sup>12</sup>Samuel I. Rosenman, ed., The Public Papers and Addresses of Franklin D. Roosevelt, 1937 vol. (New York: The MacMillan Company, 1941), p. 35.

<sup>13</sup>Wolfskill and Hudson, p. 298.

<sup>14</sup>Rosenman, p. 75.



alter the Court. Lippmann said the plan violated the constitutional provision for the establishment of the Supreme Court. Commenting on Roosevelt's February 5 message to Congress, Lippmann wrote:

. . . in view of the fact that Mr. Roosevelt's plans have been in violent collision with the Constitution as interpreted by this court, in view of the fact that six justices happen to be over seventy, and that at least five of these differ fundamentally with Mr. Roosevelt, this is no proposal for the kind of judicial reform which the message talks about. This is a bloodless coup d'etat which strikes a deadly blow at the vital center of constitutional democracy.<sup>15</sup>

The President had argued that judicial reform was necessary and that a constitutional amendment would take too long to ratify. Lippmann believed Roosevelt's reasoning was wrong. He wrote that Roosevelt was going to insist Congress give the President the power to make the "necessary" reforms by an "act of lawless legality," rather than try to get his reform by the traditional amendment process.<sup>16</sup>

Roosevelt was convinced he had a plan which was within the bounds of constitutionality. Former Justice John H. Clarke, who had served on the Supreme Court from

---

<sup>15</sup>New York Herald Tribune, 9 February 1937.

<sup>16</sup>Ibid.



1916 to 1922, agreed with the President that the court-packing plan was constitutional.<sup>17</sup>

But Lippmann was among the journalists who thought that not only was the plan bordering on unconstitutional, but also a threat to the American democratic system.<sup>18</sup> "Its audacity is without parallel in American history," he wrote.<sup>19</sup>

He was worried about the implications of such a proposal--where America would be if such drastic reform took place. He commented: "If by legislative act one President can oust two-thirds of the Supreme Court, or pack the court till it does his bidding, what is to prevent another President from doing the same thing?"

As his column on February 9 progressed, he seemed to become more alarmed. ". . . I do not say that Mr. Roosevelt is a dictator or that he wishes to be one," Lippmann wrote, "but I do say that he is proposing to create the necessary precedent and to establish the political framework for, and to destroy the safeguards against a dictator."<sup>20</sup> Years later, Arthur Krock, who

---

<sup>17</sup>Alan F. Westin, An Autobiography of the Supreme Court (New York: The MacMillan Company, 1963), p. 151.

<sup>18</sup>New York Herald Tribune, 13 February 1937.

<sup>19</sup>New York Herald Tribune, 9 February 1937.

<sup>20</sup>Ibid.





had been an editorial writer for the New York Times in 1937, and Lippmann agreed in retrospect that had the "sham issue of 'dictatorship'" not been raised, the reform bill might have passed easily.<sup>21</sup>

Lippmann concluded his first column written after the proposal was announced with this paragraph:

No issue so great or so deep has been raised in America since secession. No blow has been struck, which if it is successful, would so deeply injure the moral foundations of the republic. There is no doubt that a great question has been raised in America. It is the question of whether the people shall be deprived of their sovereign right to give and to withhold the power their servants exercise, of whether a man, who has evaded the judgement of the people on this very question, shall by indirection become the master of all three branches of the government and of the fundamental law as well.<sup>22</sup>

His next column, on February 11, was entitled "Change by Usurpation." His theme was based on a segment of George Washington's Farewell Address, in which Washington said,

If, in the opinion of the people, the distribution, or modification of the constitutional power be in any particular wrong, let it be corrected by an amendment in the way the Constitution designates--but let there be no change by usurpation.

Lippmann quoted this speech in the column to emphasize his stand on the proposed bill. He asserted that congressmen of both parties knew that the method of

---

<sup>21</sup>Wolfskill and Hudson, p. 287.

<sup>22</sup>New York Herald Tribune, 9 February 1937.



change prescribed by Roosevelt evaded the method of change designated in the Constitution. The columnist wrote the plan was a "legal trick" seeking to "accomplish the change by usurpation."<sup>23</sup>

One week after the message to Congress, Lippmann's third column on the Supreme Court plan appeared. The tone of the article was slightly different from the previous columns. He changed from writing with an appalled, outraged voice to writing in a disgusted, pitying tone.

He called the court-packing plan "stupid" as well as "audacious" and "lawless."<sup>24</sup> In this slightly condescending tone, he discussed Roosevelt's claim that the Courts were backlogged or their workload was piled up. Lippmann used as his source Franklyn Waltman, a writer for the Washington Post. Waltman discovered, said Lippmann, that "so far as the nine old men of the Supreme Court are concerned, their docket is not congested."<sup>25</sup> Waltman's findings corroborated Solicitor General Stanley Reed's findings in his annual report. Reed's report, written for Congress just before

---

<sup>23</sup>New York Herald Tribune, 11 February 1937.

<sup>24</sup>New York Herald Tribune, 13 February 1937.

<sup>25</sup>Ibid.



February 5, 1937, concluded that there was no backlog of cases in the Supreme Court.<sup>26</sup>

Lippmann's February 13 column ended with a rather pitying and disgusted reprimand:

Mr. Roosevelt should have trusted the people. They have trusted him. He would have gone farther toward his objectives, and he would have gone faster, if he had done what democracy requires of its loyal servants, had laid his plans candidly before the people and had used honest argument to obtain their consent.<sup>27</sup>

On February 16, Lippmann began a three-part series in which he discussed the "underlying constitutional crisis which has inspired the President's proposal." He softened enough to say that the Supreme Court was "periously near repealing the express power of Congress," and that this was wrong, but Roosevelt just hadn't come up with the right remedy.<sup>28</sup>

Lippmann presented four of the more popular alternatives which members of Congress and economists had suggested. Some of the suggestions were similar to the four alternative plans Cummings had presented to Roosevelt before they agreed on the proposed packing. In the last of three articles on February 18, Lippmann

---

<sup>26</sup>Merlo J. Pusey, The Supreme Court Crisis (New York: The MacMillan Company, 1937), p. 13.

<sup>27</sup>New York Herald Tribune, 13 February 1937.

<sup>28</sup>New York Herald Tribune, 16 February 1937.

modified the suggestion of economist Morris Ernst and presented his own solution.<sup>29</sup>

Lippmann stated that the remedy for the "decapitation" of social reform was to occasionally grant Congress power to override the Supreme Court. This would mean that Congress would have the power to override the Court's decisions, for certain cases, not in general. While he realized that amending the Constitution was difficult, he also realized that that was the beauty of democracy in the United States. He suggested making only Section 8, which enumerates the powers of Congress, easier to amend. This would make it just as difficult to amend the rest of the Constitution. His "solution" had a basic flaw (discussed in Chapter V), but at least as a critic he was able to offer some solution. Specifically, he wrote:

My suggestion is that a study be made of some other way of amending the Constitution with a view to excluding from the easier methods of amendments all democratic rights and civil liberties.

