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PRESIDENT ROOSEVELT’S ATTITUDE TOWARD THE COURTS

CHARLES W SMITH, JR.*

In the years since Franklin D. Roosevelt became President the American constitutional system has been undergoing a revolution. The exigencies of modern conditions have seemed to make necessary some modification in the traditional relations between the legislative, executive, and judicial branches of the government, between the nation and the states, and between economic interests and the political sovereign. The power of the executive has grown. The power of the nation has been extended. The "no man's land" which the courts had erected to insure the immunity of economic interests from the control of the political sovereign has been swept away. The revolution has been bigger than the ambit of President Roosevelt's power, but he has given it dynamic leadership. He has been in a position practically to remake the Supreme Court, which is traditionally the authoritative interpreter of the Constitution. His attitude toward the judiciary has been of basic importance in his contribution to the methods of the revolution.

In the minds of many Americans the Constitution has come to stand for the ultimate in political wisdom and the Supreme Court is its guardian. Constitution and Court "are symbols of an ancient sureness and a comforting stability" Franklin Roosevelt.

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1 See Walton Hamilton, The Smoldering Constitutional Crisis (January 18, 1943) 108 New Republic 73-76.
2 For a discussion of the development of this no man's land see ROBERT H. JACKSON, THE STRUGGLE FOR JUDICIAL SUPREMACY, 39-74.
3 Max Lerner, Constitution and Court as Symbols (1937) 46 Yale Law Journal 1290.
velt revealed early in his political career that he did not think of the Constitution as a bulwark of the status quo. Speaking in favor of the League of Nations in 1919, he replied to arguments that the League covenant would run contrary to the American Constitution with the statement that the Constitution was a document "through which a team and horses can be driven on every page." In a campaign speech in 1920, when he was a candidate for Vice President, he declared that the Constitution was incomplete and always had been. Its success depended upon its interpretation and its application to existing conditions by human beings. "I think of government as a living thing," he said, "and not just as a mass of written statutes." Later, as Governor of New York, he declared in a radio address that the Constitution of the United States had "proved itself the most marvelously elastic compilation of rules of government ever written." In his first presidential inaugural address he expressed a conviction that the Constitution was so simple and practical that extraordinary needs could always be met "by changes in emphasis and arrangement without loss of essential form." Toward the close of his first term as President, after he had seen many of his cherished measures held unconstitutional by the Supreme Court, he expressed his intention to continue to march forward in the belief "that the Constitution is intended to meet and to fit the amazing physical, economic and social requirements that confront us in this modern generation."

If this is the proper conception of the Constitution, judges who interpret the Constitution as a static, or even conservative, influence on the government are guilty at least of poor statesmanship or lack of vision. Of course one might assume that the courts know best, and accept their judgments as having a kind of Olympian finality, regardless of one's own private opinion of the Constitution and the constitutional. Roosevelt never felt such a veneration for the courts.

Shortly before he took office as Governor of New York, Roosevelt expressed a desire for reform in the procedure of state courts, in an interview with a journalist. He criticized the

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5 Ibid. October 28, 1920, p. 5.
6 March 2, 1930. 1 THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT, 370.
7 Ibid. 15.
8 June 10, 1936. 5 Ibid. 200.
law's delay, its complexity and its costliness. He said that he intended to appoint a commission composed, not of lawyers alone, but of able citizens in all walks of life to bring about a reform of the system.\(^9\) In his first annual message to the legislature he suggested that the subject of legal procedure be given careful study "by a body of citizens representing the bench, the bar and laymen."\(^{10}\) When the legislature passed a bill providing for the creation of a body composed wholly of lawyers he vetoed it. In his annual message to the legislature in 1930 he renewed his recommendation for the creation of a mixed commission of laymen and lawyers.\(^{11}\)

