

# THE BEST LAID PLANS: FRED M. VINSON AND THE DECLINE AND FALL OF THE ROOSEVELT COURT, 1946-1949

Harvey Gresham Hudspeth  
*Mississippi Valley State University*

## ABSTRACT

One of the great ironies in constitutional history is the fact that the Supreme Court that Franklin Roosevelt labored so hard to construct lasted for such a short period of time following his death. Dying early in his fourth term in 1945, FDR's supporters could at least take solace in the fact that eight of the Court's nine sitting justices had been appointed by the late president. Within four years of Roosevelt's death, however, the myth of monolithic-styled unity would be shattered and the so-called "Roosevelt Court" of Harlan Fiske Stone would have given way to the "Truman Court" of Fred M. Vinson. The great irony behind this transformation is that the very same economic issues that initially brought the Roosevelt Court together ultimately helped to likewise drive it apart.

## INTRODUCTION

It was the culmination of a dream- the long awaited transformation of the Supreme Court of the United States from a bastion of laissez faire economic conservatism to the guardian of welfare state regulation of the private economy. For American liberals, it was an eleven year process that began with the presidential election of Franklin Roosevelt in 1932, the "Switch in Time" vote of Justice Owen Roberts in the landmark regulatory case of *West Coast Hotel Company v. Parrish* followed by the nomination of Hugo Black to replace Willis Van Devanter in 1937, and the subsequent four year self-destruction of the heretofore "Four Horseman" – dominated Court that followed.<sup>1</sup> The crowning point came with the appointment of New Deal liberal Wiley P. Rutledge to become F.D.R.'s ninth and final appointee to the bench in 1943. With that, Roosevelt established himself as second only to George Washington as the most influential president in the Court's history. Ironically enough, the so-called "Roosevelt Court" such as it was, was not to last beyond 1949. More importantly, whatever initial cohesion it may have enjoyed on the basic issue of government regulation failed to extend into other related areas of concern – especially in the field of organized labor.

This growing court division became increasingly apparent in the 1945 case of *Jewell Ridge Coal Corporation v. Local No. 6167, United Mine Workers of America*. Significantly rendered on V-E Day, *Jewell Ridge* dramatically made public for the first time the growing ideological and personal differences between such former Roosevelt lieutenants as Felix Frankfurter and Robert Jackson on one side and Hugo Black and William Douglas on the other. Allied with such relative moderates as Stanley Reed and

Harold Burton, Frankfurter and Jackson favored a limited extension of the rights and power of organized labor. By contrast, Black and Douglas, in league with their fellow liberals Frank Murphy and Wiley Rutledge, tended to oppose any such restrictions. Caught in the middle of this growing judicial rift was the Chief Justice of the United States, Harlan Fiske Stone.<sup>2</sup>

Elevated to the Court's top position by Roosevelt in 1941, Stone often served as the deciding vote between these two increasingly divergent factions. While no leader in the sense of his immediate predecessor, the god-like Charles Evans Hughes, Stone nevertheless at least enjoyed the advantage of moral and intellectual authority acquired through sixteen years of prior experience as one of the Court's leading liberals. Moreover, having risen to the position of Chief Justice just five months prior to Pearl Harbor, he further was able to take advantage of the need for national unity necessitated by America's entry into the Second World War. With Roosevelt's death and the war's end in 1945, however, all of that was due to change. Dying less than nine months after Hiroshima, Stone's departure was to further precipitate the destruction of an already badly-divided Court.<sup>3</sup> Ultimately, however, it was to be left to his Truman-appointed successor, Fred M. Vinson, to guide the F.D.R. Court to its final demise. In the end, his poor leadership skills, combined with the personal antagonisms of his associates as well as the Court's growing emotionalism over the rising power of organized labor, to see the 'best laid plans' of Franklin Roosevelt go prematurely astray less than seven years after the appointment of Rutledge.

#### FRED VINSON AND THE ROOSEVELT COURT IN DECLINE: 1946-1947

On April 22, 1946, the Supreme Court of Harlan Fiske Stone met for one final time. At age seventy-three, the Chief Justice had presided over the Court for roughly four years and ten months. On the day in question, he read brief dissents to majority opinions announced by Justices Rutledge and Douglas respectively. With regard to the latter, a five-man majority opinion granting citizenship rights to an alien who had previously refused military service, Stone responded, "It's not the function of the court to disregard the will of congress on the exercise of its constitutional power." Staying one more case after that, Stone asked to be examined by awaiting physicians, only to be assured that he was suffering merely from "a small case of indigestion." With that, court was adjourned and the Chief Justice went home. Five hours later, Stone had expired- dead from a massive cerebral hemorrhage.<sup>4</sup>

With Stone's death, Harry Truman, having one year earlier elevated Ohio Republican Senator Harold Burton to the Court in the place of the retiring Justice Roberts, now had the opportunity to make his second appointment to the Bench. With the year-old animosity between Justices Black and Jackson a poorly kept secret, Truman judiciously avoided consulting any sitting member of the Roosevelt Court with regard to a possible successor. More importantly, with rumors abounding that both Black and Douglas would resign should Truman honor Roosevelt's reported promise of elevating

## THE BEST LAID PLANS: FRED M. VINSON AND THE DECLINE

Jackson to Stone's position, Truman seemed determined to avoid making contact with the Court altogether.