If I am asked what I mean by an easier method of amendment, I think I mean simply a speedier method. But I have no pet scheme: as an illustration, it might be provided that specific amendments to the commerce clause when submitted by Congress must be ratified or rejected by specially elected state conventions within six months. That would settle the issue of power between one session of Congress

---

<sup>29</sup>New York Herald Tribune, 18 February 1937.

and the next. On all other subjects, I would leave things as they are, with the states free to act on or ignore amendments, or deal with them when they feel like it.<sup>30</sup>

The next article Lippmann entitled "What Mandate?" He argued against the underlying justification Roosevelt had used for the need for reform--that the President has a mandate from the people. The columnist was reacting to the President's assumption that the voters had given him a blank check to carry out whatever programs he wished. Lippmann quoted the Democratic Party platform speech, in which Roosevelt had stated he would try to (in Lippmann's words) "draft constitutional laws for the New Deal or to amend the Constitution. . . . There was not a word, not a hint, about the need for 'reorganizing' the judiciary, about the law's delays, about the age and infirmity of the judges."<sup>31</sup>

The theme of the column was that Roosevelt was scheming to pack the court before he was reelected, but knew the plan was controversial, and therefore dared not mention it before the inauguration. Roosevelt's alleged deviousness angered the President's critics, Lippmann among them.<sup>32</sup> He wrote: "I should like to know whether

---

<sup>30</sup>New York Herald Tribune, 18 February 1937.

<sup>31</sup>New York Herald Tribune, 23 February 1937.

<sup>32</sup>Wolfskill and Hudson, pp. 172-199.





Mr. Roosevelt would have cared to run for reelection on a platform containing this proposal." The columnist reasoned that it was not honorable on Roosevelt's and Vice President John Nance Garner's part to "attack the court right after the election, and to justify the act by asserting that they have a mandate from the people."<sup>33</sup>

By February 25, Roosevelt had even lost the support of recognized progressives.<sup>34</sup> Lippmann devoted his last February column to Roosevelt's waning following and delighted in the victory of democracy: "The outcry which has gone up comes from a profound and instinctive revolution against so brutal a break with the whole American political tradition."<sup>35</sup> Lippmann and other critics of the Court-packing plan apparently had the President cornered.

#### Roosevelt Cornered

On March 4, 1937, President Roosevelt was again publicly defending his plan, this time at the Democratic victory dinner. He stated his sincere desire to work for the betterment of America and explained that this

---

<sup>33</sup>New York Herald Tribune, 23 February 1937.

<sup>34</sup>Walter F. Murphy, Congress and the Court (Chicago: The University of Chicago Press, 1962), p. 58.

<sup>35</sup>New York Herald Tribune, 25 February 1937.

goal was blocked by the Supreme Court's nullification tendencies on New Deal measures.

Roosevelt made his strongest appeal for public support on March 9. It was his first radio speech during his second term, and he used the "fireside chat" format to attempt to stir Americans into realizing a crisis situation. He did so by comparing the status of the economy in 1937 to that which had existed in 1933. He hinted that another great depression like that beginning in 1929 was just over the horizon. This fate could be avoided, he implied, if New Deal policies were not nullified. The President pleaded:

It will take time--and plenty of time--to work out our remedies administratively even after legislation is passed. To complete our program of protection in time, therefore, we cannot delay one moment in making certain that our National Government has power to carry through. . . . The Courts, however, have cast doubts on the ability of the elected Congress to protect us against catastrophe by meeting squarely our modern social and economic conditions.<sup>36</sup>

Lippmann dramatically criticized the fireside chat in his column on March 11. He asserted again that the only way to lawfully make a constitutional change was by amendment. Although there is much evidence to support Roosevelt's statement that the reform plan was many months in the making, Lippmann said that the plan

---

<sup>36</sup>Rosenman, p. 123.

was an "afterthought" and that Roosevelt just wanted a subservient court. As for packing the Court to help the economy, the columnist wrote:

The argument about his inability to protect the country against another 1929 is an appeal to the unthinking. For Mr. Roosevelt's quarrel with the Supreme Court has no real relation with his power to avert another crash. It has to do with a wholly different thing, with the reform of deep-seated social evils that could not be cured "within a year or two" if the whole Supreme Court resigned in a body and Mr. Roosevelt appointed his office boys.<sup>37</sup>

On March 13 he continued: "Ever since Mr. Roosevelt saw that his first reasons would not wash, he has been sounding a note of alarm about the immediate future of the country." He discussed the reality of inflation and economic disaster, adding that the authority to take control of prices and wages was the only important power that had been denied the President which may have helped avert disaster. "He probably cannot get that authority by an amendment, certainly he cannot get it quickly," Lippmann said. "Yet is not that the authority he feels he must have--'now'? That would explain the otherwise unintelligible argument he made in his fireside chat, March 9, when he talked as if long-range reforms could cure an imminent crisis." It was Roosevelt's remedy that was so wrong, Lippmann believed.

---

<sup>37</sup>New York Herald Tribune, 11 March 1937.

The verbal battle raged on, other columnists attacking Roosevelt's person, policy, and methods much as Lippmann did.

As mentioned earlier, the President's political clout was waning by 1937. At the end of February, those persons recognized as progressives and ardent supporters of the New Deal also began to drift from Roosevelt's side.<sup>38</sup> It is probable that the court-packing plan was President Roosevelt's low point:

1937 began with glowing promises and ended with humiliating excuses. Roosevelt himself provided the issue around which every congressman or senator who had a score to settle with the White House could rally without a second thought.<sup>39</sup>

Perhaps if Roosevelt had been willing to accept a constitutional amendment as a substitute for his bill, mounting congressional opposition would have been destroyed. "There was hardly an anti-court plan senator who did not have his own private amendment."<sup>40</sup>

Instead, Roosevelt continued to argue for and justify his original plan and the opposition had mounted a strong case. The President was cornered.

---

<sup>38</sup>Murphy, p. 58.

<sup>39</sup>Wolfskill and Hudson, p. 206.

<sup>40</sup>Joseph Alsop and Turner Catledge, The 168 Days (Garden City, New York: Doubleday, Doran and Company, 1938), p. 113.

