Franklin D. Roosevelt’s presidency profoundly transformed the U.S. Supreme Court, setting it on a course toward permitting the federal government a greater role in regulating industry, protecting individual liberties, and supporting civil rights. But FDR’s influence on this change was not as straightforward as he might have wished. The shift began after a historic clash between the White House and high court that injured FDR politically, even as it saved legislation at the very core of his domestic program, the New Deal.

When FDR became president, America’s once high-flying economy had fallen disastrously to earth. With few legal protections in the workplace and jobs scarce, industrial workers had never been more vulnerable. Farmers couldn’t make a living, no matter how many acres they planted. Americans by the millions became homeless and went hungry.

FDR promised an energetic response. “The country needs and, unless I mistake its temper, the country demands bold, persistent experimentation," he said on the campaign trail in 1932. “The millions who are in want will not stand by silently forever while the things to satisfy their needs are within easy reach.”

In 1932 and 1936, Americans enthusiastically embraced FDR’s vision of a federal government ready to use its power to make real improvements in their lives. They voted for him overwhelmingly. With Democratic majorities (augmented by Republican progressives) dominating both houses of Congress, the legislature also resoundingly endorsed FDR’s program of bold experimentation.
A judicial stumbling block
But the third branch of government in America’s famous system of checks and balances—the judiciary, and in particular the U.S. Supreme Court—did not share in the country’s appetite for fundamental change and, finding FDR’s New Deal alarmingly radical, checked its progress again and again.

In FDR’s first term, the White House, working in tandem with Congress, produced an unprecedented array of new legislation, with sixteen major bills passing in just the first one hundred days. But opponents in business and elsewhere repeatedly sued to block the laws. As these challenges reached the high court in 1935, four justices, with the help of one or two swing votes, began striking down the new laws as unconstitutional. The press dubbed the four anti–New Deal jurists the Four Horsemen, in a tongue-in-cheek reference to the biblical harbingers of the apocalypse. The Supreme Court consistently rejected laws giving the federal government authority to regulate industrial or agricultural production—FDR’s efforts to protect workers, raise employment, and lift farm incomes.

Flush from his astounding electoral victory of 1936, FDR decided to do something about this frustrating stumbling block. He presented a plan to add seats to the Supreme Court, permanently reconfiguring its basic structure. Ultimately the plan failed, but not before a key swing jurist changed his mind and began voting for New Deal programs.

The court takes a turn
The record is equivocal as to whether Justice Owen Roberts bowed to public uproar over the Supreme Court’s obstructive role, acquiesced before the threat of FDR’s restructuring proposal, or simply evolved in his thinking. But with Roberts’s change of heart, the court made an about-face in 1937, upholding programs like Social Security and a minimum wage that rested on the same legal underpinnings as laws the court had previously invalidated. In the same year, a conservative justice retired, and FDR made the first of eight new appointments to the Supreme Court, giving the seat to Hugo Black, a pro–New Deal senator from Alabama who would go on to establish a reputation as a staunch supporter of civil liberties such as free speech, serving on the court until 1971.

Historians tend to agree that FDR’s court-reform plan—critics called it a “court-packing” scheme—was a serious misstep that failed to recognize Americans’ deep commitment to their government’s separation of powers and cost him politically. It helped divide the Democratic Party and contributed to its electoral losses in the 1938 midterm elections.

But the court’s turnaround in 1937, along with FDR’s appointments over the next six years, created a philosophically diverse court whose jurisprudence would continue to break new ground long after FDR’s death, perhaps most notably in dismantling the Jim Crow racial segregation that had been legal in America since the late nineteenth century.

Saying No to the New Deal: The Four Horsemen

Supreme Court Justice Willis Van Devanter. Appointed to the court in 1910. After his retirement in June 1937 at age seventy-eight, Van Devanter said his ill health might have persuaded him to retire five years earlier except that he wanted to hold the line against Franklin D. Roosevelt’s New Deal and relied on his salary to pay the bills. In March 1937, FDR signed an act restoring the justices’ full-salary pensions, which had been cut in 1933. LOC

Supreme Court Justice Pierce Butler. Appointed to the court in 1922, Butler voted to invalidate every piece of New Deal legislation that came before the justices. His fellow jurist Oliver Wendell Holmes, who retired from the court in 1932 at age ninety, had called Butler a “monolith.” LOC