In view of the Court's recent decline in stature, Truman was no doubt driven by contemporary contrasts between Stone and his predecessor Hughes. As Frankfurter himself was to note, while "Stone used to fumble over things and allow talk to be too loose and confused," Hughes by contrast showed a rare combination of "executive competence – keeping things moving in an orderly way" and a "thoroughness of consideration at all matters no matter how complicated." Praising Hughes further for his "extraordinary qualities, his intellectual powers, and his tolerance of contrary view," Frankfurter noted that when Hughes presided at Court conferences, "the atmosphere was free, but whatever inhibition was felt was due not to Hughes' restriction of discussion, but derived from the influence of his intrinsic authority."<sup>5</sup>

With that contrast in mind, and more importantly, in view of the present Court difficulties resulting from the lack of strong leadership, President Truman now looked for a "jurist who might be able to bring harmony out of dissonance" and "stand at the balancing center of gravity" so as to bring order to a "divided and disorganized Court." Consequently, "after weeks of searching," Truman's "middle-of-the-road" Secretary of the Treasury, Fred Vinson, "seemed... to be just the man for the job." Consequently, on June 6, 1946, Vinson was nominated to be the thirteenth Chief Justice of the United States. Two short weeks later, he was confirmed by the Senate. Four days after that, he actively took over this duties as chief Justice.<sup>6</sup>

What neither Truman nor Vinson apparently understood was the true extent to which the Court at this time was divided. In terms of ideology, Justice Jackson later explained the recent Court years as:

a struggle between the ideas of Chief Justice Stone, as a liberal of one school, and Mr. Justice Black, a liberal of an entirely different school. Chief Justice Stone was a good deal of a liberal in the Holmes tradition. That is to say, he didn't agree with a good many of the legislative experiments that were going on, but he thought that the people would only learn that they wouldn't work by trying them and that they had a right to experiment. Mr. Justice Black had a different view, as his opinions will indicate. He was strongly in favor of some of the social reforms and would interpret the Constitution and text of acts to further the ends that he had in view. That is the school of thought that has been characterized as 'judicial activism.'<sup>7</sup>

Stone himself had lamented this ideological difference. Towards the end of his life, as he found himself increasingly under siege by Black and his fellow activists, the Chief Justice was to dolefully reminisce:

My more conservative brethren in the old days enacted their own economic prejudice into law. What they did placed in jeopardy a great and useful institution of government. The pendulum has now swung to the other extreme and history is repeating itself. The court is now in as much danger

## ESSAYS IN ECONOMIC AND BUSINESS HISTORY (2001)

of becoming a legislative constitution-making body, enacting into law its own predilections, as it was then. The only difference is now the interpretations of statutes whether 'over-conservative' or 'over-liberal' can be corrected by congress.<sup>8</sup>

Beyond mere ideology, however, the divisions within the Court at this point had transcended politics for the more disruptive issue of personalities. Jackson's ally Frankfurter was a source of much of this. With a talent for manipulating men of lesser intelligence, Frankfurter could never admit that his colleagues had minds of their own. Consequently, his tendency of treating many of them as though they were first-year law students was to become a source of great aggravation, especially after the first flag salute case (*Minersville School District v. Gobitis*) of 1940.

Having initially induced a unanimous court to join him in ruling that a state could compel its citizens to salute the American flag, Frankfurter was to face a revolt three years later in the second flag salute case (*West Virginia Board of Education v. Barnette*) of 1943. Having grown "disillusioned" over Frankfurter as a result of his initial ruling, Douglas, Black, and Murphy (whom Frankfurter had come to label "the Axis") were to break with him in *Barnette*. *Gobitis*, consequently, was overruled and Frankfurter found himself permanently alienated from the Court's liberal faction.<sup>9</sup>

The Court's problems over Jackson, however, were to prove to be even stronger. Having privately split with Black over the *Jewell Ridge* decision of 1945, Jackson was to spend most of the next year as the government's special prosecutor at Nuremburg, a position he would not finally return from until after Vinson's appointment as Chief Justice in 1946. Even before he had returned, however, Jackson made it clear what to expect in terms of the new Court by making public his charges against Black.

Black had attacked him, he raged. And now that the Chief Justice appointment was settled, Jackson was determined to lash right back. "It is high time," he trumpeted, "that congress has the facts. If war is declared on me, I propose to wage it with the weapons of an open warrior, not those of a stealthy assassin." Recounting the earlier controversy over *Jewell Ridge*, Jackson went on to assert that Black had waged a subtle war in Washington to keep him from getting the Chief Justiceship and that Black had used contacts from within the press to further his aims. Addressing his complaints to the judiciary committees of both houses of Congress, Jackson concluded with the statement: "It is desirable to get the controversy all back of us now so that he [Vinson] can take up his tasks without a cloud hanging over the Court."<sup>10</sup>

Neither the controversy nor the cloud, however, were to go away any time soon. While the Court was closed for the summer, tourists would flock to the Supreme Court Building in Washington "looking as if they expected to find the justices clubbing each other with baseball bats."<sup>11</sup> It was soon plain that the controversy arising out of Jackson's attack would not blow over in a few days, or even in a few weeks. Coming as a result of a deep-seated feud, which had long soiled the Court with internal turmoil, the Jackson/Black feud now had brought the Supreme Court of Fred Vinson "into public disgrace."<sup>12</sup>

