

*Chapter Eleven*

FRICITION AND RECESSION

§ 1

**I**N A cold rain which slanted viciously down upon sodden throngs before the Capitol, Franklin D. Roosevelt, standing with head bared to the gusts, took the oath of office for his second term as President of the United States and began his Inaugural Address.

It was an eloquent address. Describing in glowing terms the improvement in national conditions which had taken place since 1933, he went on to ask, "Shall we pause now and turn our back upon the road that lies ahead?" His answer, of course, was No; and he proceeded in biting sentences to summarize the poverty and wretchedness that still remained to be defeated. "I see one-third of a nation ill-housed, ill-clad, ill-nourished," said he. "It is not in despair that I paint for you that picture. I paint it for you in hope, because the nation, seeing and understanding the injustice in it, proposes to paint it out. We are determined to make every American citizen the subject of his country's interest and concern, and we will never regard any faithful law-abiding group within our borders as superfluous. The test of our progress is not whether we add more to the abundance of those who have much, it is whether we provide enough for those who have too little."

Down in the crowd below, New Dealers tried to hold on to their streaming umbrellas and clap simultaneously—and cheered anyhow. This was the sort of fighting humanitarianism they liked. Yet everybody in the crowd, New Dealer or skeptic or opponent, was listening intently for

something more specific. How did Roosevelt propose to proceed along the "road that lies ahead," and in particular how did he propose to deal with the Supreme Court, which stood right in the middle of that road as Roosevelt saw it? During the almost twenty months that had elapsed since the Court had smashed the NRA he had been biding his time. All through the 1936 campaign he had left the Court issue severely alone. Now, with the seal of majority approval upon him, would he speak?

Twice already today he had drawn the minds of the crowd to the overarching question. When he took the oath of office he had not been content to answer Chief Justice Hughes with a simple "I do," but with his left hand upon the Bible and his right hand upraised he had repeated the whole historic oath, with sharp emphasis upon the word "Constitution." Early in the Inaugural Address he had remarked, "The Constitution of 1787 did not make our democracy impotent." What more would there be? The crowd waited, the rain beating down upon them. There was no further reference to the Court, direct or indirect.

The deluge from the heavens on that twentieth of January, 1937, might have been taken as an unhappy omen. In a direct physical sense it was indeed to be one; for that rainstorm, following previous rains and being followed by others, was presently to set in motion the great Ohio River flood. Already down a thousand hillsides from Pennsylvania to Arkansas were coursing the muddy rivulets which would join to inundate Cincinnati, Louisville, and many another city and town. And in another, broader sense those who regarded the storm as an ill omen were to be justified. For the new year of 1937 was to be marked by discords and disappointments. At that very moment, in Flint, Michigan, thousands of sit-down strikers were occupying the factories of the General Motors Corporation in what was

to prove the first major conflict of a widespread and ugly industrial war. By the time this war waned, the national economy was to slide down into a new crisis which would dash, for a long time to come, the high hopes set forth in the Inaugural Address. As for the President himself, even at that moment—though only his Attorney-General and perhaps three or four other men had an inkling of what was afoot—he had formulated and was having drafted in detail a plan of campaign against the Supreme Court, a plan which, although in the end it would bring him an indirect victory, would in the meantime lead him to a painful and damaging defeat.

## § 2

The General Motors Corporation was one of the mightiest of American economic principalities. It employed nearly a quarter of a million men and annually produced, in factories and assembly plants all over the country and abroad, some two million cars and trucks—over two-fifths of all those made in the United States, and well over a third of all those made in the whole world. Its management was theoretically answerable to over a third of a million stockholders, but was actually free from any direction or restraint by any but a handful of the biggest of them. (This army of stockholders wanted dividends; when dividends are not forthcoming, the innumerable small stockholders of such a monster corporation do not revolt—they sell.) The Corporation's net earnings, though they had dwindled to the vanishing point in 1932, had swelled in 1936 to nearly a quarter of a billion dollars—just about a thousand dollars per employee. The Corporation was half immune to competition of the traditional sort, for now it shared with Ford and Chrysler well over 90 per cent of the American automobile business; only those two other monster

organizations could combat it. It had become virtually independent of the banking houses of Wall Street, since it could finance out of earnings and depreciation allowances not only replacements and improvements and additions to its plants, but all manner of adventures in other economic fields; the building of ice boxes, airplane engines, Diesel locomotives, and so on; engineering research more effective than private inventors could manage. All in all, the General Motors inner management—a few men in New York and Detroit—exercised a power in American life probably greater than that of any state government.

Yet since the end of December, 1936, this principality had been paralyzed by groups of employees who had seized its key plants by simply sitting down at their jobs and defying all who would dislodge them. The stream of car production, dammed at these vital points, slowed to a halt; while the little city of Flint, Michigan, where most of the key plants were situated, became the scene of something close to civil war.

Behind the defiance of these workers lay a long story of business regimentation, labor insurgency, and government inefficacy.

When the New Deal, in 1933, had given to business managements the permission to organize, it had also, as we have seen, acknowledged the right of labor to organize. There was nothing revolutionary about this acknowledgment: previous laws such as the Clayton Act and Norris-La Guardia Act had included similar provisions—though the courts tended to whittle them down. But the express permission, written into Section 7a of the National Industrial Recovery Act and into the resulting NRA codes, had started a rush to join labor unions.

With this rush most of the leaders of the American Federation of Labor—slow-moving, inflexible, conservative-minded men, devoted to old-fashioned craft unionism and

jealous of their jurisdictional rights—had been quite unable to cope. A few of them, however, had been galvanized into sudden activity, and one in particular, John L. Lewis, the beetle-browed boss of the United Mine Workers, had seemed to become a new man. In previous years Lewis had been noted chiefly for his dictatorial and obstructive ways and had become unpopular among the Mine Workers themselves, but now he staked every last penny in the union treasury upon a whirlwind organizing campaign, sent out bands of organizers to tell the miners that "The law is on our side," and signed them up by the hundreds of thousands.