Supreme Court Justice James McReynolds. McReynolds joined the court in 1914. Even after the justices began ruling in favor of New Deal legislation in 1937, McReynolds consistently dissented. In his 1937 dissent from the majority that upheld Social Security and unemployment benefits, McReynolds wrote, “I can not find any authority in the Constitution for making the Federal Government the great almoner of public charity throughout the United States.” LOC

Supreme Court Justice George Sutherland. Appointed in 1922, Sutherland retired from the court in early 1938, soon after colleagues began upholding New Deal laws that regulated the economy for social ends such as protecting workers. Sutherland’s resignation, which closely followed that of his conservative colleague Willis Van Devanter, gave Franklin D. Roosevelt his second Supreme Court appointment. LOC
Striking Down the New Deal

The American public widely regarded the Supreme Court of the 1920s and '30s as no friend of working men and women, and a boon to business owners. The court struck down laws securing a minimum wage, maximum work hours, and the right to unionize for workers. It rejected pension programs and child labor restrictions, price codes and farm subsidies. In short, the court's decisions generally maintained the long tradition of laissez-faire economics.

The majorities supporting these decisions based them on a conservative reading of the Constitution. This included a strict reading of the Tenth Amendment stating that powers not granted to the federal government in the Constitution are reserved for the states or the people. "The Constitution grants to Congress no power to regulate for the promotion of the general welfare," as the majority proclaimed in a 1936 case striking down a minimum wage and other regulation in the coal industry. The court also referred to the due process clauses of the Fifth and Fourteenth Amendments, finding that laws governing workplace issues infringed the liberty of individuals to enter contracts under whatever terms they chose. And the court narrowly interpreted the federal government's authority under the Constitution to regulate interstate commerce, shielding places of production—from mines to chicken plants—from federal oversight.

The court's negative rulings on New Deal programs began in the spring of 1935, when Justice Owen Roberts voted with four solidly conservative justices to overturn the Railroad Retirement Act, which established a pension plan for railroad workers, in part an effort to open jobs for younger workers. The program, the majority wrote, did not bear on interstate commerce but seemed "essentially related solely to the social welfare of the worker," an area the federal government had no power to regulate.
There followed a string of similar rulings. On “Black Monday”—May 27, 1935—the court threw out three New Deal provisions, including the National Industrial Recovery Act, which set industry-wide wage and price codes in an effort to buoy employment. In January 1936, the court invalidated the Agricultural Adjustment Act, whose subsidies to farmers to limit production (and thus raise prices) went “beyond the powers delegated to the federal government.” In May it struck down the Bituminous Coal Conservation Act, which aimed to set voluntary standards for minimum wages, maximum hours, and prices in the coal industry; jurists said that mining did not constitute interstate commerce and that the law’s tax incentives were merely “a penalty to coerce submission.”

In June the court ruled that even a state could not set minimum wage standards. In this case, a Brooklyn laundry manager had been prosecuted for coercing laundresses to kick back nearly $5 of the $14.88 pay required for a forty-seven-hour week under a new law in New York created to guarantee a living wage for women and children. The law—signed on May 1, 1933 by FDR’s successor as New York governor, Herbert Lehman—was a response to exploitation that had these marginalized workers literally going hungry on full-time work. But the minimum wage law, the court insisted, violated the individuals’ liberty to enter contracts on any terms.

Justice Harlan Stone, a progressive Republican but hardly a firebrand, wrote a powerful dissent. “There is grim irony,” he remarked, “in speaking of the freedom of contract of those who, because of their economic necessities, give their service for less than is needful to keep body and soul together. But if this is freedom of contract, no one has ever denied that it is freedom which may be restrained, notwithstanding the Fourteenth Amendment, by a statute passed in the public interest.” Stone went on to observe that “personal economic predilections” appeared to be the only grounds for arguing otherwise. Much of the press and public agreed with Stone. The court’s decision on the New York minimum wage law was roundly unpopular.

By 1935 the Supreme Court’s apparently unbending stance on efforts to create social safeguards within the capitalist marketplace had become a major preoccupation of White House policymakers trying to draft new legislation, including a committee, headed by Secretary of Labor Frances Perkins, responsible for drawing up a plan to establish federal Social Security and unemployment insurance. The committee settled on a constitutional rationale for Social Security—Congress’s right to levy taxes on one hand and, on the other, to spend funds for the general welfare—after receiving advice from two of the court’s liberal justices, Louis Brandeis and Stone. Years later, Perkins would reveal that Stone had conveyed his counsel to her at a tea given by his wife, leaning over conspiratorially and murmuring, “The taxing power, my dear, the taxing power. You can do anything under the taxing power.”