## THE BEST LAID PLANS: FRED M. VINSON AND THE DECLINE

To most observers, the Court's main problem at this time "was the justices' continual and active politicking around Washington." While James Byrnes may have left the Court to return fulltime to politics in 1942, many of his former colleagues preferred to combine the two worlds with the unfortunate result of engendering further personal antagonisms within the Court. Thus, Frankfurter had maintained his ties to the White House as a personal advisor to Roosevelt, while Jackson "hoped for a bigger political plum." At the same time, Black was making speeches before the National Citizens Political Action Committee and Murphy lobbied for an ambassadorship or even a position in the Cabinet. Douglas, however, was perhaps the most political of all. Having previously been considered for Vice-President in 1940 and 1944, he now looked to 1948 for a possible run for the presidency.<sup>13</sup>

This was the Supreme Court that Fred Vinson inherited when he took his seat as Chief Justice in June of 1946. If Truman had hoped he would be able to return the Court to the discipline of the Hughes era, however, he was to be sorely disappointed. A former congressman from Kentucky whom Roosevelt had appointed Associate Justice of the United States Court of Appeals for the District of Columbia, Vinson had subsequently served as Director of the war-time Office of Economic Stabilization and then briefly as Harry Truman's Secretary of the Treasury. For all of his prior training, however, Vinson was known more as a "skillful politicker" rather than a jurist. In replacing the liberal Republican Stone, he was to have little impact on the Court's ideological balance. More importantly, as far as Frankfurter was concerned, the new Chief Justice seemed "to have the confident air of a man who does not see the complexities of problems and blithely hits the obvious points" while precluding the "thoroughness of consideration" that had earlier been so masterfully exhibited by Hughes.<sup>14</sup>

Frankfurter went on to note early attempts by both Black and Douglas to win Vinson over to their side. Noting Reed's comment comparing the new Chief Justice to "a new girl at school when every boy is courtin' her," Frankfurter went on to muse how he could never understand how a person such as Vinson could "go through life with a vast experience... and still remain as ingenuous" as he apparently was. Such was the case that in November 1946, just five months after Vinson took office, that legal scholar and Vinson confidant C. Herman Pritchett was to observe: "Poor Fred Vinson is certainly foolin' himself by his idea as to what is smoothness... The nice man is going to have an awakening sooner than he thinks."<sup>15</sup> With the case of *United States v. United Mine Workers of America* set for argument just two months away in January, "Poor Fred Vinson" was to "have an awakening" even sooner than that.

For all intents and purposes, the Roosevelt Court came to an end on March 6, 1947, the day the Supreme Court of Fred M. Vinson handed down its decision in the case of *United States v. United Mine Workers of America*. Publishing a study of the incident one year later, Professor Pritchett was to observe that the Court's decision "was about as bitter a pill as a Court, generally sympathetic to labor and ardently believing in strict adherence to constitutional procedure in criminal cases, could have been called on to swallow."<sup>16</sup> As it had previously demonstrated in *Jewell Ridge*, the Roosevelt

## ESSAYS IN ECONOMIC AND BUSINESS HISTORY (2001)

Court by a narrow five to four margin, was firmly committed to the cause of organized labor. In the 1945 case of *Hunt v. Crumback*, it even went so far as to sanction a labor union's efforts to force an employer out of business. As Pritchett, however, was to observe, it was the *U.M.W.* case that would ultimately prove to be the Court's undoing. In the end, the Court which came into being with the 1937 *Parrish* case decision enforcing minimum wage and maximum hour statutes, ultimately came apart over John L. Lewis.

In 1946, John L. Lewis, President of the United Mine Workers and one of the most powerful labor leaders in America, ordered a nation-wide strike in the nation's bituminous coal mines. On May 21<sup>st</sup> of that year, the government on President Truman's orders, had taken possession of the mines in order to keep them in operation. On May 24<sup>th</sup>, an agreement was reached between the government and Lewis setting both wages and working conditions to cover the period of government possession. In October, however, Lewis asserted that the contract was subject to termination under a provision of the National Bituminous Coal Wage Agreement of 1945, and on November 15<sup>th</sup>, he gave the government five days' notice that the contract was to be terminated. At this point, Lewis added that unless the government agreed to reopen certain terms of the contract, he would strike the mines, whether they were government operated or not.<sup>17</sup>

Considering this a threat, Truman responded by ordering Attorney General Tom Clark to "fight John L. Lewis on all fronts." Consequently, on November 18<sup>th</sup>, the government obtained an order from the District Court temporarily restraining Lewis' call for a strike. Lewis, however, was to ignore this order and on December 4<sup>th</sup>, he was found guilty of contempt and both he and the union were fined over \$3,500,000. Calling a temporary end to the strike three days later, Lewis appealed immediately to the Supreme Court for relief.<sup>18</sup> As Pritchett was to note one year later, Lewis was to catch an already fractured "liberal Court completely unprepared" and thus fractured it even further.<sup>19</sup>