A trend builds up its own momentum. When things go well, it seems nothing can break the spell of success. But when things start sliding downhill, nothing can break the fall. So it happened with FDR's Court plan. After a while, it seemed that nothing the Administration did was right or helpful.<sup>41</sup>

Roosevelt did not even have the support of his own Vice President. Garner had carried the conservatives and the South in the 1932 election and Roosevelt needed Garner. Garner believed in the New Deal, at least in 1932. But by 1936 Garner "believed the time for drastic action, for the liberalism of the New Deal, was at an end."<sup>42</sup>

Garner saw the Court fight widening the split between New Dealers and southern conservative Democrats. The White House was well aware of his attitude. "The chief danger is the defeatist attitude of the Vice President," Roosevelt told Secretary of the Interior Harold Ickes in April.<sup>43</sup>

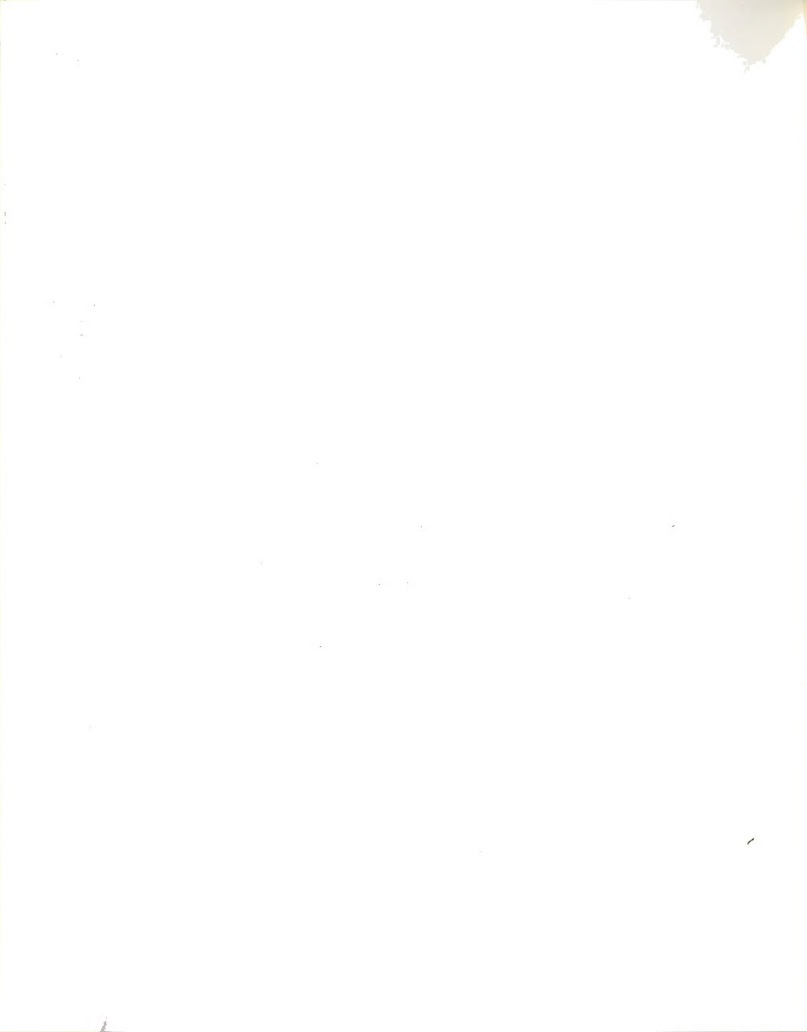
But it wasn't Garner's attitude which defeated the reform proposal. On Monday, March 29, the Supreme Court announced a decision which substantially weakened Roosevelt's reasoning in support of his Court plan. That

---

<sup>41</sup>Leonard Baker, Back to Back: The Duel between FDR and the Supreme Court (New York: The MacMillan Company, 1967), p. 205.

<sup>42</sup>Ibid., p. 218.

<sup>43</sup>Ibid.



day, referred to as "White Monday," the Supreme Court supported several Congressional decisions favoring New Deal bills by upholding their constitutionality. The event is referred to also as "a switch in time saves nine," implying that this switch from conservativeness preserved the membership of the 1937 Court.<sup>44</sup>

Then on April 12 the Court held constitutional the National Labor Relations Act of 1935 in the case of National Labor Relations Board v. Jones and Laughlin Steel Corp.<sup>45</sup> This decision signified that New Deal measures were no longer in danger of decapitation. Although this decision had been made long before the Court reform plan was announced,<sup>46</sup> the phrase "a switch in time saves nine" seems to apply. It appeared that the Court was reversing its conservative trend.

Only one month later, on May 18, 1937, Justice Willis Van Devanter suddenly announced his retirement. Now Roosevelt had a chance to make an appointment. The "need" for judicial reform was increasingly becoming a weak argument.

---

<sup>44</sup>Wolfskill and Hudson, p. 264.

<sup>45</sup>301 U.S. 1. 57 S.Ct. 615, 81 L.Ed. 893 (1937).

<sup>46</sup>Gerald Gunther, Cases and Materials on Constitutional Law, 9th ed. (Mineola, N.Y.: The Foundation Press, Inc., 1975), p. 171.





### Reactions to Lippmann's Columns

Roosevelt was concerned. The Senate Judiciary Committee was beginning its hearings and the media were creating a monster of the President. Roosevelt reacted by taking a self-righteous "last stand."

For years Roosevelt had watched Lippmann's columns and often used them as an indication of popular sentiment.<sup>47</sup> He had quoted Lippmann's Herald Tribune columns in June 1933 to support his foreign policy moves but criticized the columnist later, when Lippmann took the anti-administration angle.<sup>48</sup>

For instance, while Roosevelt was campaigning in 1932, Lippmann was criticizing the candidate. He warned the West and the South against taking Roosevelt's progressivism seriously and said that while Roosevelt is amiable enough, he "is no tribune of the people." Roosevelt wrote of Lippmann a few days later: "In spite of his brilliance, it is very clear that he had never let his mind travel west of the Hudson or north of the Harlem!"<sup>49</sup>

---

<sup>47</sup> Schlesinger, The Coming of the New Deal, p. 563.

<sup>48</sup> Raymond Moley, After Seven Years (New York: Harper and Brothers, 1939), p. 236; and Schlesinger, The Coming of the New Deal, p. 564.

<sup>49</sup> Arthur M. Schlesinger, Jr., The Age of Roosevelt: The Crisis of the Old Order (Boston: Houghton Mifflin Company, 1957), p. 291.

During Roosevelt's presidency cross-fire between the media and the Administration resulted in rhymes and songs. This verse is from a ten-stanza poem read by Secretary of the Interior Harold Ickes on network radio:

Who run the earth and sun and moon?  
 Just Thompson, Lawrence, Franklin, Broun  
 Just the columnists.  
 When FDR you want to sock,  
 Page Lippmann, Johnson, Kent, or Krock,  
 Page a columnist.<sup>50</sup>

Ickes was hard on those he called "calumnists," whose writing style he thought was to falsify and vilify when possible. He described Lippmann, for example, with the verse contained in Revelations 3:15-16: "I know thy works, that thou are neither cold nor hot; I would that thou wert cold or hot. So then because thou are lukewarm and neither cold nor hot, I will spew thee out of my mouth."<sup>51</sup> Roosevelt also responded to the columnists. He verbally lashed out at "editors and columnists who wrote bogey tales to scare the people; at the 'yes, but' fellows who agreed in general with the need for reform but disagreed with his way of doing it."<sup>52</sup> It seems that Lippmann fit into this category.

---

<sup>50</sup>Wolfskill and Hudson, p. 301.