In an address to the New York City bar association Roosevelt discussed the need for court reform at some length and explained why he considered the participation of laymen vitally important. He suggested that lawyers as members of a learned profession had been able to "invest their business with an almost mystical attribute that forbids the laying of the hard hands of common sense on the things that they are doing." In his opinion there was nothing "sacrosanct" in ordinary legal problems. The kind of thorough-going reform which he desired would require a great amount of patient planning and labor, he realized, and for the best results laymen must participate. After calling attention to the layman's concern in court procedure he said, "Moreover, laymen have no vested interests, except in unusual instances, in the administration of justice. Moreover, the intelligent layman is able to cut through cobwebs that in some way frustrate the efforts of the lawyers."\(^{12}\)

Not all of Roosevelt's comments on the courts were adversely critical. In 1930 he condemned Republican disparagement of New York's courts as "reprehensible" and "cowardly" and accused the Republicans of attempting "to break down the confidence of the public in this bulwark of our civilization."\(^{13}\) Notwithstanding this spirited defense of the judiciary it is obvious that Roosevelt, when he came to the presidency, did not

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\(^{10}\) January 2, 1929, 1 The Public Papers and Addresses of Franklin D. Roosevelt, 86.
\(^{11}\) January 1, 1930. Ibid. 88.
\(^{12}\) March 12, 1932. Ibid. 271-278.
\(^{13}\) November 1, 1930. Ibid. 435.
have any particular awe or reverence for the courts. He was interested in the practical administration of justice.

The democratic landslide in the presidential election of 1932 was largely a result of the strong popular feeling generated by the depression that began in 1929. President Roosevelt moved swiftly into action with a program of New Deal legislation designed to deal with the economic and social problems that the depression had thrown into sharp relief. This program departed from conventional standards of national government action and its constitutionality could be sustained only by a very liberal construction of the Constitution. Such a construction was not forthcoming. In spite of the political upheaval of 1932, the Supreme Court continued to reflect a conservative economic and constitutional viewpoint. The Roosevelt program attempted to subordinate economic power to political authority. The Court tried to prevent this subordination. The result was a string of decisions holding important statutes unconstitutional. At a time when progressive sentiment was stronger than it had been for generations the Court was throwing out New Deal measures, apparently with something like the whole-souled satisfaction that John Marshall felt whenever he was able to thwart President Thomas Jefferson.

As the Court's decisions followed one another with a regularity that established judicial negation as a policy, resentment mounted in the ranks of the political leaders of the New Deal. However, for the most part the New Dealers remained silent for a long time. On a few occasions they spoke out. After the NRA decision in 1935, President Roosevelt accused the Court of interpreting the commerce clause of the Constitution in the light of the "horse and buggy days" of 1789. Some time later, the Secretary of Agriculture, Henry Wallace, referred to an action of the Supreme Court as "probably the greatest legalized


15 Schechter Corp. v. United States, 295 U. S. 495.

steal in American history." A conviction began to grow, both in the New Deal high command and in some groups among the public, that something should be done to blast away the opposition of the Court. Writing later the President said, "Of course I gave no consideration at all to the suggestion which came from some quarters that we do nothing about it." In spite of a growing volume of adverse criticism of the Court from political leaders in sympathy with the New Deal program, no one knew just what was the attitude of the masses of the people. Roosevelt was wary and doubtful of the political expediency of rough treatment of the Court in 1935 and 1936. Consequently proposals for curbing the power of the judiciary were not allowed to become an important issue in the presidential campaign of 1936.

After his re-election by an almost unprecedented majority, President Roosevelt soon moved to deal with the problem of judicial obstruction to his program. Different plans and suggestions had been coming to the White House for some time and the President had talked with numerous individuals on the subject. Following his victory in the election, he settled down to a process of elimination of the plans suggested. After discussing the issues and objectives with many people, he and the Attorney General and the Solicitor General decided on the specific step to be taken. On February 5, 1937, he proposed to Congress that the President be authorized to appoint an additional justice to the Supreme Court for each justice over seventy who did not retire, with fifteen as the maximum size of the court, and that he be allowed to appoint an additional judge for every judge over seventy years of age in the lower courts who did not retire.

