VI

The Constitutional Crisis

WHEN President Franklin D. Roosevelt sent to Congress his proposals for the reform of the judiciary, with special reference to the Supreme Court, he brought to a head the most serious political struggle that has emerged in America since the days of Civil War and Reconstruction. Like the issues of the Civil War, this presents a constitutional crisis, going to the very foundation of the American system of government and expressing a deep crisis in class relations. Already it has aroused a stubborn bitterness that was not witnessed even in the 1936 Presidential election, extraordinary for its sharpness. The struggle about the role of the Supreme Court is cutting across old party lines. It has deeply divided the Democratic Party, the party of the Roosevelt administration. It bids fair to furnish the occasion for a fundamental regrouping of class forces, long in preparation and now reaching maturity. It is, therefore, of more than ordinary importance to study the issues of this struggle, and to see the process which is lining up individuals, groups, parties and classes on one or the other side—a realignment which will indicate in what direction American political life is heading for the next period.

President Roosevelt's plan for judicial reform does not, in itself, explain the tremendous excitement which it aroused. It is far from revolutionary. It does not attempt to limit the role of the Supreme Court as fixed in the written Constitution of the U.S.A. It does not even challenge the power, usurped by the Supreme Court, without constitutional authorization, to function as a supreme legislative organ by exercise of a veto upon laws passed by Congress and approved by the President.

It is limited to measures, expressly within the power of Congress as fixed by the Constitution, to enlarge the personnel of the court under certain conditions. The expectation that such enlargement of the court may shift its views on disputed questions toward a more favorable attitude to the administration just re-elected by an overwhelming majority, is certainly not something to shock the prejudices of a democratic people. It is an expectation that would be taken for granted in any other democratic country but the U.S.A.

That feature of Roosevelt's plan around which controversy rages, is the provision that whenever judges of the Supreme Court reach the age of 70 years without retiring (upon a pension, already provided by law, of the full salary of $20,000 per year), then the President is empowered, with the agreement of the Senate, to name additional judges to the same number, provided that the present membership of nine shall not be increased to more than 15. Inasmuch as among the present nine members, six are already more than 70 years of age, this means in practice that if the plan is adopted the President will immediately propose six new judges, either to replace them if they resign or to sit with them on the court if they do not.

The immediate significance of this plan lies in the fact that the Supreme Court itself is sharply divided. With a divided vote, often five to four, it has been exercising with unexampled freedom its usurped power to nullify Federal legislation. During the Roosevelt administration it has exercised this power on more occasions than in the entire previous history of the U.S.A. It has cancelled most of the laws embodying Roosevelt's so-called New Deal policies, usually with a bare majority, with the minority of the court itself vigorously protesting against such exercise of a questionable power. It is clear that the adoption of the Roosevelt plan would result in a right-about-face of the Supreme Court on most of the controversial issues of the day, and thereby would bring about a new relation of forces within the American governmental system.

Thus it comes about that a minor reform of the judicial system, which in a time of less social strain and struggle would pass with little attention, at this moment becomes the center of a political crisis that demands the attention of the whole world. Thus it is that a simple judicial reform becomes the storm center of a constitutional crisis in the most powerful capitalist country in the world.

1. Historical Background of the Crisis

A clear understanding of the constitutional crisis requires that we review briefly the structure and history of the governmental system that arose upon the basis of the Constitution of 1787. The central or "federal" government is a federation of sovereign states (now 48 in number). To the individual states is reserved all governmental powers not expressly granted by the Constitution to the federal government. The federal government of limited powers is itself composed of three co-ordinate branches, which are supposed to act as restraining influences upon one another, with no one branch supreme, in what has been called in American constitutional law the "system of checks and balances." These three co-ordinate branches are the executive, the legislative and the judicial.

Executive powers are concentrated in the hands of the President and exercised by him directly and through his cabinet. The President appoints his cabinet with the agreement of the Senate; he is the commander-in-chief of the armed forces; he conducts foreign affairs through his Secretary of State and negotiates treaties with the agreement of the Senate; he may guide legislation through his reports and messages to Congress; he names the judges of the Supreme Court to fill vacancies with the agreement of the Senate; he is charged with the execution of the laws and policies of the federal government as laid down by acts of Congress which become law when approved by his signature or when passed over his veto by a two-thirds vote of both houses of Congress.

The legislative power is vested in the Congress of two

houses, the House of Representatives and the Senate, with concurrent powers. Representatives are elected every two years by the states in proportion to their population, and now number some 435. The Senate has two members from each state, regardless of size, a total of 96, elected for six years, with one-third to be chosen every two years. A legislative act becomes law when adopted by both houses and approved by the President, or when passed over a Presidential veto by a two-thirds majority of both houses. The power to declare war or make peace is vested in Congress.

Judicial powers are vested in a Supreme Court, provided in the Constitution, and in such lower courts as may be provided by act of Congress. The number of its members is determined by Congress. Judges are appointed by the President with the approval of the Senate and hold office for life; once appointed, they can be removed only by impeachment by the House of Representatives for acts of moral turpitude, and conviction after trial before the Senate. The judiciary interprets the application of the law to individual cases, on request of the executive officers of the government or on appeal by individual citizens.

The relations between the 48 states and the federal government, and between the three co-ordinate and equal branches of the federal government, make up the famous system of "checks and balances."

In the course of years, however, by a gradual accumulation of precedent, the Supreme Court assumed such powers that destroyed the theoretically equal "balance" of the three co-ordinate branches. By assuming the power to determine whether Congress, in adopting legislation, had acted within the powers granted to it by the Constitution, and to cancel such legislation which it declared was not so empowered, the Supreme Court in fact became a superior legislative organ, over and above the elected bodies of legislative and executive branches—a supreme governing power not elected by the people and outside any constitutional means of popular control or removal.