<sup>51</sup>Ibid.

<sup>52</sup>Ibid., p. 310.



Regarding Lippmann specifically, Roosevelt "sought to cultivate his support."<sup>53</sup> Lippmann received invitations to the White House frequently and had access to the President whenever he desired.<sup>54</sup> Lippmann's comments apparently had some impact on Roosevelt and probably the public; the extent will be discussed in the next chapter.

---

<sup>53</sup>Edward L. Schapsmeier and Frederick H. Schapsmeier, Walter Lippmann: Philosopher-Journalist (Washington, D.C.: Public Affairs Press, 1969), p. 79.

<sup>54</sup>*Ibid.*

## CHAPTER V

### THE DEATH OF THE PROPOSAL

The proposed judicial reform bill, Senate Bill 1392, was given to the Senate Judiciary Committee to debate and make recommendations on, then put before the entire Senate. This process dragged out the issue, even though the proposal was essentially defeated during the Committee hearings.

#### The Outcome of the Proposal

After the Supreme Court's "self-reversal" on the Wagner Labor Relations Act on April 12, the "senators of the opposition virtually held a cheer meeting, and if they had built a bonfire on the Senate floor no one would have been surprised."<sup>1</sup> At this point, pro-Administration senators began urging that the President agree to compromise and then declare a victory to save face. But Roosevelt wasn't satisfied with a five-to-four majority; he wanted a more cooperative Court.<sup>2</sup>

---

<sup>1</sup>Joseph Alsop and Turner Catledge, The 168 Days (Garden City, New York: Doubleday, Doran and Company, 1938), p. 151.

<sup>2</sup>Ibid., p. 155.



Lippmann's April 17 column, entitled "To the Bitter End?", focused on Roosevelt's unwillingness to compromise. There was still time to back away from the issue and preserve dignity, Lippmann believed. He added: "There is still time in the next few weeks for magnanimity to triumph over the threat of an irreconcilable and deeply destructive political war."<sup>3</sup>

The President's overconfidence about the outcome of the proposal could have been due to three factors: his recent overwhelming Presidential victory, his confidence in the influence of the ardent New Dealers in the Cabinet and Senate<sup>4</sup> and Senator Joe Robinson's continual urgings to proceed with the packing plan. On all three counts, Roosevelt had misjudged. As explained previously, Roosevelt did not have a mandate from the people and by 1937 the support of his followers was dwindling. Also, Robinson was particularly interested in sticking his neck out for the Supreme Court proposal because Roosevelt had promised him the first appointment to the Court.<sup>5</sup> So he gave the President a promising picture of the plan's fate. And Roosevelt was not going to give up his battle

---

<sup>3</sup>New York Herald Tribune, 17 April 1937.

<sup>4</sup>Leonard Baker, Back to Back: The Duel between FDR and the Supreme Court (New York: The MacMillan Company, 1967), pp. 13-14.

<sup>5</sup>Alsop and Catledge, p. 157.

with the Court. He thought the justices were after the New Deal with hatchets.

Rosalie M. Gordon wrote in her book Nine Men Against America that Roosevelt had even tried to make a deal with Chief Justice Hughes. The two men would talk over constitutional issues that were before the Court, Roosevelt had thought, and then he would be able to clear proposed legislation with the Chief Justice. Roosevelt interpreted Hughes' coolness to this plan as evidence of the Supreme Court's uncooperativeness.<sup>6</sup> The case against the Court, in Roosevelt's mind, was justified.

Although Roosevelt's message to Congress was delivered on February 5, the Senate Judiciary Committee did not commence its hearings until March 10, 1937. The hearings ended on April 23. By then "it was obvious, even if not publicly stated, that a majority of the committee opposed FDR's plan and would write a report criticizing it."<sup>7</sup>

Chief Justice Hughes sent Senator Wheeler a letter on March 21 which was read before the Judiciary Committee. Hughes asserted that the Court was abreast of its docket and predicted that enlargement of the Court

---

<sup>6</sup>Rosalie M. Gordon, Nine Men Against America (New York: The Devin-Adair Company, 1958), p. 22.

<sup>7</sup>Baker, p. 193.



would slow rather than speed work. Hughes had consulted Brandeis and Van Devanter on the letter, but it had an impact on the Committee as if it represented the views of all of the Justices.<sup>8</sup>

The chairman of the Committee was Senator Henry F. Ashurst of Arizona. Ashurst was summoned to the White House after the hearings. In his private papers, he wrote an account of that visit with Roosevelt. The President had requested that the Committee deliver its report without recommendations, a request which Ashurst felt he could not honor. Also, he wrote that the President thought the delay between the announcement of the judicial reorganization bill on February 5 and the start of the Committee's hearings on March 10 had helped kill the bill.<sup>9</sup>

In the middle of June, the majority report from the Committee was finished, condemning the Court bill. The President could no longer refuse to face the facts.<sup>10</sup> Whatever the reasons for the death of the proposal, he was angry.

---

<sup>8</sup>Walter F. Murphy, Congress and the Court (Chicago: The University of Chicago Press, 1962), p. 59.

<sup>9</sup>Baker, p. 193.

<sup>10</sup>Alsop and Catledge, p. 228.

The bill was essentially defeated because of the Committee's findings, but debate opened in the Senate on July 6. Senator Robinson proposed an amendment which was a compromise drawn up by Senators Carl A. Hatch and Marvel Logan. The compromise provided for the appointment of one co-justice for each justice 75 or older, limited to only one appointment per year.<sup>11</sup>

Walter Lippmann wrote of the compromise: "This is in no sense of the word an honest compromise, and at bottom the new proposal is as devious and as deceptive as its predecessor."<sup>12</sup> But before any action was taken on the compromise, Senator Robinson died. On July 14, 1937, he was found dead with the Congressional Record in his hand, a heart attack victim.<sup>13</sup> Because of this, both publicly and privately the President was urged to drop the Court fight, lest someone else be "killed." The division within the Administration and in the Senate became too great to overcome.<sup>14</sup>

Some historians agree that the final blow to the Administration in the Court fight was New York Governor

---

<sup>11</sup>U.S. Congress, Senate, Senator Robinson speaking for the Amendment of Senate Bill 1392, 75th Cong., 1st sess., 6 July 1937, Congressional Record 81:6788.

<sup>12</sup>New York Herald Tribune, 6 July 1937.

<sup>13</sup>Baker, p. 253.

<sup>14</sup>Ibid., pp. 254-256.



Herbert Lehman's letter to New York Senator Robert Wagner, the contents of which were published in New York newspapers on July 19. Lehman, though liberal, was a known opponent of the Court plan from the beginning, but his timing rocked the Administration.<sup>15</sup> The next day, Roosevelt met with Garner and instructed him to take care of the matter. The President asked Garner just to try to save face.