This proposal aroused the vigorous opposition of various powerful conservative and influential groups and individuals. The American Bar Association polled the lawyers of the country and revealed that they were overwhelmingly opposed to the proposal. The President of the Association declared that

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38 June 3, 1941. Introduction to The Public Papers and Addresses of Franklin D. Roosevelt, 1937 volume, LXXI.
President Roosevelt envisaged a "legislative form of government, with an executive veto, but without power in the courts to restrain legislation under the Constitution." He was convinced that the plan would destroy popular respect for the Constitution "and fundamentally alter the theories of government upon which we have heretofore proceeded."21

To Roosevelt the issue was whether or not the will of the people as expressed in the elections of 1932, 1934, and 1936 was to be carried out. As he saw it, the Supreme Court had been blocking the will of the overwhelming majority of the American people for twenty years. Its invalidation of the New Deal program was simply the climax to a long period of obstruction.22 The situation in 1937 was so critical that to permit the will of the people to be thwarted indefinitely was dangerous. Democracy had been discarded in other countries because it had failed for the time being to meet human needs. Democracy had not yet failed in the United States, but it had not fully succeeded, and if the government could not meet the needs of the people for security and economic freedom, there was grave danger that ultimately it might be compelled to give way to some alien type of government.23

There had been some talk of seeking remedy through amendment of the Constitution. Roosevelt was opposed to this because he thought an amendment would take too long and because it would still be subject to the interpretation of biased judges who would read into it the same prejudices they had read into the original Constitution. But he held also that there was nothing wrong with the Constitution. If interpreted rightly, it was an instrument of progress.24 The trouble was with the Supreme Court justices who had laid a "dead hand" on the "program of progress." The Constitution must be saved from the Court and the Court from itself. "We must find a way to take an appeal from the Supreme Court to the Constitution it-

22 Introduction to The Public Papers and Addresses of Franklin D. Roosevelt, 1937 volume, XLVII.
23 Ibid. XLVII. See also Roosevelt's address of March 4, 1937, 115-116.
24 Ibid. LXXIII. See also Annual Message to Congress, January 6, 1937, 5 The Public Papers and Addresses of Franklin D. Roosevelt, 839.
self." The trouble was not even with the Court as an institution. The trouble was with some of the men on the Court.

The President's theory was that the American government with its three branches was like a three horse team. The people were in the driver's seat. There was work to be done which the people wanted done. Two of the horses, the President and Congress, were pulling together to get the field plowed. The Supreme Court by refusing to work with the team was preventing the field from being plowed. The Court had not kept the place assigned to it in the American form of government, but had set itself up as a "super-legislature" and had blocked action by reading into the Constitution meanings which were not there and had never been intended to be there.

Apparently Roosevelt never had much doubt that the people would eventually have their way. In the course of the 1936 campaign he expressed a faith that future history would show, as past history had repeatedly shown, that a return to reactionary practices is always short lived. "Having tasted the benefits of liberation, men and women do not for long forego those benefits." In his first annual message to Congress after the election, he said, "it is not to be assumed that there will be a prolonged failure to bring legislative and judicial action into closer harmony." Then, after the fight over his proposal to enlarge the Court had ended, he declared in a Constitution Day address that the Constitution was a layman's document and every effort in the past to construe it as a lawyer's contract had failed. "Whenever legalistic interpretation has clashed with contemporary sense on great questions of broad national policy, ultimately the people and the Congress have had their way."

Although the fight to enlarge the Court was lost, that august body changed its ways even before there was any change in personnel. A distinguished English political scientist, writing

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25 March 9, 1937. The Public Papers and Addresses of Franklin D. Roosevelt, 1937 volume, 126. See also Introduction, L.
26 Ibid. LXIII, 130.
28 August 3, 1936. 5 The Public Papers and Addresses of Franklin D. Roosevelt, 281.
29 January 6, 1937. Ibid. 639.
when the fight had just ended, declared that it was not certain that the President had been finally defeated. "For, in the first place his pressure has secured for him a temporarily favourable Court, and, in the second, he has struck so resounding a blow at its prestige, as to make it certain that its next period of illiberal construction will evoke an immense movement for the drastic reorganization of its powers."  