Yet the framers of the Agricultural Adjustment Act, the New Deal’s program to subsidize farmers to curtail production using taxes levied on food processing, had adopted a similar legal strategy—and would be rebuffed by the high court in 1936.
Franklin D. Roosevelt’s Court-Reform Proposal

Franklin D. Roosevelt emerged from the election of 1936 with a ringing mandate. He had garnered an unprecedented 60.8 percent of the popular vote. Americans had seen the New Deal in action, and they liked what they saw. But the president was intensely frustrated that his efforts to innovate solutions to an earthshaking economic crisis had been stymied repeatedly by the Supreme Court. So, working with Attorney General Homer Cummings and a Princeton professor, he devised a plan for judicial "reform."

FDR’s Judiciary Reorganization bill proposed to give the president the authority to appoint an additional Supreme Court justice for every sitting justice over the age of seventy. When FDR presented the proposal in February 1937, the jurists’ average age was seventy-one. The plan would right away give FDR six nominations, potentially expanding the court to fifteen members.

He presented the bill as a proposal to address inefficiency in the court’s workflow, but it was quite evident to even the most casual observers that its most important aim was to tip the judicial balance in favor of the New Deal. Indeed, in making his case for the restructuring, FDR argued that the Supreme Court had acted single-handedly to thwart the people’s will, blocking policies the country wanted and needed.

On March 4, speaking at a Democratic dinner, FDR listed major programs of the New Deal, repeating the mantra, “You know who assumed the power to veto, and did veto that program.” He compared the United States government to a three-horse team. “If three well-matched horses are put to the task of plowing up a field where the going is heavy, and the team of three pull as one, the field will be plowed,” he said. “If one horse lies down in the traces or plunges off in another direction, the field will not be plowed.” In a fireside chat broadcast to the nation a few days later, he took up the theme again. “It is the American people themselves who want the furrow plowed,” he said. “It is the American people themselves who expect the third horse to pull in unison with the other two.”

Though much of the public and the press had shared FDR’s frustration with the governmental logjam, many, including some of FDR’s own supporters, were also leery of tampering with the Supreme Court for essentially political reasons. Others were incensed that FDR had simply unveiled the proposal without congressional input or were put off by its seemingly disingenuous casting as a plan to assist overworked elderly jurists.

The proposal became a subject of intense national debate, with letters, press reports, and political cartoons coming down on both sides. FDR, feeling certain that his popular mandate justified the bill and that his support in Congress would assure its passage, was determined to push it through. Tom Connally, a Texas Democrat on the Senate’s Judiciary Committee and a New Deal supporter, led a fight to hold up the bill in committee and build public opposition to it. The Senate finally began debating the bill on July 2.

But in the meantime, just a few weeks after FDR’s fireside chat, the impetus for the bill had begun to evaporate. On March 29, the court ruled in favor of a Washington
II. Hope, Recovery, Reform: The Great Depression and FDR’s New Deal

State minimum wage law very much like the New York law it had struck down less than a year before. Justice Owen Roberts sided with the majority in a move that would go down in history as “the switch in time that saved nine.”

Then the court upheld the National Labor Relations Act (which guaranteed the right to unionize), holding that Congress had the right to regulate a steel plant that had fired union workers, based on the plant’s “close and substantial relation to interstate commerce,” a relation the court had expressly denied in the case of other production facilities. In perhaps the biggest surprise of all, on May 24, Roberts joined the majorities that upheld the Social Security Act’s retirement and unemployment benefits against three separate challenges. In their opinions, the justices raised an eminently practical point: the Depression had shown the country that unemployment and impoverishment in old age were widespread problems that the states could not effectively address alone. In the same month, a conservative justice, Willis Van Devanter, announced his retirement.

As the court relinquished its opposition to the New Deal, pressure on New Dealers to advocate court reform ebbed away. After a major fighter for FDR’s restructuring bill, Senate Majority Leader Joseph T. Robinson, died unexpectedly of a heart attack in July, the legislation went back to committee. By summer’s end, the bill, stripped of its most controversial elements, called only for expediting procedures in lower federal courts. (Another law had passed earlier in the year making it possible for Supreme Court justices to take “senior status” with a full pension at age seventy; they would remain eligible to work in other federal courts but vacate their seat on the Supreme Court.)