Senator Logan moved that the judicial reform bill be returned to the Judiciary Committee when the Senate convened on July 22, 1937. The Republicans were not satisfied with the recommittal suggestion alone; they asked for a record vote to show the margin of the bill's defeat. The vote was 70 for recommittal of the bill, 20 against. Also, in the rhetoric, mention of the Supreme Court had carefully been avoided. So to heighten the sense of elation over the bill's defeat, Senator Hiram Johnson of California asked specifically whether the Supreme Court was to be part of the reform bill which was recommitted. The answer was that "The Supreme Court is out of the way."<sup>16</sup> The gallery applauded. The bill

---

<sup>15</sup> Ibid., p. 258; and Alsop and Catledge, p. 279.

<sup>16</sup> U.S., Congress, Senate, Senator Johnson speaking before the Senate regarding Senate Bill 1392, 75th Cong., 1st sess., 22 July 1937, Congressional Record 81:7381.



which was to be recommitted to the Judiciary Committee was to be redrafted without any reference to enlarging the Supreme Court.

The proposal was defeated, but Roosevelt had really gotten what he wanted. The retirement of Justice Van Devanter gave the President an opportunity for an appointment, and there was indication that Justice Roberts had "switched" to pro-New Deal legislation.<sup>17</sup>

In the years to come Roosevelt was to make more appointments to the Supreme Court than any other U. S. President, except George Washington, who set up the original Court. Roosevelt's first choice was Hugh L. Black in August 1937. From 1938 to 1943, Roosevelt appointed, in chronological sequence: Stanley Reed, 1938; Felix Frankfurter, 1939; William O. Douglas, 1939; Frank Murphy, 1940; James F. Byrnes, 1941; Harlan F. Stone (Chief Justice), 1941; Robert H. Jackson, 1941; and Wiley B. Rutledge, 1943.<sup>18</sup>

Lippmann had written that even the 1937 Court had been a potentially liberal court after the appointment of Hughes, Roberts and Cardozo. The shock of the crisis changed the Court from potentially liberal to

---

<sup>17</sup>Baker, p. 231.

<sup>18</sup>Robert Scigliano, The Supreme Court and the Presidency (New York: The Free Press, 1971), p. 51.



liberal in action.<sup>19</sup> But Roosevelt's attempt to change the Court had decreased his popularity. After the Court fight, he got through Congress only one more major piece of domestic New Deal legislation.<sup>20</sup>

#### Lippmann's Influence on the Outcome

"Public opinion, fired by conservative newspapers and fanned by bar association pronouncements, was more incensed at the deviousness and crassness of Roosevelt's scheme than at the Court decisions."<sup>21</sup> Regarding the Court fight, "probably the most important and influential of the journalistic critics was Walter Lippmann."<sup>22</sup> His column was appearing in large, conservative American newspapers in 1937, as well as in several Canadian and Latin American papers. The circulation of the papers in which his column appeared was near 12,000,000 for continental America.<sup>23</sup>

---

<sup>19</sup>New York Herald Tribune, 3 April 1937.

<sup>20</sup>Murphy, p. 62.

<sup>21</sup>Ibid., p. 58.

<sup>22</sup>Arthur A. Ekirch, Jr., Ideologies and Utopias: The Impact of the New Deal on American Thought (Chicago: Quadrangle Books, 1969), p. 200.

<sup>23</sup>David Elliott Weingast, Walter Lippmann: A Study in Personal Journalism (New Brunswick, New Jersey: Rutgers University Press, 1949), pp. 22, 31.



Roosevelt also recognized Lippmann's influence and often invited him to the White House for consultation over dinner.<sup>24</sup> More than once, Lippmann had been an adviser to the President on foreign policy and corresponded regularly with the President on domestic affairs.<sup>25</sup>

In his correspondence to Roosevelt, the columnist advised the President to slow the pace of progressivism, and as early as 1935, Lippmann was writing to Roosevelt about the judicial branch. On June 4, 1935, Lippmann wrote that the President should consider an amendment to control the judicial branch's legislative destruction.<sup>26</sup>

Roosevelt recognized that the press was an influential factor with Congress. He realized that popular opinion was largely determined by the newspapers, and this in turn could be the factor on which Congressmen based their voting decisions. Therefore, Roosevelt was anxious to have Lippmann's support.<sup>27</sup>

---

<sup>24</sup>Edward L. Schapsmeier and Frederick H. Schapsmeier, Walter Lippmann: Philosopher-Journalist (Washington, D.C.: Public Affairs Press, 1969), p. 79.

<sup>25</sup>*Ibid.*; Ekirch, p. 200.

<sup>26</sup>Ekirch, p. 200.

<sup>27</sup>Murphy, p. 61; James MacGregor Burns, Roosevelt: The Lion and the Fox (New York: Harcourt, Brace and Company, 1956), p. 295; Schapsmeier and Schapsmeier, p. 79.

Lippmann had aspired to be influential, "constantly seeking as an editor and columnist to guide the thinking of a large number of his fellow citizens."<sup>28</sup> One of Roosevelt's greatest complaints about Lippmann was that the journalist was inconsistent.

In David Weingast's biography of Lippmann, a chapter called "To Whom Does Lippmann Appeal?" states that Lippmann appealed strongly to the liberals and social reformers in his earlier years, but

almost from the beginning there was an obvious and consistent good will toward "industrial statesmen." While he continued to support the liberal position in intellectual and philosophical terms, his opposition to individual New Deal measures attracted strong support among conservatives.<sup>29</sup>

This support is reflected in the 1937 Congressional Record. During the Senate debate, articles by Walter Lippmann were submitted by various senators who thought that what the columnist wrote reflected their views, stated more eloquently.<sup>30</sup> Senator Francis T. Maloney of Connecticut, for example, wrote that when he was considering the compromise stating a two-third vote

---

<sup>28</sup>Ekirch, p. 15.

<sup>29</sup>Weingast, p. 107.

<sup>30</sup>U.S., Congress, Senate, appendix of Senate hearings and debates on Senate Bill 1392, 75th Cong., 1st sess., 19 February 1937; 6 July 1937, Congressional Record 81:265,1694,1725.

would enable Congress to override Supreme Court decisions, he came upon an article by Lippmann. Until then, Maloney said he would have supported a compromise. But Lippmann's article on February 17 in the Herald Tribune "erased" Maloney's earlier impression of the compromise, an indication of the columnist's influence in the Court matter.<sup>31</sup>

---

<sup>31</sup>Ibid., 81:265.

## CHAPTER VI

### CONCLUSION

It is difficult to determine exactly what motivated Walter Lippmann to write so adamantly against Roosevelt's packing proposal. But there are many factors which may have influenced Lippmann's columns in 1937.