The President himself apparently was convinced that the victory had been his. A lost battle had won a war. He considered this victory one of "the most important domestic achievements" of his first two terms in office.

A long range view, however, will probably lead to the belief that the victory was only a temporary one. The President had hoped to establish a method of providing for "a continuous and recurrent addition of new blood, new vigor, new experience, and new outlook," to the federal judiciary. In this he was defeated. Robert H. Jackson, later to be appointed to the Supreme Court, wrote in a book published in 1941 that the struggle had produced "no permanent reconciliation between the principles of representative government and the opposing principle of judicial authority." The end had been a truce between judicial authority and the popular will which might, or might not develop into permanent peace. The Justices themselves had been left to correct the errors of the Court. And Mr. Jackson pointed out that the efforts of previous liberal Presidents to reform the Court by additions to its personnel had failed to work any permanent change.

Although the fight to enlarge the Court was spectacular and significant, President Roosevelt’s attitude toward the federal court system was revealed also in the nature of his appointments to judgeships. In fact, the personnel of the courts is so important that the kind of men appointed to the courts might be said to be the basic criterion of any president’s attitude toward the courts.

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22 June 24, 1938. The Public Papers and Addresses of Franklin D. Roosevelt, 1937 volume, 393.
23 Introduction. Ibid. xlvi.
24 Ibid. lxiv.
When President Hoover appointed Judge Benjamin N. Cardozo to the Supreme Court of the United States in 1932, Franklin D. Roosevelt issued a public statement expressing his approval and saying, "I know of no jurist more learned in the law, more liberal in its interpretation and more insistent that simple justice keep step with the progress of civilization and the bettering of the lot of the average individuals who make up mankind." This may be taken as Mr. Roosevelt's ideal for judicial appointments. However, since he became President he has not always lived up to that ideal in his appointments. He would doubtless agree with Machiavelli's dictum, "for how we live is so far removed from how we ought to live, that he who abandons what is done for what ought to be done, will rather learn to bring about his own ruin than his preservation."

A survey of the Roosevelt appointments leaves no doubt that politics has been an important factor in numerous instances. We read, for example, that on January 4, 1936, Frank V Kelly, Democratic leader of Brooklyn, lunched with President Roosevelt and recommended the appointment of Matthew T. Abruzzo to be a district judge in New York, and that he conferred also with Postmaster General Farley. A month later we read that the President nominated Mr. Abruzzo for the position, and this news item says, "Mr. Abruzzo is a borough-wide power among the Italian-American voters." A presidential election was just ahead.

In the middle of June, 1936, the President sent to the Senate the names of two other appointees to federal district courts in New York. These two appointments aroused a storm of protest, outside Democratic organization circles. The New York Times editorially said, "It is painful to have to record that the President has again treated important appointments to the federal courts as if they were ordinary partisan spoils. About all that has been made public regarding the qualification of one of the nominees is that he has been politically active in the Bronx, is a follower of Boss Flynn and a friend of Chairman Farley. The other has been repeatedly in the Assembly and the Senate at Albany, as a representative of Tammany, and his appointment is reported to be agreeable to Boss Dooling, who,

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27 Ibid. January 5, 1936, p. 22.
28 Ibid. February 4, 1936, p. 11.
for various reasons, is supposed to be in need of placating by the Democratic Administration." Strong protest against these appointments came also from the New York City Bar Association and from the New York County Lawyers' Association.

In 1939 Thomas G. Walker was nominated by President Roosevelt to be a district court judge in New Jersey. The news item telling of his appointment said that Mr. Walker had been favored for the position by Mayor Frank Hague ever since the vacancy occurred and it continued, "The Mayor journeyed to Hyde Park not long ago when the President was there and later was quoted as saying he would support Mr. Roosevelt for a third term." In the minds of those who do not approve of Machiavellian standards in politics President Roosevelt's court appointments reached bottom in 1942 when he sent to the Senate for appointment to a district court the name of Thomas F. Meaney, a Hague protege whom the Governor of New Jersey referred to as "a pawn in the hands of the boss of Jersey City."