Presently the transformed Lewis became the strong leader of an aggressive group inside the Federation, a group which stood for industrial unionism—for collecting in a single organization all the workers in a given industry, whatever special crafts they might be engaged in. Along with Lewis the group included such men as Sidney Hillman, the astute head of the International Garment Workers; Charles P. Howard of the International Typographers; and David Dubinsky of the International Ladies Garment Workers. Believing that the craft-unionists of the Federation were consistently muffing opportunities to mobilize the workers in the yet-unorganized mass-production industries—steel, automobiles, rubber, and so on—these men gathered on October 9, 1935, to form a special organization of their own, inside the A. F. of L. They called it the Committee for Industrial Organization: the CIO. The rift deepened and the next year, 1936, the CIO was read out of the A. F. of L. and became, under Lewis's leadership, a competing federation—more alert, more headlong, better able to undertake rapid, large-scale organization, and quite prepared to go into party politics: its fast-growing unions contributed nearly half a million dollars to help Roosevelt defeat Landon.

Meanwhile the NRA had been tossed into the wastebasket by the Supreme Court. Congress had quickly passed a new law, the Wagner Labor Relations Act, to supplant Section 7a and specifically authorize collective bargaining, and had set up a National Labor Relations Board to enforce the Act. From the outset this Board faced a well-nigh impossible task. Many employers were coolly proceeding as if there were no Wagner Act at all, driving away union organizers and firing union members in the confident hope that the Supreme Court would upset the new law and things would return to the *status quo ante*. Other employers were setting up "company unions"; and though some of these were really representative agencies for genuine conciliation and adjustment, others were essentially fake unions, under the management's thumb. There was an ugly temper in the industrial towns, where men who had suffered acutely during the Depression, and had lost all respect for the princes of industry who hired and fired them, were ready to make trouble just as soon as they had full stomachs and a glimmer of hope. With labor in a rebellious mood, many unions inexperienced and undisciplined, racketeers and adventurers making hay as union organizers, jurisdictional disputes frequent, the labor high command divided, the status and meaning of the law uncertain, the attitude of the government shifting and ambiguous, many employers openly heedless of the law, and conflicting propagandas misrepresenting the issues, there was confusion everywhere. Anger deepened and strikes multiplied.

Among the automobile workers the militancy became especially hot. They complained of their low wages, arguing that although the hourly rates were higher than in most other industries, employment was spasmodic and the annual wage uncertain and unsatisfactory. They complained of the inexorable speed of the factory assembly lines. Especially they were angry at the way in which the corporations

spied on union members and found pretexts to discharge them in order to break the union movement. According to the official summary of the report of the La Follette Committee of the Senate, during the period of a little over two and a half years between January 1, 1934, and July 31, 1936, the General Motors Corporation alone "paid \$994,855.68 to detective agencies for spy services." Union leaders were shadowed, there were stool pigeons in the unions, and no man in the assembly line knew whether a casual reference to the union in a conversation with a fellow-workman might not be followed by his discharge on the ground of inefficiency.

An industrial union, the United Automobile Workers, had been formed among these men. In 1936 it was taken under the wing of the CIO and thereafter it grew with angry speed. In December, 1936, its new head, an energetic ex-minister, Homer Martin, tried to arrange a meeting with William S. Knudsen, the vice-president of General Motors, only to be told that labor matters should be taken up with the heads of the various plants; the vast General Motors principality, so well integrated in many respects, preferred not to act as if labor policy were a matter for integration. The plant managers were indisposed to negotiate. Thereupon the dispute boiled over.

John L. Lewis wanted no strike then in General Motors. He had his hands full organizing other industries, particularly steel. An automobile strike now might wreck the CIO in its infancy. Besides, the General Motors Corporation was far from unpopular with the general public, which liked its cars and thought of it as paying high wages. But the rebellion was irrepressible.

In plant after plant the men abruptly sat down—in the Cleveland Fisher Body plant, in Fisher Body No. 1 and Fisher Body No. 2 at Flint, in the Fleetwood and Cadillac plants at Detroit, and elsewhere. They kept enough men

inside each factory to hold it as a fortress, and while these men idled, played cards, and stood guard at doors and windows, food was sent in to them from union kitchens outside. Thus began one of the most gigantic industrial conflicts in American history.

The sit-down strike was not a new phenomenon. It had been tried, briefly but successfully, by employees of the Hormel Packing Company in Austin, Minnesota, as far back as 1933. There had been several sit-downs in Europe in 1934, and subsequently the method had been utilized on an immense scale in France and to a limited extent in the United States, particularly at Akron. But the General Motors strike was the first to bring it forcibly to the attention of the great American public, and the country buzzed with indignation, enthusiasm, and bewilderment, according to its various predilections, as it read the news from Flint.

Pretty clearly the sit-down was illegal. Liberal observers might point out that the traditional concepts of ownership did not seem quite applicable to a colossal corporation the ownership of which rested, not with the management, but with a third of a million stockholders, very few of whom were anywhere near as close to it as the workmen whose daily lives were bound up with it; but no new legal concepts applicable to such a principality had been formulated. And anyhow the angry men at Flint were beyond bothering about the law. They had discovered that the sit-down gave them new strategic advantages. Not only did it enable them to capture and hold the corporation's productive machinery; it also removed from them the usual temptation to violence, or the appearance of violence, which would alienate the general public. From the moment they sat down they were on the defensive, and the temptation to attack rested with the management. Behind the walls of the great factories they had only to sit and wait while Governor Murphy



of Michigan and Secretary of Labor Frances Perkins sought tirelessly to induce the General Motors management to sit down at a table with the United Automobile Workers.

On January 11 the management took the offensive. It turned the heat off in one of the besieged plants, Fisher Body No. 2, and the police gathered to prevent food from being sent in. The union leaders sent a sound truck to the scene, and with the magnified voice of an organizer to cheer them on, rushed food past the police to their friends inside. A few hours later the police stormed the plant, and were beaten off in a pitched battle in which the weapons included buckshot and tear gas (on the part of the police) and door hinges, metal pipes, and soda-pop bottles (on the part of the strikers). The sit-downers remained in possession. The National Guard was called out; but Governor Murphy—who was willing to let the law go unenforced if only he might prevent further violence—forbade the troops to attack. Still the sit-downers remained in possession.

