

FDR and the Nine Old Men - Part II

Lead: With the New Deal set at peril, President Franklin Delano Roosevelt faced a U. S. Supreme Court that was decimating his legislative agenda through the process of judicial review.

Intro. *A Moment in Time* with Dan Roberts.

Content: In over two centuries of sometimes radical social and economic change, the United States Constitution has remained relatively undisturbed. It is essentially the same document ratified by the infant nation in the late

18th Century. After the Bill of Rights, only sixteen times has use been made of the intricate amending procedure proscribed in Article V. Constitutional change by amendment is possible but not easy, therefore other techniques have been used to adapt constitutional structures to the needs of a changing world.

One of the most frequently used methods of modifying the constitution has been judicial review. Beginning with Chief Justice John Marshall in the early nineteenth century the Supreme Court asserted its right to review acts of Congress and Executive procedure to determine the measures' constitutionality. This essentially "un-democratic" procedure is seen by

many as quicker and less difficult than the amendment process, yet it has its own problems. The Court can be far more progressive than the nation as a whole such as in the desegregation cases decided in *Brown v. Board of Education*. The Court's change was correct from in every moral and legal perspective but because it was far out in front of the nation, the ruling produced great dispute and resistance particularly in those sections of the country still committed to legal racism. On the other hand the Court, depending on its make-up, can be a source of reaction, blocking Congress and the President and impeding social and economic change sought by the majority of citizens. *Dred Scott v. Sanford* was a provocative case of

such judicial stonewalling.

In the depths of the Depression, the New Deal administration of Franklin Roosevelt and its allies in Congress passed a series of laws they hoped would help the suffering and pain that was gripping the country. These changes affected many powerful corporations and well-entrenched special interests. Lawsuits challenging these laws began to make their way through the judicial system and in 1935 reached the Supreme Court. After an initial success, one New Deal law after another fell under the judicial ax of a Court majority deeply skeptical of Roosevelt's expansive view of the federal government's power.

Next time: Nine old men.

**At the University of Richmond, this
is Dan Roberts.**

Resources

Kyvig, David. "The Road Not Taken," *Political Science Quarterly* 103 (3, Fall, 1989), 463-481.

**Schlesinger, Arthur M., Jr. "Roosevelt and the Courts,"
Society 24 (November - December, 1986), 53-57.**

**"F.D.R.'s Scheme (expanding size of U.S. Supreme Court),"
Time 124, (October 8, 1984), 34.**

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