Not all of Roosevelt's judicial appointments have been made for purely partisan political reasons. He has made some particularly good appointments to the Circuit Courts of Appeals, if one uses the apparent legal qualifications of the appointee as a standard of judgment. The appointment of Judge Walter E. Treanor to the Circuit Court of Appeals for the seventh circuit, in 1937, is an example. Judge Treanor was an able student of the law who had been a member of the Supreme Court of Indiana and had previously been a member of the faculty of Indiana University's Law School. Law school deans have fared reasonably well. Charles E. Clark, dean of the Yale Law School, Herschel W. Arant, dean of the Ohio State University Law School and Calvert Magruder, vice dean of the Harvard Law School, were appointed to Circuit Courts of Appeals in 1939, and Herbert F. Goodrich, dean of the University of Pennsylvania Law School was appointed in 1940. Armstead M. Dobie, dean of the University of Virginia Law School, was appointed a dis-

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See *Congressional Record* for June 30, 1942 (77th Congress, 2d Session, 5959, unbound issue).
trict judge and a few months later appointed to a Circuit Court of Appeals in 1939. Wiley Rutledge, dean at the University of Iowa, was appointed to the Court of Appeals of the District of Columbia in 1939, and in 1943 elevated to the Supreme Court. Thurman Arnold, one time dean at West Virginia University and later professor of law at Yale University, was nominated for the Court of Appeals of the District of Columbia in 1943.

In the annual convention of the American Bar Association in 1936, Judge Merrill E. Otis, of the Western District of Missouri, presented a paper in which he gave statistics indicating that the men appointed to judicial office by President Roosevelt were inferior in educational qualifications to those named by the six preceding Presidents. His figures were for appointments of circuit and district judges and were as follows.\(^4\)

<table>
<thead>
<tr>
<th>Appointees of</th>
<th>College trained</th>
<th>College graduates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Theodore Roosevelt</td>
<td>77.0%</td>
<td>55.8%</td>
</tr>
<tr>
<td>William H. Taft</td>
<td>77.0%</td>
<td>55.8%</td>
</tr>
<tr>
<td>Woodrow Wilson</td>
<td>69.0%</td>
<td>54.0%</td>
</tr>
<tr>
<td>Warren G. Harding</td>
<td>69.0%</td>
<td>54.8%</td>
</tr>
<tr>
<td>Calvin Coolidge</td>
<td>73.1%</td>
<td>52.4%</td>
</tr>
<tr>
<td>Herbert Hoover</td>
<td>66.6%</td>
<td>57.8%</td>
</tr>
<tr>
<td>Franklin D. Roosevelt</td>
<td>49.0%</td>
<td>25.5%</td>
</tr>
</tbody>
</table>

There is no statistical way by which the fitness of judges can be measured, but statistics may give clues of more or less value as to the general qualifications of a group of men. Age, education and previous experience are important elements in the background of a judicial appointee. A young man may be more liberal in outlook than an old man, at any rate he will probably be on the court longer. Other things being equal, a man with previous experience as a judge would seem to be better qualified than one without such experience. If a man has been a member of Congress, his appointment to a federal court would seem to be a political appointment.

At the beginning of 1943 there were fifty-six justices on the United States courts of appeals,\(^4\) and one hundred and eighty-

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\(^4\) Merrill E. Otis, *Organized for Service*, 61 Annual Report of the American Bar Association 413-414 (1936). Commenting on these statistics, The New York Times suggested, editorially, that college training was not an adequate criterion of a judge's fitness for office and pointed out that a high percentage of the federal judges who have been impeached were college graduates. The New York Times, August 25, 1936, p. 20.

\(^4\) Including the courts for the ten circuits and the District of Columbia.
five judges of district courts in the United States proper (including the District of Columbia). Of these judges, thirty-eight courts of appeals justices and one hundred district court judges were appointed by President Roosevelt.