The management turned to the courts for aid, securing an order that the factories must be evacuated—an order which failed of its moral effect when the judge who had issued it was revealed to be a large stockholder in General Motors. Again the management secured an evacuation order, from another judge, which threatened the strikers with imprisonment and a fine of no less than fifteen million dollars if they did not get out by three o'clock on the afternoon of February 3. The men, inflamed now by the sort of spirit which sends soldiers over the top, had no intention of getting out; and as three o'clock on that fiercely cold winter afternoon approached, and thousands of CIO members and sympathizers gathered from Detroit and Toledo and Akron and massed in the streets, armed with clubs, pokers, and crow-bars, while the soldiers of the National Guard waited grimly for the order to advance, one could see impending a tragic battle the scars of which might remain for generations.

But there was no battle. Instead, there was hilarious square dancing on the frozen lawns outside Fisher No. 1. For at the last moment Governor Murphy wired that he had induced Knudsen to confer, and told the sheriff to make no move. After an anxious week of conferences, the Governor was able to announce that a settlement had been reached. General Motors recognized the United Automobile Workers as the exclusive bargaining agency in seventeen of its plants, and would negotiate for a contract with it.

The strike was over—after lasting 44 days, involving 44,000 workers directly and 110,000 indirectly, and paralyzing 60 factories in 14 states. Governor Murphy had succeeded in settling it—at the expense of the prestige of the law—with a minimum of bloodshed. And the CIO had won a great victory: a chance to participate in the government of the General Motors principality.

What wonder that after this intoxicating triumph workers all over the country caught the sit-down fever and stopped work in factories, ten-cent stores, restaurants, all manner of workplaces, until the total of sit-down strikers in America from September 1936, through May, 1937, was brought to almost half a million? Or that partisanship for and against the CIO reached the boiling point? Or that John L. Lewis became the man of the hour, sagely discussed as a looming presidential candidate for 1940—a portentous dictator-in-the-making in the eyes of the conservatives, a hero immaculate in those of the liberals?

### § 3

Where would the next struggle come? In United States Steel?

That was what men were asking one another. But they were due for a surprise. For already the drama of the CIO

and United States Steel was far advanced—in complete secrecy.

On Saturday, January 9, 1937—when the General Motors strike was still young—John L. Lewis had been lunching with Senator Guffey of Pennsylvania at the Mayflower Hotel in Washington when Myron C. Taylor, the dignified chairman of the board of United States Steel, entered the dining-room with Mrs. Taylor. Taylor bowed to the Senator and the big labor leader as he threaded his way past their table; a moment later he came back to chat with them briefly; and after Lewis and Senator Guffey had finished lunch and the Senator had left, Lewis went over to the Taylors' table and remained with them for twenty minutes or so, in what appeared to be the most affable conversation. Other luncheon guests throughout the room were agog at the spectacle of the leader of the CIO and the leader of the most famous corporation in the country hobnobbing agreeably. They would have been much more surprised had they guessed that during the conversation the labor leader had said he would like to have a leisurely talk with Taylor, and Taylor had suggested that they confer the next day—Sunday—at his suite at the Mayflower. When Lewis arrived at the Mayflower the next day and took the elevator, nobody in that hotel lobby in news-hungry Washington had an inkling of where he was bound.

There followed a series of conferences, most of them at Taylor's house in New York—still without anybody's being the wiser. The result of these conferences was an agreement upon a formula by which the Steel Corporation would recognize and sign contracts with the Steel Workers Organizing Committee, a unit of the CIO. Taylor submitted this agreement to his astonished directors and won their consent to it; and on Monday, March 1, the news broke that Steel and the CIO were signing up.

“One of the steel workers just came in and said he heard

over the radio that U. S. Steel was meeting with the CIO," said an organizer over the telephone to Philip Murray of the SWOC; "I told him he was crazy and kicked him out of the office." "I can't believe you!" cried the president of one of the lesser steel companies when President Irwin of U. S. Steel called him on the telephone to tell him the news. No reconciliation during the nineteen-thirties until the reconciliation of Stalin and Hitler in 1939 caused more amazement. The steel industry as a whole had gone on record against the CIO unionization drive only the preceding summer. The Steel Corporation had been historically noted as an implacable foe of organized labor. The CIO's attitude toward corporation properties during the General Motors strike had brought most conservative industrialists almost to the point of apoplexy. Yet here was the Corporation making friends with the CIO—running up the white flag of surrender, cried the angry industrialists—without even a struggle! The news was too good to be true, cried the partisans of labor; surely there must be a catch in it somewhere! But there was no catch. The chairman of the Steel Corporation had simply recognized that the SWOC had already signed up enough workers—even out of the Corporation's own company unions—to cause a very ugly strike; that such a strike would cost the Corporation money, for foreign orders for steel for armaments were booming; that it would also cost the Corporation good will, for U. S. Steel had had a bad labor record in the past; and that the way of conciliation was the way of prudence.

Would there, then, be peace throughout the steel industry? There would not. "Little Steel"—the Bethlehem, Republic, National, Inland, and Youngstown Sheet and Tube companies—refused to sign contracts with the CIO. A strike was called that spring, for the insurgent workers could not be held back; and the companies fought it with all the weapons at their command. "Loyal workers" were protected

with riot guns and gas grenades. These "loyal workers" were fed inside company plants with supplies sent them by airplane and by parcel post. "Back-to-work" movements were organized and well publicized. Local police and deputies broke up picket lines (a crowd of picketers in South Chicago were pursued and shot down as they ran, leaving behind them four killed, six fatally injured, and ninety wounded, some thirty of them by gunfire). And there was a barrage, throughout the strike, of persuasive publicity, which represented the steel companies as defending the "right to work," as protecting men who wanted to work from the "intimidation, coercion, and violence" of "outside agitators" sent into peaceable and contented communities by the CIO. "I won't have a contract, verbal or written," said Tom M. Girdler, head of the Republic company and leader of the managements' side in the conflict, "with an irresponsible, racketeering, violent, communistic body like the CIO, and until they pass a law making me do it, I am not going to do it."