Thirty years later, a retired William Douglas was to note the animosity surrounding the case. Asserting what he claimed to be an occasional Court tendency to disregard "high principles and standards of justice and equality" as to allow "government or individuals to get after a person or a class of people," Douglas claimed that the "1947 case was supercharged with feelings about John L. Lewis and led... to extreme strictures on his union." Noting that the case had come "in a blaze of anti-Lewis public sentiment" and, that "Vinson was convinced that... Lewis was 'too big for his britches,'" Douglas was to conclude that March 6, 1947, "was a bad day for law." In the end, he condemned both the late Chief Justice's "complete dedication to finding or fashioning some law to put John L. Lewis "in his place," and his former colleagues for allowing "passion" to send them "pell-mell to a public stand against... Lewis."<sup>20</sup>

In the end, the District Court's verdict against Lewis was upheld, but the original fine was ordered reduced to \$700,000. Douglas was unable to determine "[H]ow our Court had the power to set a fine in a criminal case which it had never heard at the trial level." More to the point, the Lewis decision had the unfortunate effect of splitting the

## THE BEST LAID PLANS: FRED M. VINSON AND THE DECLINE

Court even further “into splinter groups.” According to Pritchett, Frankfurter and Jackson succeeded in “finding a purely judicial hook- maintenance of respect for the courts” – on which the Chief Justice as well as Justices Reed and Burton were willing to allow Lewis to be “snagged.” Rutledge and Murphy, on the other hand in their dissent, were to “stick to the doctrines of old liberalism and deny the government’s right to coercion” altogether. At the same time, however, Douglas and Black, also in dissent, were to “assist in judicial formulation of a new public policy for dealing with crucial conflicts between strong unions and the public interest” while at the same time insisting “that judicial enforcement of that policy should avoid any taint of retaliatory action.”<sup>21</sup>

Thus to a Court “formally versed in an old liberalism... familiar only with a weak labor movement, which needed protection if it was to survive,” the Lewis decision had the effect of separating old theories from new realities and further divided and weakened an already comatose Court. Having initially won the battle for economic liberalism in 1937, the post-*Parrish* liberalism of the post-*Parrish* Court was to mount its horse and ride off “in all directions.”<sup>22</sup>

### FRED VINSON AND THE ROOSEVELT COURT IN COLLAPSE: 1948-1949

Writing just seven months after the Lewis decision, Pritchett was to observe that two and one half years after his death, Franklin Roosevelt’s appointees still dominated the Supreme Court and “presumably will continue to do so for some time.” With regard to its previous two terms, however, he questioned as to whether it was still proper “to term the current Court the ‘Roosevelt Court.’” Noting that even then, the “temper of the Court was already changing,” Pritchett contended that “a swing to the right is apparent in many fields.”<sup>23</sup>

What Pritchett failed to note, however, was the dramatic change in the concepts of judicial “left” and “right” which had taken place during the decade following *Parrish*. As the Court moved from the economic conservatism of Taft to the economic liberalism of Vinson, those concepts were to take on whole new dimensions. Ultimately the doctrine of judicial activism previously used by such conservatives as Willis Van Devanter and James McReynolds to promote laissez faire was now adopted by such liberals as William Douglas and Hugo Black to promote state welfare by mandating government regulation even where none had previously existed. Consequently, the doctrine of judicial restraint, heretofore seen as relative liberalism in the hands of such jurists as Brandeis and Holmes, now as practiced by Frankfurter and Jackson became a doctrine of relative conservatism.<sup>24</sup> While Pritchett’s conclusion that the “Roosevelt Court came to an end on that Thursday in March, 1947, when the John L. Lewis decision was handed down,” may be subject to debate, the fact of the matter is that from 1947 on, the days when any sort of Rooseveltian majority was to hold sway over the Court were at best numbered.<sup>25</sup>

By the summer of 1949, the Court had managed to regain a little of its former stature. A “sad-faced Chief Justice Vinson, ... a formidable poker player, above-all a

## ESSAYS IN ECONOMIC AND BUSINESS HISTORY (2001)

man of diplomacy,” was said to be at the helm of a Court consisting of Hugo Black, “an ex-police court judge... now rated as one of the best read, hardest working, most learned justices on the Court;” Stanley Reed, “massive and heavy-jowled... writer of pedestrian opinions, rated as an able lawyer;” Felix Frankfurter, though at age 66, the “oldest in years..., a bouncing, argumentative, brilliant little man planted firmly on the roost of his vast knowledge of the law;” William Orville Douglas, “the justice with the cowlick and the friendly grin,” at age 50, “the court’s youngest,” yet, “an assertive, restless, billy-be-damned man;” Frank Murphy, “with a starched, far-off look... a man of humanitarian impulses without the intellectual drive and capacity to make himself highly effective;” Robert Jackson, “with his open-work, Dutch expression... and eloquent, incisive writer who, when he dissents, dissents in vitriol;” Wiley Rutledge, “rocklike... large, dignified, and pedagogical... a liberal in the tradition of the Midwest;” and finally Harold Burton, “with an air of avuncular interest... an amiable man, out-paced by his hard-running colleagues, generally regarded as the least effective justice on the court.”<sup>26</sup>

Thus eight full years after Franklin Roosevelt named seven of the nine justices (excluding Coolidge nominee Stone) to the United States Supreme Court, seven of its nine members remained Roosevelt appointees. “Since 1937,” one observer noted:

The Nine had taken themselves pretty well out of the headlines, but they had made news nonetheless. Closer to the tradition of Holmes and Brandeis than to that of Hughes, they had plowed under old and respected landmarks; they had overturned, altogether, some thirty previous decisions of the Supreme Court; they had struck out boldly, sometimes brashly, into new grounds. Other courts had split more violently, but no court had quarreled so continuously and rambunctiously with itself. Whereas in the Twenties and Thirties, the courts found themselves in solid agreement some eighty percent of the time, seventy percent of the time this term, the court had found itself split.<sup>27</sup>

Reviewing the previous twelve years which had followed *Parrish*, this same observer noted that the present Court:

had not got in spectacular knockdown fights with other branches of government, as for example, had their predecessors, the Nine Old Men. That Court, dominated by McReynolds, Van Devanter, Sutherland, and Butler, defiantly stood against a social revolution. This court [in contrast] was part of the revolution.<sup>28</sup>

“In the twelve years,” he continued:

only two congressional measures- neither of them major- had been declared unconstitutional. The court merely nibbled around the edge of the big, still unresolved questions, leaving it to time and changing customs to determine



## THE BEST LAID PLANS: FRED M. VINSON AND THE DECLINE

the ultimate shape of things. The nibbling was deliberate and not the result of timidity. Rebutting by implication their immediate predecessors, the present justices insisted that it was Congress's job to legislate, not the Court's.<sup>29</sup>

And so it went. As had been noted so many times before:

the justices were nine broiling brooks in search of a new main stream. Running down one side of the hill were Frankfurter, Jackson, Burton, and Vinson. Running down the other side, a more precipitous slope, were Black, Douglas, Murphy, and Rutledge. Reed ran back and forth. The Frankfurter group thought the Court should stay in the well-defined grooves left by precedent. Only then, they believed, would the people have any idea of what to expect from justice... The Black group cared less for precedent, more for a flexible legal logic in a world in a state of flux.<sup>30</sup>

Quoting Justice Douglas, it was noted that the Black group "would not stand in the way of legislation leading toward the welfare state." Addressing a CIO convention in 1948, Douglas asserted, "The human welfare state is the greatest invention of the Twentieth Century." Later noting the Court's current trend, Douglas contended that "[I]t is better that we make our own history than be governed by the dead. We too must be dynamic components of history." Enthusiastically proclaiming that "[s]uch a doctrine made for exciting legal history," the observer was to conclude that "[i]t also made for some difficulty in knowing what the bright young court would do next."<sup>31</sup>

Unfortunately the "bright young court" would do nothing. In 1949, the court, in the case of *Lincoln Federal Labor Union v. Northwestern Iron and Metal Company*, did formally overrule the Fuller Court's 1908 anti-labor ruling in *Adair v. United States*.<sup>32</sup> Before year's end, however, the Court's composition would be drastically altered by the untimely deaths of first Justice Murphy (on July 16<sup>th</sup>)<sup>33</sup> and then Justice Rutledge (on September 10<sup>th</sup>).<sup>34</sup> In their place, President Truman in the span of just six weeks, would be able to name this third and fourth appointees to the Court. Naming Attorney General Tom Clark (of *US v. UMW* notoriety) on August 2<sup>nd</sup> to succeed Murphy, Truman subsequently nominated the often-considered Sherman Minton to succeed Justice Rutledge on September 15<sup>th</sup>. By October 12<sup>th</sup>, both men had joined their fellow Truman appointees, Vinson and Burton on the Bench and the Supreme Court of Franklin Roosevelt formally gave way to that of Harry Truman.<sup>35</sup>

## AFTERMATH AND CONCLUSIONS: THE LEGACY OF THE ROOSEVELT COURT

Looking back on this Court in 1980, retired Justice William O. Douglas would opine that "[u]nder Truman, the Court sank to its lowest professional level until the Burger Court arrived." While conceding that Truman's appointees "would be called liberal on economic issues," Douglas nevertheless faulted them for reflecting what he

## ESSAYS IN ECONOMIC AND BUSINESS HISTORY (2001)

considered to be “the small-town attitude of conformity more than the emerging urban consciousness of the need for diversity.”<sup>36</sup>

Speaking “from the viewpoint of one who believes that the judiciary should be alert to construe the constitution and laws of the United States as providing a strong arsenal for protection of the individual,”<sup>37</sup> Douglas thus reflected the change of judicial emphasis which had taken place a dozen years after economic liberalism’s breakthrough in *Parrish*. As had been seen, with the demise of the Nine Old Men and the triumph of government regulation of commerce, the post-Roosevelt Court was finally free to pursue other areas of judicial interest. With economic liberalism a constitutional given by 1949, the Truman-dominated Court of Fred M. Vinson and, all of the other courts which were to follow, were to shift their attention to the struggle over social liberalism.

Ironically, the Truman Court was to last no longer than the Roosevelt Court before it. With Vinson’s death in 1953, the new President, Dwight D. Eisenhower was to make the first Court appointment by a Republican President in twenty-one years. Feeling that the court had become “a repository of unbalanced partisan attitudes,” Ike was to consider a long list of potential candidates, including the once-rejected Hoover appointee John J. Parker. In the end, he selected the liberal Republican Governor of California to be his nominee. On March 1, 1954, the Senate confirmed the nomination of Earl Warren to be Chief Justice of the United States and the Warren Court era of constitutional theory had begun.<sup>38</sup>

So what can be said of the Supreme Court of Fred M. Vinson? The Vinson Court has not been considered one of the better courts in our nation’s judicial history and Vinson himself has not been considered one of our better jurists. A 1970 poll of constitutional scholars went so far as to rate him as one of the eight so-called “failures” to have served on the High Bench. Thirty years later, he was still the only chief justice to be so categorized.<sup>39</sup> This characterization of constitutional mediocrity is only reinforced by the fact that it has gone largely unchallenged for over half a century.

