

## New Deal



Roosevelt's energetic public personality-- "the only thing we have to fear is fear itself," and his "fireside chats" helped restore confidence.

The term *New Deal* refers to the domestic program of President Franklin D. Roosevelt, or in a more general sense, to his first two terms of office (1933–1941). The Supreme Court had a great impact on the New Deal—and vice versa.

Roosevelt's approach to the crisis of the Great Depression was characterized by an attitude of experimentation and a confidence that sufficient constitutional power already existed to enable the states and the nation to surmount economic difficulties. The Constitution was "so simple and practical," Roosevelt averred in a fireside chat, "that it can always meet extraordinary needs." The first hundred days of Roosevelt's administration produced a freshet of federal regulatory agencies and legislation, including the Agricultural Adjustment Act of 1933 (AAA) and the National Industrial Recovery Act of 1933 (NIRA). Despite the presence of a conservative bloc dubbed by journalists the "Four Horsemen" (from *Revelation* 6:2–8)—Justices Willis Van Devanter, James C.

McReynolds, Pierce Butler, and George Sutherland—the Court at first accepted some New Deal initiatives as well as important state regulatory legislation (*Home Building and Loan Association v. Blaisdell*, 1934; *Nebbia v. New York*, 1934). Federal measures included Congress's action voiding contractual clauses providing for payment in specie, upheld for private contracts in the so-called *Gold Clause Cases* of 1935, and creation of the Tennessee Valley Authority, sustained in *Ashwander v. Tennessee Valley Authority* (1936).

But the conservative bloc, with the accession of Justice Owen Roberts, and joined sometimes by Chief Justice Charles Evans Hughes, struck powerful blows at the New Deal program in *Schechter Poultry Corp. v. United States* (1935), voiding the NIRA, and *United States v. Butler* (1936), voiding the AAA. *Carter v. Carter Coal Co.* (1936) exhumed the discredited *United States v. E.C. Knight Co.* (1895) to strike down an exercise of commerce power. Together with decisions negating state regulatory efforts (e.g., *Morehead v. New York ex rel. Tipaldo*, 1936), these decisions justified reasonable observers' concluding that the Court was likely to be blindly obstructive to all efforts to cope with the Depression and to be wedded to the obsolete and regressive precedents of the *Lochner* era.

Roosevelt responded with the ill-conceived court-packing plan of 1937, which, although a tactical failure, was strategically successful in accomplishing a turnabout in the Court's judicial direction. Beginning with *West Coast Hotel Co. v. Parrish* (1937), the Court accepted state and federal regulatory legislation. It systematically dismantled the entire structure of laissez-faire constitutionalism (including *Lochner* and *Knight*), and with it the dogmas of substantive due process and freedom of contract. The members of the conservative bloc (as well as Justices Benjamin N. Cardozo, Louis D. Brandeis, and Chief Justice Hughes) retired, enabling Roosevelt to make a string of judicial appointments that solidified the triumph of New Deal experimentation: Hugo L. Black, Felix Frankfurter, William O. Douglas, Frank Murphy, Stanley F. Reed, and Robert H. Jackson.

— William M. Wiecek