These events brought in a new era in which the court became much more amenable to federal involvement in the domestic economy, permitting the emergence of the modern state. FDR would say that he had lost the court-reform battle but won the war. His opponents largely agreed. “Mr. Roosevelt has won,” said Wendell Willkie, the Indiana Republican who would run against FDR in 1940. “The Court is now his. . . . Mr. Roosevelt has accomplished exactly what he would have accomplished if Congress had approved his proposal.”

On the other hand, the episode gave courage to an emerging conservative coalition of Republicans and southern Democrats who saw that, even after his extraordinary landslide, FDR could be challenged and defeated. The core of the New Deal had been saved, but in the years that followed, New Deal lawmaking slowed considerably.

The Judicial Procedures Reform bill proposed to give the president the authority to appoint an additional Supreme Court justice for every sitting justice over the age of 70.
Franklin D. Roosevelt’s Supreme Court Legacy

The Supreme Court’s change of direction in the midst of debate over Franklin D. Roosevelt’s proposal to reorganize the court, sometimes referred to as the Constitutional Revolution of 1937, was certainly momentous. But the court, as it turned out, was perhaps even more deeply influenced by the addition of the very element FDR had sought in the first place—new blood.

By 1940 FDR had appointed five new justices—the majority—to the high court. By 1943 he had made three more new appointments. They were: Hugo Black (1937–71), Stanley Foreman Reed (1938–57), Felix Frankfurter (1939–62), William O. Douglas (1939–75), Frank Murphy (1940–49), James Francis Byrnes (1941–42), Robert H. Jackson (1941–54), and Wiley Rutledge (1943–49). All were, naturally, sympathetic to the president’s policies, and some, like Frankfurter and former attorney general Jackson, were good friends.

This court expanded the definition of interstate commerce to allow broader federal jurisdiction, and the court abandoned the stance that, as FDR had bluntly put it, “The right under a private contract to exact a pound of flesh was more sacred than the main objectives of the Constitution to establish an enduring Nation.”

Some of the most important issues to come before this court would have to do with race and civil rights. The high court was composed entirely of FDR appointees when it approved the wartime “exclusion” of ethnic Japanese from the West Coast as potential enemy threats. Writing in late 1944, Black explained, “Compulsory exclusion of large groups of citizens from their homes, except under circumstances of direst emergency and peril, is inconsistent with our basic governmental institutions. But when, under conditions of modern warfare, our shores are threatened by hostile forces, the power to protect must be commensurate with the threatened danger.”

The decision did not stand the test of time, and in 1998, the Japanese American from California who had challenged the exclusion order, Fred T. Korematsu, received the Presidential Medal of Freedom.

**FDR’s Supreme Court Appointees, with Years of Service**

[Images of appointed justices]
But the court FDR helped to assemble would have a prouder and more enduring legacy in the dismantling of Jim Crow.

FDR’s first two appointments, Black and Reed, helped form the majority in Missouri ex rel. Gaines v. Canada—a landmark desegregation case validating African American Lloyd Gaines’s challenge to the University of Missouri Law School. The court ruled in late 1938 that since the state had no law school for blacks, excluding them violated the Constitution’s equal protection clause.

By 1941 Frankfurter, Douglas, and Murphy had joined Black and Reed on the bench, creating the first court dominated by FDR appointees. Within a year, this bloc tackled discrimination in interstate transportation and primary elections.

On April 28, 1941, in Mitchell v. the U.S., the Roosevelt court unanimously supported a suit brought by the only black member of Congress, Arthur Mitchell of Illinois, challenging enforcement of an 1891 Arkansas law that required separate cars for blacks on trains. The court deemed Mitchell’s removal from the white car to be “manifestly a discrimination against him . . . based solely upon the fact that he was a Negro.” The problem, according to the court, wasn’t segregation (which would remain legal for years) but the inferiority of the Negro car to which Mitchell had been consigned; he had been denied “equality of accommodations.”

By 1944 Jackson and Rutledge had joined the court and FDR had appointed Harlan Stone chief justice. On April 3, the court, in an eight-to-one decision, voted to reverse its 1935 unanimous support for the whites-only Democratic primary, the southern segregationists’ most effective political tool. All the Roosevelt justices united to rule that any political primary that excluded African American voters violated the Constitution’s equal protection clause.

All three cases served as strong precedents for legal attacks on segregation. In 1954, when the Supreme Court unanimously rejected “separate but equal” public schools for black and white American children in the landmark Brown v. Board of Education, five of the nine justices striking at the heart of Jim Crow were FDR appointees.