Publishing an article in the *Yale Law Journal* six months after the *UMW* decision, legal scholar Walter Hamilton offered a critique of the Roosevelt Court under Chief Justice Vinson in comparison with the pre-Roosevelt Court that existed before the so-called “Roosevelt Revolution” of 1937. Writing of the old Court of Charles Evans Hughes, Hamilton praised the so-called “Four Horsemen” conservative bloc who had dominated it as “honest and bold in their attempt to turn the hands of the clock back. If they did not like coal control, the minimum wage, or relief for dirt farmers, they said so by directly reading their prejudices into the present Constitution.”

Moving on to the court that existed some ten years later, Hamilton went on to observe that the present justices “arrive at a kindred result by finding- or devising- ways to prevent the substantive question from being reached... Such instances,” he continued, “and they are legion-indicate a state of mind so esoterically judicial that a slight deviation from correct procedure-often existing only in the mind of the justices-is a mutual sin, while a serious miscarriage of justice is only a venal one.”<sup>40</sup>

In contrasting the pre-1937 court of Charles Evans Hughes with the post-1947 court of Vinson, Howard went on to assert:

## THE BEST LAID PLANS: FRED M. VINSON AND THE DECLINE

A myth has been created in defense of the lapse of the Court from the great tradition of the law... The Old Court may have been any bad thing you wish to call it, but in backwardness, it was bold and did not hide its naughtiness behind a curtain. The New Court is a lion in condemning iniquity, and a lamb in putting an effective stop to it... [I]n a retreat from old ways, a respect for the province of the legislature does not carry an immunity to judicial responsibility.<sup>41</sup>

To most observers, the Court's main difficulty at this time lay with the powerful and conflicting personalities which sat on it and the inability of the Chief Justice to bring harmony out of discord. Penning a January 1947 article in *Fortune* magazine, the young historian Arthur Schlesinger, Jr., predicted, "It will be hard for [Vinson] to cope intellectually with men like Black and Frankfurter: his mind does not move fast in the same way... Vinson will have... to influence the Court by a certain massive instinct for practicality."<sup>42</sup>

To this legal scholar Fred Redell seemingly responded that any initial hopes that Vinson's "political moderation and soothing personality would end the era of multiple opinions which had produced constitutional uncertainty as well as personal animosity among the justices" were soon "doomed to failure." Noting that the 'Black-&Douglas against Jackson-&Frankfurter row... was intellectual, not personal," Redell went on to note that "all four of the participants were Vinson's intellectual superiors."<sup>43</sup>

One of the major problems facing Vinson when he took the Chief Justiceship in 1946 was that he inherited long-standing personal and professional animosities which went all the way back to the earliest days of the "Roosevelt Court." As H. N. Hirsch noted in 1981, seven years before Vinson's appointment by Truman, Felix Frankfurter had been appointed by Roosevelt in hopes of leading the Court "through a period of calm after the stormy Court-Packing controversy of the mid-thirties."<sup>44</sup> Despite his superior intellect, however, Frankfurter proved to be no more successful in this endeavor than Vinson. As Hirsch went on to observe:

Calm... was hard to produce in a period marked by unsettled doctrine and dynamic judicial personalities. FDR placed on the Court highly complex and extraordinary men- Hugo Black, William O. Douglas, Frank Murphy, Robert H. Jackson, and Felix Frankfurter- whose combined volatility made it impossible to achieve the judicial peace he sought.<sup>45</sup>

For all of that, Frankfurter proved to be less than sympathetic to Vinson when he was subsequently confronted with similar difficulties. Even with Vinson's death, Frankfurter could not help but express glee. Philip Elmer, Frankfurter's former law clerk, was to recount a brief encounter he had with the justice at Union Station in 1953. The Chief Justice had just died and Frankfurter had returned to Washington for the funeral:

He was in high spirits. Frankfurter said to me, 'I'm in mourning' sarcastically... and looking me straight in the eye said, 'Phil, this is the first solid piece of evidence I've ever had that there really is a God.'<sup>46</sup>

## ESSAYS IN ECONOMIC AND BUSINESS HISTORY (2001)

With attitudes such as this, it is not difficult to understand how the “Roosevelt Court” failed to survive Vinson’s tenure as Chief Justice.