The strike was broken. The CIO was defeated.

Already the sit-down epidemic and the strike epidemic generally were waning, somewhat to the relief of most of the general public, which had become sick and tired of reading about riots, plug-ugly strikebreakers, and new strikes started by new labor factions after settlements had been reached; sick and tired of picket lines, vigilantes, and all the discords of industrial friction. And presently the ubiquitous disputes were to be almost automatically subdued by the approach of the business Recession of 1937-38.

#### § 4

During the very months in the spring and summer of 1937 when the country was most sharply divided by the disputes over the CIO, it was torn also by another major

conflict. For on February 5—when President Roosevelt's second term was hardly more than two weeks old, and the receding flood waters of the Ohio were leaving wreckage and slime in the streets of Louisville and Cincinnati, and Governor Murphy was beginning his conferences with Knudsen and Lewis for the settlement of the General Motors strike—the President almost nonchalantly tossed to Congress his plan for the liberalization of the Supreme Court. It was like tossing a cannon cracker into a munitions dump.

No President who was not buoyed up by a great confidence in the willingness of the majority of Congress and of the public to follow him wherever he might lead, and who was not by nature both daring and impulsive, would have gambled on such a plan without a preliminary sounding of opinion. For nearly two years Roosevelt had shown by his caution that he knew there was dynamite in the Supreme Court issue. But now he walked blithely up and set off the charge almost single-handed.

On the afternoon of February 4 the President asked the Speaker of the House, the Democratic leaders in the Senate and House, and the chairman of the two judiciary committees of Congress to meet with the Cabinet the following morning; and when, on the morning of the 5th, these gentlemen assembled in the Cabinet room at the White House, he explained to them briefly his new proposal and dismissed them with the word that he had a press conference to attend and would be sending his message to Congress, together with a draft of the proposed bill, at noon. Nobody in the room, according to the best evidence available at this writing, had had the least foreknowledge of the proposal except Attorney-General Homer Cummings, who had drafted it in consultation with the President. To all the rest of the Cabinet, and to the Congressional leaders, it came as a complete surprise. In the current vernacular, the President was not asking them, he was telling them.

It seems that some time in December, 1936, Cummings remembered that he had once found in the files of the Department of Justice a document drafted back in 1913 by Attorney-General McReynolds, who subsequently had become the most violently anti-New-Deal justice on the Supreme bench: this document was a suggestion that younger men be provided for the Federal judiciary by appointing a new judge for each judge who had reached the age of seventy (after serving at least ten years) and had failed to retire. Cummings had taken his discovery over to the White House, suggesting to Roosevelt that this principle might be applied now to the Federal judiciary—including the *Supreme Court*. Thus the Court would be enlarged to a maximum of fifteen members, Roosevelt would have a chance to nominate as the new members men who would not torpedo progressive legislation, and there would be no necessity for a Constitutional amendment. The whole thing would be done simply as a part of a mere plan for the provision of a larger and more alert judiciary.

Cummings had suggested other methods too of meeting the situation, but this one met with Roosevelt's immediate delight—a delight not decreased by the fact that there would be in it a well-concealed joke on Justice McReynolds. "That's the one, Homer!" cried the President, and straightway Cummings went to work upon it.

Not until January was well advanced, apparently, was anyone else except Solicitor-General Stanley Reed (and perhaps one or two subordinates in the Department of Justice) let in on the secret; then—according to Joseph Alsop and Turner Catledge—the plan was shown to Judge Rosenman and Donald Richberg; a little later it was shown to Tom Corcoran and perhaps two or three other intimate Presidential advisers. (Corcoran, for one, disliked it because of the indirection with which a major matter of governmental policy was attacked; he had been working on a quite differ-

ent plan.) The rest of the Cabinet and the Congressional leaders, as we have seen, were completely in the dark. Very much on his own responsibility, the Presidential quarterback gave the signal for the boldest of trick forward passes.

That not all the players on the team relished making interference for such a play was immediately apparent. As Hatton Sumner, chairman of the House judiciary committee, walked away from the meeting at the White House he remarked grimly to his colleagues, "Boys, here's where I cash in my chips." He was thereafter in opposition. And although the Presidential message made public at noon that day was innocent-looking to the last degree—it argued that "the personnel of the Federal judiciary is insufficient to meet the business before them," spoke of the tendency of judges to continue on the bench "in many instances far beyond their years of physical or mental capacity," and argued that "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"—a previously amenable Congress began at once to show signs of scattered but rising insurgency. Nor did there come from the country at large that overwhelming shout of approval which would have swept the plan to victory.

The reason was that three minority groups of voters combined in disapproval of the plan. First there was the large anti-New-Deal group who were ready to leap savagely upon any Roosevelt measure. Second, there were people who, however adverse their opinion of the Supreme Court of 1937, had a sharp emotional bias against interfering with the Court as an institution. Third, there were those who did not mind seeing the Court interfered with but thought the Roosevelt scheme too breezily disingenuous, and were offended at the idea of treating a grave governmental issue as a mere matter of arterial hardening. Even at the outset



these three groups added up to make a majority; and they were enlarged by subsequent events.

A group of wily Republican strategists in the Senate managed to persuade ex-President Hoover and other Republican leaders outside Congress to muffle their protests, knowing that if the Court plan were allowed to take on the color of a party issue the Democrats would rally round the flag. These Republican strategists were happy to let Senator Burton Wheeler, a Democrat, be the shining leader of the opposition. Then Chief Justice Hughes was persuaded to write a letter to Senator Wheeler explaining that the Supreme Court was keeping up with its calendar and thus undermining the implication that the "nine old men" could not get through their work. Most effective of all, the Court itself had a sharp attack of prudence.