#### Behind Lippmann's Criticism

Lippmann was a socialist when he began his writing career at Harvard in 1909. His first book, A Preface to Politics, extolled such socialist ideas as the abolition of child labor, the necessity of slum clearance, and the importance of women's suffrage. The book was published in 1913, but he soon rejected the socialist principles because in his words, "There was something monotonously trivial and irrelevant about our reformist enthusiasm."<sup>1</sup> He felt that socialism as an ideal was not all bad, but realized that a vote for socialism was not an indication of the understanding of true socialist

---

<sup>1</sup>David Elliott Weingast, Walter Lippmann, A Study in Personal Journalism (New Brunswick, New Jersey: Rutgers University Press, 1949), p. 12.

principles. In fact, he feared that a vote for socialism possibly implied a more sinister governmental plan.<sup>2</sup> He wrote that "the evils besetting society would in no way be relieved by vesting ownership in the state."<sup>3</sup>

It is important to understand this turn in Lippmann's philosophy because much of the criticism Lippmann wrote about Roosevelt centered around the journalist's fear of deviation from democracy. Lippmann may have rejected many New Deal programs because he felt they resembled socialist ideals. Many critics of the President in 1937 were comparing Roosevelt with leaders from Communist, Fascist and Socialist states.<sup>4</sup> It appeared to Lippmann that the President was more concerned with the ends of social progress and economic betterment than the means by which those goals might be attained.<sup>5</sup>

Also the situation abroad in 1937 must be considered. While Roosevelt was creating the "Second New Deal" in late 1936, many European nations were in the

---

<sup>2</sup>Ibid.

<sup>3</sup>Ibid., p. 12.

<sup>4</sup>George Wolfskill and John A. Hudson, All But the People: Franklin D. Roosevelt and his Critics (New York: The MacMillan Company, 1969).

<sup>5</sup>David Lawrence, Supreme Court or Political Puppets? (New York: D. Appleton-Century Company, Inc., 1937), p. 72.

hands of dictators. Italy had succumbed to the fascist leadership of Mussolini in 1924, Stalin's brand of Communism in Russia was increasingly suspect, and Hitler had led Germany from Marxist Communism to fascism and barbarism.<sup>6</sup> Spain, under Franco, was in the midst of the Civil War in 1936 and 1937, which was eventually to see Hitler, Stalin and Mussolini attempting to aid the Spanish factions. All of this was an indication of Russia's and Germany's expansionist policies, and the growing unrest in all of Europe.

Lippmann was abreast of the politics in Europe. Frequently, his column in the Herald Tribune centered on foreign policy. In 1937, when he wasn't writing of the Supreme Court, he frequently wrote of Spain and of the case for American neutrality in foreign affairs. By the end of February, he was alternating between the topics of judicial reform and foreign policy.

The packing proposal, viewed in an international context, seemed sinister to Lippmann. This view is reflected in his 1937 columns, when he was writing of Roosevelt's desire to "destroy" one of the three branches

---

<sup>6</sup> Arthur M. Schlesinger, Jr., The Age of Roosevelt: The Politics of Upheaval (Boston: Houghton Mifflin Company, 1960), pp. 78, 182, 198.

of the United States government and to create a Court of so-called Presidential puppets.<sup>7</sup>

Lippmann's conservative philosophy in 1937 is reflected in his writing. While journalists may tend to be liberal Democrats, Lippmann leaned more toward the conservative, right side of the Party. The progressive New Deal was too far to the left of the Party politics Lippmann was subscribing to in 1937.

A New Social Order was originally a speech which he wrote in 1933 and delivered at the University of California at Berkeley. In the speech, which was published the same year, he stated that an ordered society is desirable, even though the masses often object to the organization and discipline required to create the ordered society. He warned of the impracticality of government in the hands of the masses.<sup>8</sup> But it is evident that he had some change of mind between 1933 and 1937, for often in his 1937 column, he objected to the drastic measures Roosevelt was taking to order American society. Lippmann feared governments with too much centralized control. In 1937 he feared for the rights of the masses, as reflected in his anti-Roosevelt columns of that year. He saw too

---

<sup>7</sup>New York Herald Tribune, 13 February 1937.

<sup>8</sup>Walter Lippmann, A New Social Order (New York: The John Day Company, 1933), pp. 19-20.

much central control in many of the New Deal programs, and he thought the packing plan was perilously close to revolutionary.<sup>9</sup>

Throughout Roosevelt's twelve years in office, Lippmann changed his mind often about the President's capability, efficiency and policy.<sup>10</sup> Perhaps a columnist's prerogative is to change his mind. The question is, does the overall inconsistency of Lippmann's feelings about Roosevelt make Lippmann more or less credible? Roosevelt, reacting to Lippmann, noticed the inconsistency:

He writes so lucidly and charmingly that we are apt to overlook the fact that he is, to say the least, not always consistent. I wish sometime that he could come more into contact with the little fellow all over the country and see less of the big rich brother!<sup>11</sup>

That Lippmann wrote both kindly and negatively about Roosevelt could suggest a more impartial, objective analysis of the President. If the comments were all one-sided, Lippmann would have appeared to carry some personal prejudice for or against Roosevelt the man.

The inconsistency might mean, rather, that Lippmann swayed with the tide. It is conceivable that

---

<sup>9</sup>New York Herald Tribune, 11 February 1937.

<sup>10</sup>Weingast, p. 52.

<sup>11</sup>Arthur M. Schlesinger, Jr., The Age of Roosevelt: The Coming of the New Deal (Boston: Houghton Mifflin Company, 1959), p. 564.



he desired to create the tides. After all, he had already been syndicated for six years with a large, influential metropolitan daily. The point Roosevelt made at the end of the quote above refers to Lippmann's position on the Herald Tribune. Being so established, Lippmann's politics were probably more akin to the ways of the wealthy capitalist.

His prominent, secure position on the Herald Tribune's staff could have motivated him to criticize the Administration's New Deal labor provision, the Wagner Act. The Wagner Labor Relations Act of 1935 allowed collective bargaining, replacing the National Recovery Act codes which had been outlawed in 1935.<sup>12</sup> When Morris Watson, an Associated Press newsman, was discharged in 1935, he argued that he had been dismissed for his involvement with the American Newspaper Guild. He appealed to the National Labor Relations Board (NLRB) for his reinstatement under the Wagner Act. The AP took the case to the Supreme Court after the NLRB ruled in favor of Watson in 1936.

---

<sup>12</sup> Edwin Emery, The Press and America, 3rd ed. (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1972), p. 684.

Newspaper publishers all over the country reacted in various ways, many negatively.<sup>13</sup> What most objected to was the possibility that the NLRB would "endanger freedom of the press" if the Wagner Act were to apply to news organizations. Since Lippmann was a syndicated columnist and collective bargaining was not likely to be an advantage, he may have sided with the publisher on business matters, and most publishers opposed the Wagner Act. The constitutionality of the Wagner Act, another New Deal measure on trial, was decided upon in December 1936, and the decision publicly announced in April 1937. If the Court had remained true to its recent anti-New Deal trend, Roosevelt's program would suffer another blow.

As it turned out, the Court upheld the Wagner Act as constitutional, and Morris Watson was reinstated in his job. The majority wrote, "The publisher of a newspaper has no special immunity from the application of general laws."<sup>14</sup> Because publishing a newspaper is a business also, the Court ruled that as with all businesses, there are certain ground rules.