The following table gives information as to the age, education and experience of the Roosevelt appointees.

### AGE, EDUCATION, AND EXPERIENCE OF ROOSEVELT COURT APPOINTEES IN PERCENTAGES

<table>
<thead>
<tr>
<th></th>
<th>District Court Appointees</th>
<th>Court of Appeals Court Appointees</th>
<th>District and Appeals Court Appointments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Age at time of appointment</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>60 and over</td>
<td>6.0</td>
<td>15.8</td>
<td>8.7</td>
</tr>
<tr>
<td>50–59</td>
<td>46.0</td>
<td>47.4</td>
<td>46.4</td>
</tr>
<tr>
<td>49 and less</td>
<td>43.0</td>
<td>34.2</td>
<td>40.6</td>
</tr>
<tr>
<td>Information not available</td>
<td>5.0</td>
<td>2.6</td>
<td>4.3</td>
</tr>
</tbody>
</table>

| **Education**             |                           |                                  |                                       |
| College graduates         | 38.0                      | 50.0                             | 41.3                                  |
| Not college graduates     | 52.0                      | 47.4                             | 50.7                                  |
| Information not available | 10.0                      | 2.6                              | 8.0                                   |

| **Previous judicial experience** |                           |                                  |                                       |
| Previously judges          | 25.0                      | 44.7                             | 30.4                                  |
| Previously not judges      | 64.0                      | 52.6                             | 60.9                                  |
| Information not available  | 11.0                      | 2.6                              | 8.7                                   |

| **Membership in Congress** |                           |                                  |                                       |
| Previously members of Congress | 13.0                  | 10.5                             | 12.3                                  |
| Previously not members of Congress | 75.0                | 86.8                             | 78.3                                  |
| Information not available  | 12.0                      | 2.6                              | 9.4                                   |

The table indicates that appointees to the courts of appeals are better qualified by education and judicial experience than appointees to the district courts. A smaller percent have been members of Congress, which may indicate that the appointments.

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45 These numbers are from a list of judges furnished by the Administrative Office of the United States Courts, January 15, 1943.


47 The term college graduate is used here to mean that the appointee had a college degree other than a law degree.
were less political. They were older men at the time of appointment. Excellent individual appointments to the Circuit Courts of Appeals have already been mentioned. The appointees as a whole could hardly be called "old men," but, in view of the President's emphasis on the undesirability of old judges, it is a little surprising to find that almost nine percent of his appointees have been sixty years old or older.

Roosevelt's appointments to the Supreme Court have been made with an eye on political considerations and on the social and economic views of the men appointed. His appointees have been comparatively young men. Of the eight, Black, Reed, Frankfurter, Douglas, Murphy, Byrnes, Jackson, and Rutledge, only Byrnes was past sixty years of age at the time of his appointment. The others ranged in age from forty to fifty-six years. Only Rutledge came to the Court with any previous experience as judge of an important court. Frankfurter had an established reputation as an outstanding legal authority when he was appointed. The appointments of Black, Murphy, Byrnes, and Jackson were the most political.

Political appointments are not necessarily bad ones. John Marshall was a Federalist politician without any impressive background of legal training when he was put on the Court, but he was an able statesman and is generally considered the greatest Chief Justice in the Court's history. Roger B. Taney was one of the ablest lawyers of his time, but he was appointed to the Court because he was a trusted lieutenant of President Jackson. Hugo Black was a political appointee of Roosevelt with a legal background not much more impressive than John Marshall's but he has already made an enviable record on the Court and is quite likely to go down in history as one of the great justices.48

Although political appointees to the Supreme Court sometimes have been very good ones, no evidence is available to indicate that appointments to lesser courts made to please Senators who want to pay off political debts or to please party bosses who need patronage have ever turned out so well. President Roose-