If anybody had supposed that the black-robed gentlemen of the Court were not very human—that the processes of the Court were impersonal and unpolitical, an Olympian matching of the text of an Act with the text of the Constitution—he was due for a shock in March and April, 1937. Realizing that a series of rejections of liberal laws would strengthen the Roosevelt attack, the Court suddenly turned as mild as any sucking dove. It upheld the Railway Labor Act and the new version of the Frazier-Lemke Farm Mortgage Moratorium Act. It reversed itself upon minimum wages for women and children, upsetting the decision which had so embarrassed Governor Landon at the time of his nomination less than a year before. More remarkable still, it upheld the Wagner Labor Relations Act by a vote of 5 to 4, Justice Roberts moving quietly from the die-hard group into the liberal group, and thus confounding those industrialists who had cheerfully expected the National Labor Relations Board to be blown into oblivion. A little later the Court upheld the Social Security Act. The climax came when Justice Van Devanter resigned, thus giving Roosevelt

the chance to make his first appointment to the Court—and presumably to convert what had been usually a narrow anti-New-Deal majority into a narrow liberal majority.

All these moves weakened the Roosevelt side in Congress. "Why run for a train after you've caught it?" remarked Senator Byrnes after he heard the news of the Van Devanter resignation. An eloquent fireside chat by the President over the radio early in the battle over the bill had not started the snowball of public opinion rolling; a *Fortune* poll made during the spring indicated that only about one-third of the voters were definitely in favor of the plan. But the President would consider no compromise. The battle in Congress became more bitter. Not until June 3 did the President give ground. On that day he saw Senator Joseph T. Robinson, the Democratic leader (who was in an agony of embarrassment because he had long since been promised a seat on the Supreme bench, and the Van Devanter seat was now vacant, and nothing had been done about filling it) and agreed to let Robinson work out whatever compromise seemed necessary. But by this time the factions in Congress had become so ugly-tempered that even a compromise would be difficult to obtain.

Furiously, belligerently, exhaustingly, Robinson labored week after week as June gave way to July and the Washington heat became more sullen and Senatorial tempers became more frayed—until at last he came to the end of his elderly strength. On the morning of July 14 the Senator's maid became uneasy when he did not appear for breakfast. She looked in his bedroom and in the bathroom, did not see him and rang for the elevator boy to ask whether the Senator had gone out. He had not. The frightened maid returned with the elevator boy to the apartment. They found the Senator sprawled dead upon the bedroom floor—out of sight of the door—with a copy of the Congressional Record

lying beside his outstretched hand. Roosevelt's strongest musterer of Senatorial votes had gone down in the battle.

Eight days later came the end of the inevitable Presidential retreat, when Senator Logan rose and moved to recommit the Supreme Court bill to the judiciary committee in order that this committee might substitute for it a bill providing for certain changes in the Federal judiciary but not touching the Supreme Court.

"Is the Supreme Court out of it?" asked Senator Johnson of California.

"The Supreme Court is out of it," replied Senator Logan.

"Glory be to God!" exclaimed Johnson.

Thereupon the motion to recommit was passed, 70 to 21. The Supreme Court bill was definitely beaten.

Still the President had not moved to fill Justice Van Devanter's seat. On August 12 he did so—and sprung another surprise. For on the nomination form which he sent by messenger to the Senate he had filled in in his own hand the name of Hugo L. Black of Alabama—a liberal Senator whose enthusiasm for the New Deal had been constant. Black's legal experience had been so limited that leaders of the legal profession were outraged at his selection, but Roosevelt counted on the nomination going through because Black was a Senator and his colleagues would hesitate to oppose him. He was right: the Senate consented. Many Senators, already embittered by the Court plan fight, were further angered, however; and in a few weeks a new storm broke. The Pittsburgh *Post-Gazette* produced what looked like substantial documentary proof that many years before, when the Ku Klux Klan had been strong in Alabama, Black had joined it. A member of the Supreme Court, guardian of the civil liberties of America, was shown to have been a member of an organization whose business it had been to promote racial and religious intolerance!

The outcry was terrific. Justice Black had gone to Eng-

land; virtually besieged there by newspaper men, he refused to say a word. Not until the first of October, when he had returned to the United States, did he break his silence. On that evening he spoke over the radio from the living room of his friend, Claude E. Hamilton, Jr., in Chevy Chase; and millions of Americans heard him, in his soft Southern voice, confess that he had joined the Klan "about fifteen years ago," that he had "later resigned" and "never rejoined," and that he had "no sympathy whatever with any organization or group which, anywhere or at any time, arrogates to itself the un-American power to interfere in the slightest degree with complete religious freedom." The new Justice's concern for civil liberties was so apparent in his discourse that thereafter the storm of protest at his appointment died to a rumble.

Soon afterward Black took his seat on the bench, there to occupy a position considerably to the left, politically, of even the liberal justices already sitting. Now there was a definite liberal majority on the Court—which was later to be reinforced when the seats vacated by Justices Sutherland and Brandeis, who resigned, and Justice Cardozo, who died, were filled by the appointment of Solicitor-General Reed, Chairman William O. Douglas of the Securities and Exchange Commission, and Felix Frankfurter, long a behind-the-scenes adviser to the President. The Court's new inclination to look with a favorable eye upon the extension of Federal power became a settled trend.

Had Roosevelt, then, really lost his campaign? In one sense he had won: the Court no longer stood in his way. There was more than political ingenuity to his claim, in 1939, that he had attained his ultimate objective despite the defeat of his plan for reaching it. Yet in another sense he had lost. Many members of Congress hitherto glad to meet his wishes had been left sore and vindictive by the pressure put upon them to vote for a measure thrown at

them as the Court plan had been; and there were also Senators who were piqued at the Black incident, feeling that they had somehow been tricked into endorsing an appointment which later brought them embarrassment at home. When, a year later, Roosevelt tried to bring about the defeat at the polls of various Senators who had voted against the Court plan, these wounds were further inflamed. There was nothing new about the attempt of a President to reward his loyal supporters and eliminate his disloyal ones—although the Roosevelt offensive of 1938, to which the opposition press attached the opprobrious term of “purge,” was unusually bold and inclusive—but to make the vote upon the Supreme Court plan the test of loyalty was galling. The offensive failed. In friendships within Congress, in prestige within and without Congress, the President had suffered. In this sense the campaign over the Supreme Court had been for him a costly defeat.