---

<sup>13</sup>Editor and Publisher, LXIX (October 10, 1936), p. 7; and Editor and Publisher, LXIX (December 19, 1936), p. 57.

<sup>14</sup>Associated Press v. NLRB, 301 U.S. 103 (1937).

Anyway, Lippmann, not knowing that the Wagner Act would be upheld, was against the criticism that the Court was taking for their decisions.

This suggested motivation of Lippmann's criticism is not to imply that the columnist was desiring "special immunity" (which Guild members claimed publishers wanted) but rather to suggest and recognize that Lippmann was, like any human, biased. As a 48-year-old successful writer, he was established and more conservative than those people in the 1930's organizing labor unions. The Newspaper Guild became a success after the April, 1937 Court decision upholding the Wagner Act, however.

Lippmann had offered a solution to the Supreme Court crisis in his February 18, 1937 column in the Herald Tribune. He, like Senators Ashurst, Wheeler, Norris and many others, favored amending the Constitution. But offering an amendment as a solution was like professing there was no crisis at all. Since Lippmann claimed in a column that he supported almost all New Deal measures,<sup>15</sup> it is strange that he was so critical of the Administration in 1937 and so supportive of the amendment "solution." The amendment process is too slow a process to solve any crisis. By 1937, only 21 amendments had ever

---

<sup>15</sup>New York Herald Tribune, 1 April 1937.

been ratified, and ten of those were adopted with the Constitution in 1791. At that rate of adoption, once every 13 years an amendment would pass. The chance of Roosevelt ever changing the size of the Court by amendment, or of amending Section 8 of the Constitution as Lippmann suggested, was remote. It is possible Lippmann realized this and was only offering an amendment solution in mockery of the "immediacy" of the need for reform at all. And by offering a solution, however remote, the critic could not be criticized for not at least thinking of an alternative to the proposal.

#### A Columnist's Prerogative

Since Lippmann wholly supported Roosevelt in the 1940 election,<sup>16</sup> discovering what motivated his 1937 criticism is difficult. Of the alternative explanations offered in this chapter, probably the columnist's conservative leanings lay beneath his criticism of Roosevelt's Court-packing proposal. The evidence supports that more than any other explanation.

Lippmann's early career influenced his philosophy in 1937, as discussed in previous chapters. He had been radical at Harvard, and during his first few jobs praised

---

<sup>16</sup>New York Herald Tribune, 7 November 1940.

socialism and criticized the evils of "modern capitalism."<sup>17</sup> But to Lippmann, socialism "meant humanitarianism, social reform, even, perhaps, welfare capitalism."<sup>18</sup>

In 1915, he wrote Drift and Mastery, the title implying that some control needed to be taken of the masses, otherwise a drifting economy would result. This book signified his "shift from extreme radicalism toward orthodox Progressivism."<sup>19</sup>

This period of confusion in Lippmann's career may have been tapped when Franklin Roosevelt was elected. Lippmann supported the principles of the New Deal in the early 1930s, but was unable to accept many of the New Deal measures in their entirety.<sup>20</sup> He was fearful Roosevelt would swerve from a "free collectivism" (as Lippmann had advocated in a Method of Freedom<sup>21</sup>) to socialism of the economy "along collective lines," a negation of liberalism.<sup>22</sup> In other words, Lippmann

---

<sup>17</sup>Edward L. Schapsmeier and Frederick H. Schapsmeier, Walter Lippmann: Philosopher-Journalist (Washington, D.C.: Public Affairs Press, 1969), pp. 7-11.

<sup>18</sup>Weingast, p. 11.

<sup>19</sup>Schapsmeier and Schapsmeier, p. 11.

<sup>20</sup>Weingast, p. 77.

<sup>21</sup>Walter Lippmann, The Method of Freedom (New York: The MacMillan Company, 1934).

<sup>22</sup>Weingast, p. 77.

believed in social reform and in the progressivism of Theodore Roosevelt and Woodrow Wilson, but was undecided as to which Party was more closely akin to his philosophies in the 1930s. He decided to align himself with the Democrats,<sup>23</sup> but was leary of Roosevelt's "liberalism."

Just as his socialist affiliation has been shown as "impermanent in character," so was his conservatism. Lippmann's writings "undoubtedly suggest a right-of-the-center orientation," David Weingast wrote, but added that his writings "have many times discomfited if not pained his well-to-do followers."<sup>24</sup> Therefore to suggest that Lippmann was totally conservative would be wrong. In fact, he considered himself a liberal. "Disturbing to the reader of Lippmann's books and columns, however, is the suspicion that to Lippmann 'liberalism' has meant different things at the same time."<sup>25</sup>

The best explanation of his criticism of Roosevelt's plan in 1937 is given by Weingast in his biography of Lippmann, Walter Lippmann: A Study of

---

<sup>23</sup>Schapsmeier and Schapsmeier, p. 11.

<sup>24</sup>Weingast, p. 117.

<sup>25</sup>Ibid., p. 119.

Personal Journalism. Weingast wrote of the phenomenon of the columnist's changing opinions:

Much, undoubtedly too much, has been made of the fact that in the course of his career Walter Lippmann has changed his position on certain controversial issues. His honesty and his convictions have been brought into question by critics who have, apparently, been unwilling to recognize that events and issues acquire new perspectives with the passing of time; that to change one's mind does not necessarily suggest a lack of virtue; that sometimes the test of courage lies in the modification of one's course rather than in adherence to it. Nor, apparently, have some of his readers made sufficient allowance for the fact that much of his writing is done under pressure and reflects transitory opinions that at the time of writing is done under pressure and reflects transitory opinions that at the time of writing appeared to him true and significant.<sup>26</sup>

This study of Lippmann's criticism of Roosevelt's plan to pack the Supreme Court shows that Lippmann honored his contact with the Herald Tribune, writing "freely" on topics of his choice, "expressing whatever opinions he holds." Though controversial, his opinions were respected by many readers, for many years. Selected areas for further study might be Lippmann as a socialist, Lippmann's reaction to Roosevelt's nine Court appointees, and Lippmann's role as adviser to Roosevelt.

---

<sup>26</sup>Ibid., p. 117.