48See Harold C. Havighurst, Mr. Justice Black (June, 1938) 1 National Lawyers Guild Quarterly 181-185; Vincent M. Barnett, Jr., Mr. Justice Black and the Supreme Court (1940-1941) 8 University of Chicago Law Review 20-41; Richard F. Green, Mr Justice Black versus the Supreme Court (1939) 4 University of Newark Law Review 113-148.
velt's record in these matters betrays an attitude toward the judiciary which could hardly be called one of reverence, and it is not calculated to inspire reverence in the minds of others. But Mr. Roosevelt was not the first to treat judicial appointments as partisan spoils.\textsuperscript{49}

A University of Michigan law professor wrote in 1931, "District and circuit judgeships have come to be regarded as jobs to be handed out at the behest of local party chiefs."\textsuperscript{50} There is no convincing proof that the Roosevelt appointments to the lower federal courts have been worse, or better, by any standard, than the average appointments of other Presidents.

A clue to Mr. Roosevelt's attitude toward the courts, perhaps related to the nature of his appointments, is the readiness he has shown to take men from the courts for appointments to administrative positions. James F Byrnes resigned from the Supreme Court, after having been on it only a little longer than one year, to accept appointment as Director of Economic Stabilization. Robert P Patterson, who had been appointed to the Circuit Court of Appeals by the President in 1939, was appointed Assistant Secretary of War in 1940. Francis Biddle, who had been appointed to the Circuit Court of Appeals in 1939, was made Solicitor General early in 1940. Such shifting of men on and off high courts tends to make a judicial appointment seem just like any other important government job. It certainly tends to dispel any aura of sacredness that may hover around the courts in the minds of romantic conservatives.

Roosevelt's primary concern has been with policy rather than administration. He has viewed the courts as merely one part of the administrative machinery of government, and has not been particularly concerned with them except when they blocked his policies. To him courts are no more sacred than the other branches of government. Judges are no more infallible than other public officials and no more entitled to respect. The ideal judge is a person learned in the law, with a broad and liberal point of view. But practically the President must work with

\textsuperscript{49} For a discussion of the political, personal, and other factors that entered into the appointment of Supreme Court justices from 1853 to 1939 see J. P Frank, \textit{The Appointment of Supreme Court Justices} (1941) Wisconsin Law Review 172-210, 343-379, 461-512.

\textsuperscript{50} Burke Shartel, \textit{Federal Judges—Appointment, Supervision, and Removal—Some Possibilities Under the Constitution} (June, 1931) 15 Journal of the American Judicature Society 22.
Senators and party bosses in order to obtain support for his policies, therefore he will appoint to judgeships men recommended by these politicians without too much quibbling about their qualifications just as he will appoint men to postmasterships or make them federal marshals for similar reasons. The important thing is to get the work done. The will of the people as expressed at the polls must be carried out.

In the development of constitutional law the Supreme Court is much more important than the lesser courts, and the Supreme Court since 1937 has pursued a policy of self-restraint. In this period no act of Congress has been held unconstitutional. Roger B. Taney, Jacksonian jurist, Chief Justice a hundred years ago, set the states free to deal with social and economic problems. His philosophy was well expressed in his Charles River Bridge decision, in the course of which he said, "But the object and end of all government is to promote the happiness and prosperity of the community by which it is established, and it can never be assumed, that the government intended to diminish its power of accomplishing the end for which it was created."51 Now the Supreme Court has set the nation free. The majority of the justices now accept Chief Justice Stone's idea that "Courts are not the only agency of government that must be assumed to have the capacity to govern."52 Franklin D. Roosevelt's attitude toward the courts as translated into his influence on the American constitutional system has been that of a kind of twentieth century Jacksonianism.53

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51 Charles River Bridge v. Warren Bridge, 11 Peters 420, 547 (1837)
See also License Cases, 5 Howard 573 (1847).
53 This is not to imply that the justices on the Roosevelt constituted Court are always unanimous in their decisions. For a discussion of their recent voting records see C. Herman Pritchett, The Voting Behavior of the Supreme Court (1942) 4 Journal of Politics 491-506.