## § 5

Sometimes the historian wishes that he were able to write several stories at once, presenting them perhaps in parallel columns, and that the human brain were so constructed that it could follow all these stories simultaneously without vertigo, thus gaining a livelier sense of the way in which numerous streams of events run side by side down the channel of time. The chronicle of American life during the spring and summer of 1937 offers a case in point. The drama of insurgent labor and the drama of Roosevelt against the Court were being played simultaneously, and all the while other disturbances and excitements were distracting our attention to other stages, other currents of tendency were flowing alongside these roaring torrents of change. How to give any sense of the multiplicity and heterogeneity of events without endless interruptions of what must, if any-

body is to be able to read it, be an orderly and consecutive narrative?

It was on the showery evening of May 6, 1937—while the CIO was getting ready for the strike in Little Steel and Administration emissaries were coaxing Congressmen to vote for the Roosevelt Court plan—that the great German airship Hindenburg, nosing toward the mooring mast at Lakehurst to complete its first transatlantic flight of 1937, suddenly became a torch flaming in the dusk, and the cheerful inconsequentialities that poured out of American radios were broken into by staccato reports of the horror on the New Jersey plain. Down went the hopes which had built a mooring mast on the Empire State Building and had risen high as the Hindenburg made crossing after crossing safely in 1936. Now the future of transatlantic lighter-than-air transport looked black indeed. Within a few weeks, as if to point the contrast, Pan-American clippers and Imperial Airways flying boats were making survey flights between Britain and America in preparation for the inauguration of a regular passenger service.

During those same months of 1937 the armies of Francisco Franco were besieging Madrid, the farce of "non-intervention" was permitting Mussolini to help him, American liberals were "eating lunch against Franco" (in Elmer Davis's phrase), and American Catholics were arguing that Franco's offensive was a holy crusade against communist hordes which burned churches and slew priests.

In midsummer (just as the Supreme Court plan was coming to defeat in the Senate) the Japanese began a systematic attack upon China, thus adding a new major invasion to the lengthening list of international aggressions; soon Japanese bombs were falling in Shanghai and Americans were wondering whether the United States would have to choose between the loss of all its traditional privileges in China—and perhaps the lives of oil salesmen and missionaries—and

war with Japan. What would happen if a stray bomb should hit Admiral Yarnell's flagship on the Whangpoo? And ought American women to wear lisle stockings on behalf of suffering China?

No picture of the America of the spring and summer of 1937 would be fully revealing which was not a montage of innumerable and varied scenes. It would show Walter Reuther and Richard Frankenstein, officials of the United Automobile Workers, being slugged and kicked and thrown bodily down on the concrete floor of a street overpass beside the Ford factory at River Rouge by "loyal employees," who according to the testimony of observers were hired thugs of the Ford "Service" organization. (Thus was the "American system" defended.) It would show American living rooms littered with books of reference and public librarians distracted by the fury of contestants in the Old Gold Puzzle Contest. (That picture of two women saying "All London is now sporting the wide-awake hat!" and "Do you know that Palmerston quits today as Foreign Sec?"—could the answer to that be Jenny Lind? And those two people picking oxeye daisies—would that be Sitting Bull or Morgan Dix?)

It would show Leon Henderson, the burly economic adviser of the WPA, becoming worried by the rising trend of prices, concocting a memorandum entitled "Boom or Bust," and communicating his fears of a business collapse to Secretary Morgenthau, who in turn communicated them to the President; whereupon the President issued a warning to the effect that certain prices—notably that of copper—were too high. (Henderson was right: trouble was coming, nor could such a statement avert it.)

It would show Americans bent over their newspapers as they devoured another series of installments of the royal romance that had so entranced them the preceding December: Wallis Warfield Simpson's divorce being declared absolute on May 3, 1937; the Duke of Windsor rushing from his

Austrian retreat to join her in France; their wedding taking place at Monts, France, on June 3; while, during the month's interval, the Duke's brother George was crowned King at Westminster with pomp and circumstance. "Yes, I set my alarm clock for five in the morning and listened to the whole coronation on the air and I could hear the crowds cheering as the King and Queen went by in the golden coach." "Wallis may not have got to be Queen, but that trousseau was *something*."

The montage of American life in the spring and summer of 1937 would include endless other pictures: glimpses of Dust Bowl drought victims climbing into their jalopies to seek a newer world in the orchards of California; Joe Louis knocking out Jim Braddock at Chicago and becoming the titular heavyweight champion of the world (though not for another year would he bring down Max Schmeling); Edgar Bergen leaping into national popularity as he and his dummy Charlie McCarthy became features of the Chase and Sanborn radio hour in May, 1937, and shortly made it the most popular program of all. (Bergen had been almost unknown before he appeared at the Rainbow Room in New York on November 11, 1936. He made such a hit there that on December 17 he went on the air. Within a few months he was a national celebrity. Was there any area of American life, except the entertainment area, where success could come so swiftly?)

The montage would show Amelia Earhart Putnam flying from New Guinea toward Howland Island, never to be seen again, though the Navy searched the Pacific rollers long and hard; visitors to New York running through the theatre advertisements and trying to make up their minds whether to see "You Can't Take It With You" or "Brother Rat" or "Room Service," or Maurice Evans in "King Richard II"; a private car bearing northward from Ormond Beach the body of John D. Rockefeller, dead at the age of ninety-seven;



men and women in darkened movie theatres visiting the peaceful gardens of Shangri La with Ronald Colman in Frank Capra's screen version of *Lost Horizon*, or listening to Jeanette MacDonald and Nelson Eddy in "Maytime"; bright billboards (donated by Outdoor Advertising, Inc., to the National Association of Manufacturers' campaign against labor-union influence) flaring with pictures of happy workmen over the title, "The American Way"; and Carolina students working out the steps of "The Big Apple," a modified square dance which would presently break the monotony of fox-trotting for hundreds of thousands of their agile contemporaries.