## SELECTED BIBLIOGRAPHY



## SELECTED BIBLIOGRAPHY

### Primary Sources

- Lippmann, Walter. Drift and Mastery: An Attempt to Diagnose the Current Unrest. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1961.
- \_\_\_\_\_. . Early Writings. (Introduction and annotations by Arthur Schlesinger, Jr.) New York: Liveright, 1970.
- \_\_\_\_\_. . The Good Society. 1st ed. Boston: Little, Brown and Company, 1937.
- \_\_\_\_\_. . Interpretations 1931-1932. (Selected and edited by Allan Nevins) New York: The MacMillan Company, 1932.
- \_\_\_\_\_. . Interpretations 1933-1935. (Selected and edited by Allan Nevins) New York: The MacMillan Company, 1936.
- \_\_\_\_\_. . Isolation and Alliances: An American Speaks to the British. Boston: Little, Brown and Company, 1952.
- \_\_\_\_\_. . The Method of Freedom. New York: The Macmillan Company, 1934.
- \_\_\_\_\_. . The New Imperative. New York: The MacMillan Company, 1935.
- \_\_\_\_\_. . A New Social Order. New York: The John Day Company, 1933.
- \_\_\_\_\_. . A Preface to Politics. Ann Arbor: The University of Michigan Press, 1962.
- \_\_\_\_\_. . Public Persons. (Edited by Gilbert A. Harrision) New York: Liveright, 1976.
- \_\_\_\_\_. . The Stakes of Diplomacy. New York: The MacMillan Company, 1932.

Lippmann, Walter. The Supreme Court: Independent or Controlled? New York: Harper and Brothers, 1937.

Lippmann, Walter, and Nevins, Allan. A Modern Reader. Chicago: D. C. Heath and Company, 1936.

### Secondary Sources

Alfange, Dean. The Supreme Court and the National Will. Garden City, New York: Doubleday, Doran and Company, Inc., 1937.

Alsop, Joseph, and Kintner, Robert. Men Around the President. New York: Doubleday, Doran and Company, Inc., 1939.

Alsop, Joseph, and Catledge, Turner. The 168 Days. Garden City, New York: Doubleday, Doran and Company, Inc., 1938.

Baker, Leonard. Back to Back: The Duel between FDR and the Supreme Court. New York: The MacMillan Company, 1967.

Barnes, William R.; and Littlefield, A. W., eds. The Supreme Court Issue and the Constitution: Comments Pro and Con by Distinguished Men. New York: Barnes and Noble, Inc., 1937.

Burns, James MacGregor. Roosevelt: The Lion and the Fox. New York: Harcourt, Brace and Company, 1956.

Eckrich, Arthur A., Jr. Ideologies and Utopias: The Impact of the New Deal on American Thought. Chicago: Quadrangle Books, 1969.

Ewing, Cortez A. M. The Judges of the Supreme Court, 1789-1937. Minneapolis: The University of Minnesota Press, 1938.

Gordon, Rosalie M. Nine Men Against America. New York: The Devin-Adair Company, 1958.

Grey, David L. The Supreme Court and the News Media. Evanston, Illinois: Northwestern University Press, 1968.

- Gunther, Gerald. Cases and Materials on Constitutional Law. 9th ed. Mineola, New York: The Foundation Press, Inc., 1975.
- High, Stanley. Roosevelt--And Then? New York: Harper and Brothers Publishers, 1937.
- Jackson, Robert H. The Struggle for Judicial Supremacy. New York: Vintage Books, 1941.
- Lawrence, David. Supreme Court or Political Puppets? New York: D. Appleton-Century Company, Inc., 1937.
- Leuchtenburg, William Edward. "The Origins of Franklin D. Roosevelt's 'Court-Packing Plan.'" In Essays on the New Deal, p. 347. Edited by Harold M. Hollingsworth. Sup. Ct. Rev., 1966.
- Moley, Raymond. After Seven Years. New York: Harper and Brothers, Publishers, 1939.
- Murphy, Walter F. Congress and the Court. Chicago: The University of Chicago Press, 1962.
- Phelps, Michael Edward. "Franklin Delano Roosevelt and the Press: The 1936 Presidential Campaign." M.A. thesis, Michigan State University, 1971.
- Pusey, Merlo J. Charles Evans Hughes. Vol. 2. New York: Columbia University Press, 1963.
- \_\_\_\_\_. The Supreme Court Crisis. New York: The MacMillan Company, 1937.
- Rosenman, Samuel I., ed. The Public Papers and Addresses of Franklin D. Roosevelt. 1937 vol. New York: The MacMillan Company, 1941.
- Schapsmeier, Edward L., and Schapsmeier, Frederick H. Walter Lippmann: Philosopher-Journalist. Washington, D.C.: Public Affairs Press, 1969.
- Schlesinger, Arthur M., Jr. The Coming of the New Deal. Boston: Houghton Mifflin Company, 1959.
- \_\_\_\_\_. The Crisis of the Old Order. Boston: Houghton Mifflin Company, 1957.

Schlesinger, Arthur M., Jr. The Politics of Upheaval.  
Boston: Houghton Mifflin Company, 1960.

Schmidhuaser, John R. The Supreme Court--Its Politics,  
Personalities, and Procedures. New York: Holt,  
Rinehart and Winston, 1960.

Scigliano, Robert. The Supreme Court and the Presidency.  
New York: The Free Press, 1971.

Tugwell, R. G. The Brains Trust. New York: The Viking  
Press, 1968.

Weingast, David Elliott. "Walter Lippmann: A Content  
Analysis." Public Opinion Quarterly 13 (1950):  
296-302.

\_\_\_\_\_. Walter Lippmann: A Study in Personal  
Journalism. New Brunswick, New Jersey: Rutgers  
University Press, 1949.

Westin, Alan F., ed. An Autobiography of the Supreme  
Court. New York: The MacMillan Company, 1963.

Wolfskill, George, and Hudson, John A. All But the  
People: Franklin D. Roosevelt and his Critics.  
New York: The MacMillan Company, 1969.

#### Miscellaneous

Lippmann, Walter. "Today and Tomorrow." New York  
Herald Tribune, 1937.

\_\_\_\_\_. "Today and Tomorrow." New York Herald Tribune,  
8 September 1931, 20 August 1935, 8 September 1936,  
7 November 1940.

Editor and Publisher. LXIX, 10 October; 19 December 1936.

#### Public Documents

U.S. Congress. Senate. Debates and hearings on Senate  
Bill 1392. 75th Cong., 1st sess., 19 February 1937.  
Congressional Record, vol. 81, part 9.

U.S. Congress. Senate. Debates and hearings on Senate  
Bill 1392. 75th Cong., 1st sess., 6 July 1937.  
Congressional Record, vol. 81, part 10.

U.S. Congress. Senate. Senator Johnson speaking for the Recommitment of Senate Bill 1392. 75th Cong., 1st sess., 22 July 1937. Congressional Record, vol. 81, part 6.

U.S. Congress. Senate. Senator Robinson speaking for the Amendment of Senate Bill 1392. 75th Cong., 1st sess., 6 July 1937. Congressional Record, vol. 81, part 6.

#### Reference Sources

Barzun, Jacques, and Graff, Henry F. The Modern Researcher. rev. ed. Chicago: Harcourt, Brace and World, Inc., 1970.

Emery, Edwin. The Press and America. 3rd ed. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1972.

Rivers, William L. Finding Facts. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1975.

Shafer, Robert Jones, ed. A Guide to Historical Method. rev. ed. Homewood, Illinois: The Dorsey Press, 1975.





MICHIGAN STATE UNIV. LIBRARIES



31293104527886