In the most recent evaluation of the Vinson Court, Melvin Urofsky in 1997 coupled Vinson with his immediate predecessor, Harlan Stone, as having jointly failed to provide the necessary leadership earlier provided by Hughes and subsequently provided by Warren. While Stone was credited with having the “intellectual capacity,” he nevertheless lacked the “strength of will that would have allowed him to dominate such strong personalities as Black, Frankfurter, Douglas, or Robert H. Jackson.” Turning his attention to Stone’s successor, Urofsky was even more critical citing the by-now time-honored observation that Vinson “had neither the intellectual nor the political skills to lead the Court.”<sup>47</sup> Urofsky went on to render final judgement: “[H]e played a relatively minor role in shaping the Court’s jurisprudence.”<sup>48</sup>

Vinson’s misfortune was to begin his tenure on the Court at a time when ideological and personality differences had been allowed to run unabated for over half a decade. Doomed by the perception that he was chosen more for reasons of political cronyism than for intellectual talent, Vinson’s tenure as Chief Justice will always be remembered for his glaring inability to preserve the Court so carefully put together by F.D.R. just a few years earlier. The fact that the so-called “Truman Court” which followed it failed to last beyond Vinson’s death bed only served to accentuate the fact that history does often depend on having the right man at the right place at the right time. As the focus of American liberalism shifted from economic to social and racial matters in the 1950’s and 1960’s, it was well that the Court could look to a new Chief Justice to guide it into the difficult days ahead.

### Notes

1. Harvey G. Hudspeth, “Losing Battles and Winning Wars: Franklin Roosevelt and the Fight to Transform the Supreme Court, 1937-1941”, *Essays on Economic and Business History: The Journal of the Economic and Business Society*, Volume XVII (1999), 179-195.

2. Harvey G. Hudspeth, “A Court Divided: Harlan Fiske Stone, Judicial Review, and Administrative Regulation of the Economy, 1941-1946”, *Essays in Economic and Business History: The Journal of the Economic and Business Society*, Volume XVIII (2000), 79-80.

3. *Ibid*, 81-82.

4. “The Case Should be Stayed,” *Time*, April 29, 1946, Volume 47-2, 28.

5. *From the Diaries of Felix Frankfurter*, edited by Joseph P. Lash, W. W. Norton & Co., Inc., (New York, 1975), 274-275.

6. “Even Stephen,” *Time*, June 17, 1946, Volume 47-2, 18.

7. Phillip B. Kurland, “Transcript of Taped Interview of Robert Jackson,” published in *The Justices of the United States Supreme Court, 1787-1969: Their Lives and Major Opinions*, Leon Friedman and Fred L. Israel, Editors, Chelsea House Publishers, (New York, 1969), Volume IV, 2564.

8. Alpheus Thomas Mason, “Harlan Fiske Stone,” in *The Justices of the United States Supreme Court 1789-1969*, Volume III, 2235.

9. William O. Douglas, *The Court Years: 1939-1975, The Autobiography of William O. Douglas*, Random House, (New York, 1980), 43-45.

See Also:

*The Douglas Letters: Selections from the Private Papers of Justice William O. Douglas*,

## THE BEST LAID PLANS: FRED M. VINSON AND THE DECLINE

Edited by Melvin I. Urofsky, Adler & Adler (Bethesda, Maryland, 1987), 73-75.

Hugo and Elizabeth Black, *The Memoirs of Hugo L. Black and Elizabeth Black*, Random House (New York, 1986), 72.

10. "Wrath Without Dignity," *Time*, June 24, 1946, Volume 47-52, 21.

11. "Feud Continued," *Time*, June 24, 1946, Volume 47-52, 21.

12. Ibid.

13. Ibid.

14. Joseph P. Lash, ed. *From the Diaries of Felix Frankfurter*, 274-276, 286-287, 303-304, 306, 309-311.

See Also:

"Even Stephen," *Time*, June 17, 1946, Volume 47-52, 18.

15. Hermann C. Pritchett, *The Roosevelt Court: A Study in Judicial Politics and Values, 1937- 1947*, The MacMillan Company, (New York, 1948), 232-236, 273.

16. Ibid.

17. Ibid.

See Also:

*Hunt v. Crumback*, 325 US 821 (1945).

"Grand Right and Left," *Time*, July 2, 1945, Volume 46-51, 16.

18. Harry S. Truman, *Memoirs by Harry Truman, 1945: Year of Decisions*, Doubleday & Company, Inc. (Garden City, New York: 1955) 552-556.

19. Pritchett, *The Roosevelt Court*, 236.

20. Douglas, *The Court Years*, 102, 139, 246.

*Hunt v. Crumback*, 325 US 821 (1945).

"Grand Right and Left," *Time*, July 2, 1945, Volume 46-51, 16.

21. Pritchett, *The Roosevelt Court*, 273.

See Also:

*United States v. United Mine Workers*, 330 US 258 (1947).

22. Ibid.

23. Pritchett, *The Roosevelt Court*, p. xiv.

24. Hudspeth, "A Court Divided", 74-77.

25. The Living Must Judge," *Time*, June 27, 1949, Volume 53-62, 16-19.

See Also:

Konvitz, Milton R. "Value of Judgements," *The Saturday Review of Literature*, September 18, 1946, Volume 31-31, 15.

26. Ibid.

27. Ibid.

28. Ibid.

29. Ibid.

30. Ibid.

31. Ibid.

32. *Lincoln Federal Labor Union v. Northwestern Iron and Metal Company*, 335 US 525 (1949).

33. "Death of an Apostle," *Time*, August 1, 1949, Volume 54-61, 12.

"Promise Kept," *Time*, August 8, 1949, Volume 54-61, 10-11.

34. "Death of a Scholar," *Time*, September 19, 1949, Volume 54-61, 26-27.

35. Merle Miller, *Plain Speaking: An Oral Autobiography of Harry S. Truman*, Bereley Publishers Corporation, (New York, 1973) 144-145, 225-226.