The montage would show American women putting on the oddest-looking peaked hats and openwork hats that had balanced on feminine heads for many a year. And, as the stock-market ticker stopped at noon on Saturday, August 14, 1937, it would show brokers debating whether Steel at 121 and Chrysler at 118 $\frac{5}{8}$  were still attractive purchases, or whether it might be a sensible idea to play a bit safe for a time.

It would have been a distinctly sensible idea to play safe. For the Recession of 1937-38 was at hand.

## § 6

When it came, it came fast—and apparently out of a clear sky.

Toward the end of August, 1937, the stock market sold off and business showed signs of slackening. After Labor Day the retreat became sharper. Stocks went down fast and far. On the morning of October 19 the market seemed near demoralization, with support for some stocks apparently quite lacking and selling orders pouring in from all over the country; the tape lagged twenty-five minutes behind the

trading, and when at last the gong rang for the closing, the total of transactions had come to 7,290,000 shares—the biggest total since the collapse of the New Deal Honeymoon bull market in the summer of 1933. All through the autumn of 1937 the decline continued. Only the fact that speculation previous to August had been moderate and well-margined, with the SEC watching carefully to prevent manipulation, kept the annihilation of values from having disastrous consequences outside the exchanges. Meanwhile business operations contracted steadily and rapidly. Not until the end of March, 1938, did the stock market touch bottom; not until May did business do so. Never even during the collapse of 1929-32 had the industrial index shrunk at such a terrific rate.

Look first at what happened to the prices of some leading stocks in the space of only seven and a half months:

	<i>Closing Price on August 14, 1937</i>		<i>Low Reached in March, 1938</i>
American Telephone & Telegraph	went from 170 $\frac{3}{4}$	to	111
Chrysler	from 118 $\frac{3}{4}$	to	35 $\frac{3}{4}$
General Electric	from 58 $\frac{3}{4}$	to	27 $\frac{1}{4}$
General Motors	from 60 $\frac{3}{4}$	to	25 $\frac{1}{2}$
New York Central	from 41 $\frac{1}{2}$	to	10
U. S. Steel	from 121	to	38
Westinghouse E. & M.	from 159 $\frac{1}{2}$	to	61 $\frac{1}{4}$

Then see what happened to our familiar measure of the state of business in general, the Federal Reserve Board's adjusted Index of Industrial Production. (Do you recall its previous ups and downs? Its high of 125 in 1929, its low of 58 in 1932 and of 59 in the bank-panic month of 1933, its rush up to 100 during the New Deal Honeymoon, its decline to 72 as the Honeymoon ended, and its wobbling rise thereafter?) At the end of 1936 the index had touched 121, which looked distinctly promising. As late as August, 1937, it stood at 117. Then it ran downhill, month after month, until by May, 1938, it had sunk to 76. *In nine months it had lost*

*just about two-thirds of the ground gained during all the New Deal years of painful ascent!*

What had happened? During the latter part of 1936 and the early part of 1937 there had taken place sharp increases in the prices of goods—some of them following increases in wages during the CIO's offensive, some of them affected by armament orders from Europe, many of them accentuated by a general impression, among business men, that "inflation" might be coming and that one had better buy before it was too late. The price of copper—which you will recall especially disturbed the President—had jumped in five months from 10 cents a pound to 16. Business concerns had been accumulating big inventories. When the time came to sell these goods at retail to the public, the purchasing power to absorb them just was not there.

For new investment still lagged; and what was more, the government spending campaign, which had kept pumping new money into the economic system, had been virtually halted. During the summer of 1937, Henry Morgenthau, the Secretary of the Treasury, had persuaded the President to make a real attempt to balance the budget; and although it did not yet seem to be quite in balance, nevertheless when one took into account the Social Security taxes which were being levied (and were not counted on the credit side of the budget, being set apart in a separate account), the government was for a time actually taking in from the public more than it paid out.

Result: the goods which were piled up on the shelves moved slowly. Business men became alarmed and cut production. Two million men were thrown out of work in the space of a few months—and became all the less able to buy what was for sale. The alarm increased, for men well remembered what a depression was like and were resolved to cherish no false hopes this time. The vicious spiral of deflation moved with all the more rapidity. Thus out of that appar-

ently clear sky—no great speculative boom in stocks or real estate, no tightness in credit, no overexpansion of capacity for making capital goods (in fact, not nearly enough expansion)—came the Recession of 1937-38.

It brought its ironies. Precisely a year after the beginning of the great sit-down strikes in General Motors, the president of the Corporation announced that about 30,000 production men were to be laid off immediately, and the remaining men would be reduced to a three-day week. What price CIO gains now? (If you had visited a General Motors dealer and seen the used cars accumulated on his hands, you would have realized why the Corporation had to stop glutting the market.)

Another irony was provided by the collapse of values on the New York Stock Exchange. Eight years before, when prices were tumbling, Richard Whitney had walked out on the floor and stemmed the panic by offering to buy Steel at 205; now Richard Whitney, deeply in debt, was misappropriating trust funds in the frantic attempt to save himself from bankruptcy. On Tuesday, March 8, 1938, just as trading for the day was beginning, President Gay of the Exchange mounted the rostrum and, as the gong rang to halt the brokers, read the amazing announcement that Richard Whitney & Company were suspended for "conduct inconsistent with just and equitable principles of trade." A few weeks later the hero of the 1929 panic, having confessed his all-too-obvious guilt, was on his way to Sing Sing.

Early the following winter—in December, 1938—the metropolis provided an even more extraordinary business scandal. F. Donald Coster, head of the reputable drug house of McKesson & Robbins, was discovered not only to have doctored the books of its crude drug department to the extent of many millions of dollars, but actually to be an ex-convict named Philip Musica who had changed his name and appearance and had successfully conducted a long mas-

querade as a respectable corporation official. When the police were closing in upon him, Coster-Musica gave this almost unbelievable episode its final touch of melodrama by committing suicide in his fine house at Fairfield, Connecticut. Again Wall Street was shaken, as men asked one another how bankers and accountants could have been so easily fooled. The Musica scandal, however, had no such overtones of significance as the collapse of Whitney. For Whitney had been the leader of the Old Guard of the Exchange. With his downfall during the Recession crumbled the last opposition to a reorganization of the Exchange in accordance with the wishes of Chairman William O. Douglas of the Securities and Exchange Commission. Soon the Exchange had a new paid President—a young man who had not even been acquainted with any member of it when he arrived in New York in 1931! Verily the old order had changed.

There was irony, too, in the earnest effort of Administration leaders to remain calm and hopeful-looking as they issued statements predicting an early upturn, while the economic landslide was roaring downhill. Hadn't there been another Administration, not so many years before, which they had ridiculed for doing much the same thing?

As the Recession deepened, there rose angry voices from the business community and the conservative press. The whole thing was the Administration's fault. This was a "Roosevelt Depression." With malicious glee they quoted a previous boast of the President's, made while the business indices were climbing: "We planned it that way." Well, this was what his planning came to. Especially they blamed the undistributed profits tax—a curious measure which was proving one of the less successful bright ideas of the Administration and which stirred the business world to particular wrath.

"Five years ago, with magnificent courage and resoluteness of purpose, President Roosevelt gave the financial and

business communities of the nation an invigorating hope that banished fear," wrote David Lawrence on March 28, 1938. "Today, the same man has aroused in the financial and business communities a fear amounting almost to terror and a distrust which has broken down the morale of the whole economic machinery. . . . What Mr. Roosevelt has done—and I believe he has not done it intentionally—is to break down the spirit and faith of the business and financial world in the actual safety of a citizen's property and his savings. To strike down this bulwark of the whole economic system is to breed panic and fear of indescribably dangerous proportions."

Strong words—yet they were not unrepresentative of business opinion generally. So obsessed had many business men become with their *idée fixe* that nothing the Administration could do would mollify them. On November 10, 1937, Secretary Morgenthau, in a speech before the New York Academy of Political Science, announced that the Administration would do everything possible to balance the budget. His audience appeared half-pleased, half-amused, and wholly unconvinced. (The Morgenthau speech, as it happened, had been carefully revised and approved by the President.) Addressing Congress at the beginning of 1938, Roosevelt spoke in cordial terms of the need for co-operation between government and business. There was no resulting uprush of "confidence." At that moment the President was making a deliberate effort to pursue a conservative and conciliatory course, conferring with big business men and calling a conference of little business men—which turned into a virtual riot. No friendly gesture seemed to have any real effect.

It is true that there was a contest of policy going on inside the Administration ranks. Certain men of the well-defined liberal group which Joseph Alsop and Robert Kintner called the "New Dealers"—including among others Tom Corcoran, Ben Cohen, Leon Henderson, Herman Oliphant

of the Treasury, and Solicitor-General Robert H. Jackson—had composed speeches for delivery by Jackson in which the blame for the Recession was laid upon “monopolies” and “the sixty families” (meaning that they blamed the controllers and managers of the great corporations for pushing up prices by tacit agreement and then, when goods could no longer be sold at these prices, slowing production and throwing off workers lest their profits be unduly cut). They had encouraged Secretary Ickes to make a similar speech. But these speeches had been written without express Presidential authorization, and the young New Dealers had been risking their jobs and their influence in thus expressing their private opinions. What happened was that jittery business men read these New Deal speeches, listened to the calmer utterances of the President, and decided that no blandishments from Washington meant anything.

For this fact the impulsiveness of a President who seemed smilingly unaware of inconsistencies among New Deal pronouncements was partly to blame; indeed, the President commended Ickes for his “sixty families” speech on the eve of composing his own appeal for co-operation. Nevertheless it was true that as 1937 turned into 1938 Roosevelt was trying to balance the budget and to refrain from proposing measures which would frighten business men unduly; that the conservative business community, in its wrath, seemed oblivious of the attempts being made to appease it; and that slowly the Administration leaders were becoming convinced that no policy of retrenchment and appeasement would bear fruit.

All the while the New Dealers were urging a resumption of deficit spending, and on April 2—as things were getting worse and worse—the President threw up the sponge. At lunch on the train from Warm Springs to Washington he told Harry Hopkins and Aubrey Williams that he was ready to abandon the budget-balancing effort and go in for heavy

spending again. On April 14 he went on the air to explain that he was asking Congress to appropriate three billion dollars for relief, public works, housing, flood control, and other recovery efforts.

That spring the legislation went through Congress, and simultaneously business began to show faint signs of improvement. In the latter half of June the stock market sprang to life. Recovery began again.

Economists might disagree as to whether the recovery was stimulated by the spending or was a mere coincidence, but among the young New Dealers there was no doubt at all. Look at the industrial index, they argued. It did no good to try to appease business; it did a lot of good to spend. Q.E.D.

The young New Dealers now rode high (so high, in fact, that in the autumn of 1938 they ventured into the comparatively unfamiliar field of politics and persuaded the President to make a dolefully unsuccessful attempt to defeat the Democrats in Congress who had voted against his Court plan). But the Administration as a whole had been struck a very heavy blow by the Recession. Meeting a new economic crisis, it had disclosed itself as neither able to generate "confidence" in business men nor to concoct any new and effective measures of recovery. The best it could do was to take down from the shelf a bottle of medicine to which it had been addicted for years—pump-priming.

## § 7

It had been a proud President who stood before the Capitol in the rain in January, 1937, and declared his intention to paint out the picture of "one-third of a nation ill-housed, ill-clad, ill-nourished." His pride had come before a fall. During a subsequent year and a half of friction and Recession his prestige in Congress had been sorely weakened; his



economic policies had been tried in the balance and found wanting; the hateful picture of unemployment and poverty had been altered, if anything, for the worse.

Was the New Deal, then, played out?

Perhaps; but if so, the fact was becoming obscured by the approach of a new sort of crisis which would cause the citizens to look upon their country and its government with new eyes. For now the American skies were being slowly darkened by storm clouds rolling in from Europe.