36. Douglas, *The Court Years*, 245.

37. Ibid.

38. Dwight D. Eisenhower, *Mandate for Change: The White House Years, 1953-1956*, Doubleday & Company (Garden City, New York, 1963), 226-230.

39. Thomas E. Baker, "Vinson, Frederick Moore," *The Oxford Companion to the Supreme Court of the United States*, Kermit L. Hall, Editor, (New York, Oxford University Press, 1992), 898-899.

## ESSAYS IN ECONOMIC AND BUSINESS HISTORY (2001)

40. Walter Hamilton, 56 *Yale Law Journal* (September 1947) 1459-1460.
41. Ibid.
42. Frances Howell Rudko, *Truman's Court: A Study in Judicial Restraint*, Greenwood Press (New York, 1988), 34.
43. Ibid.
44. H. N. Hirsch, *The Enigma of Felix Frankfurter*, Basic Books, Inc., (New York, 1981), 4.
45. Ibid.
46. Rudko, *Truman's Court*, 36.
47. Melvin I. Urofsky, *Division and Discord: The Supreme Court under Stone and Vinson, 1941-1953*, University of South Carolina Press (Columbia, 1997), 8.
48. Ibid.

### REFERENCES

#### PRIMARY SOURCES

##### BOOKS:

- Black, Hugo and Elizabeth, *The Memoirs of Hugo L. Black and Elizabeth Black*, Random House (New York, 1986).
- Douglas, William O., *The Court Years: 1939-1975, The Autobiography of William O. Douglas*, Random House, (New York, 1980).
- Eisenhower, Dwight D., *Mandate for Change: The White House Years, 1953-1956*, Doubleday & Company (Garden City, New York, 1963).
- Kurland, Phillip B., "Transcript of Taped Interview of Robert Jackson," published in *The Justices of the United States Supreme Court, 1787-1969: Their Lives and Major Opinions*, Leon Friedman and Fred L. Israel, Editors, Chelsea House Publishers, (New York, 1969).
- Lash, Joseph P., Editor, *From the Diaries of Felix Frankfurter*, W. W. Norton & Co., Inc., (New York, 1975).
- Miller, Merle, *Plain Speaking: An Oral Autobiography of Harry S. Truman*, Bereley Publishers Corporation, (New York, 1973).
- Pritchett, Hermann C., *The Roosevelt Court: A Study in Judicial Politics and Values, 1937-1947*, The MacMillan Company, (New York, 1948).
- Truman, Harry S., *Memoirs by Harry Truman, 1945: Year of Decisions*, Doubleday & Company, Inc. (Garden City, New York: 1955).
- Urofsky, Melvin I., Editor, *The Douglas Letters: Selections from the Private Papers of Justice William O. Douglas*, Adler & Adler (Bethesda, Maryland, 1987).

##### CASES:

- Hunt v. Crumback*, 325 US 821 (1945).
- Lincoln Federal Labor Union v. Northwestern Iron and Metal Company*, 335 US 525 (1949).
- United States v. United Mine Workers*, 330 US 258 (1947).

##### PERIODICALS:

- Hamilton, Walter, 56 *Yale Law Journal* (September 1947).
- Konvitz, Milton R. "Value of Judgements," *The Saturday Review of Literature*, September 18, 1946.

##### TIME MAGAZINE ARTICLES:

- "Death of an Apostle," *Time*, August 1, 1949.
- "Death of a Scholar," *Time*, September 19, 1949.
- "Even Stephen," *Time*, June 17, 1946.

## THE BEST LAID PLANS: FRED M. VINSON AND THE DECLINE

- "Feud Continued," *Time*, June 24, 1946.  
"Grand Right and Left," *Time*, July 2, 1945.  
"Promise Kept," *Time*, August 8, 1949.  
"The Case Should be Stayed," *Time*, April 29, 1946.  
"The Living Must Judge," *Time*, June 27, 1949.  
"Wrath Without Dignity," *Time*, June 17, 1946.

### SECONDARY SOURCES

#### BOOKS:

- Baker, Thomas E., "Vinson, Frederick Moore," *The Oxford Companion to the Supreme Court of the United States*, Kermit L. Hall, Editor, (New York, Oxford University Press, 1992).  
Hirsch, H. N., *The Enigma of Felix Frankfurter*, Basic Books, Inc., (New York, 1981).  
Mason, Alpheus Thomas, "Harlan Fiske Stone," in *The Justices of the United States Supreme Court 1789-1969: Their Lives and Major Opinions*, Leon Friedman and Fred L. Israel, Editors, Chelsea House Publishers, (New York, 1969).  
Rudko, Frances Howell, *Truman's Court: A Study in Judicial Restraint*, Greenwood Press (New York, 1988).  
Urofsky, Melvin I., *Division and Discord: The Supreme Court under Stone and Vinson, 1941-1953*, University of South Carolina Press (Columbia, 1997).

#### PERIODICALS:

- Hudspeth, Harvey G., "A Court Divided: Harlan Fiske Stone, Judicial Review, and Administrative Regulation of the Economy, 1941-1946," *Essays in Economic and Business History: The Journal of the Economic and Business Society*.  
Hudspeth, Harvey G., "Losing Battles and Winning Wars: Franklin Roosevelt and the Fight to Transform the Supreme Court, 1937-1941," *Essays in Economic and Business History: The Journal of the Economic and Business Society*.