All this makes up a very complicated structure of government. It works without serious difficulty as long as the three branches of government are in substantial agreement as to the boundaries of their varied and overlapping powers and as to the direction of policy to be followed. But when any serious difference arises as to the division of powers and as to fundamental policy, this brings about a constitutional crisis, a deadlock between the organs of governmental power. Such a constitutional crisis exists today in the deep division on policy between the President and Congress on the one hand, and the Supreme Court on the other.

The Constitution itself provides two ways of solving such a constitutional crisis. One way is to amend the Constitution, as provided in that document, with a declaration on the matter in dispute. The other way is to bring the opinion of the Supreme Court into agreement with Congress and the executive by changing its personal composition through additional appointments.

Constitutional amendment is, however, so hedged about with difficulties that it has never been successfully applied on any question which deeply divided the country. Such an amendment must be submitted by Act of Congress to the separate 48 state legislatures for their approval, and for adoption requires the agreement of 36 out of the 48 states. Any 13 states can block such an amendment and prevent its ratification. Such a group of 13 states might comprise less than five per cent of the population, but its veto is as effective as if it were a majority. Amendments to the Constitution on fundamental issues have proved in past history capable of adoption only after a practical solution of the issue in controversy had been found by other means.

A few simple examples will sufficiently illustrate this point. Prohibition of the manufacture and sale of alcoholic beverages was written into the Constitution during the World War, under the influence of war conditions which made national control necessary. After the war, the population turned against prohibition by an overwhelming majority. But prohibition re-

mained for many years the law of the land, until mass violation of the law had nullified it in practice. Only the growth of a tremendous industry, outside the law and creating an atmosphere of general lawlessness among the population, finally forced the advocates of prohibition themselves to agree to its repeal as impossible of enforcement. Since this issue did not involve any basic alignment of class interests, it serves to bring out all the more sharply the rigidity of the American constitutional system.

The constitutional amendments which abolished slavery in the United States and guaranteed equal rights to all citizens, came only many years after the practical decision had been made in life by the arbitrament of Civil War. The slave power in the Southern states had long dominated the federal government in all its branches; it had established the principle of the constitutional inviolability of slavery as an institution. The slave power lost control of the executive and legislative branches of the government in the election of 1860, not on the issue of slavery itself, but only on the issue of its extension to the new Western states just being opened up; even after 1860 it still retained control of the Supreme Court. Slavery was destroyed only when the slave states tried to withdraw from the federal union, in order, by military power, to force slavery upon the new states. Even then, abolition of slavery was only adopted, after years of Civil War, as a military measure necessary to a military decision of the struggle to prevent the permanent disruption of the Union. Only later did constitutional amendment register this decision in the fundamental law.

Every constitutional crisis in American history has been, of course, merely the juridical form taken by great social struggles, conflicts of classes, contradiction between fundamental class interests. In every such struggle, the role of the Supreme Court has been a very active and vital one, and in each case the Supreme Court has been the main fortress of the forces of political and social reaction, of privilege and monopoly.

The first great constitutional crisis, in which can be seen the outline of all succeeding ones, arose early in the administration of Thomas Jefferson, third president of the United States, and the first great ideologist of American democracy.

Jefferson came to the presidency in 1801, at the head of the Democratic Party. He had defeated the Federalist Party, the party which had championed the Constitution and which had held power under it for the first 12 years after its adoption. The Federalist Party represented the landed aristocracy of the Northeast, the clerical influences, and the moneyed interests (mercantile and speculative capital). In full control of all three branches of the federal government, it had ridden roughshod over the interests and liberties of the masses, enforcing its policies with exceptional laws (the so-called "Alien and Sedition laws").

The Federalist Party, upon its defeat in the election of 1800, determined before surrendering office to maintain and strengthen its stronghold in the judiciary, which holds office for life and is irremovable. To insure this stronghold for a long time, the Federalists, in their last days of power, created additional courts to double the previous number, appointing and confirming the Federalist occupants of the new posts on the last day of their administration before Jefferson assumed office. The Federalist Secretary of State, John Marshall, sat at his desk until midnight of his last day in office, issuing certificates of appointment to new Federalist judges; at that moment Marshall was himself already appointed Chief Justice of the Supreme Court, a post he was to occupy for 30 years, and in which he was to prepare the Supreme Court for its reactionary role in the constitutional crisis of today.

President Jefferson, supported by a majority of Congress, when faced by this outrageous abuse of power, proceeded to adopt an act of repeal of the legislation which had created the new courts; he refused to recognize the new judges, to set up their courts, or to provide them with salaries. The first great struggle had begun between the elective branches of the government and the judiciary.

The Federalist Party, in control of the judiciary, attempted to use this position to extend their power. A certain Mr. Marbury, a Federalist appointee under the repealed Act, was refused his judicial commission by James Madison, Secretary of State under Jefferson. Marbury appealed to the Supreme Court for an order directing Madison to issue his commission. Chief Justice Marshall issued the decision, upholding the right of Marbury, declaring that his commission had been wrongfully withheld, but refusing any court action in his relief on the ground that the Act of Congress which granted jurisdiction to the courts to review such contests was contrary to the Constitution, was therefore void, and the Supreme Court without jurisdiction. Thus in the form of refusing to exercise a jurisdiction granted by Congress, the Supreme Court made its historic usurpation of power over Congress.

This historic case of "Marbury versus Madison" was the first statement of the doctrine of judicial power to nullify legislation. It was a clear act of usurpation, not sanctioned by the Constitution, and embodying a doctrine which had been specifically rejected by the Constitutional Convention which wrote that document.

Jefferson and Congress refused to recognize this decision of John Marshall for the Supreme Court. On his side, Marshall, aware of the great popular support behind Jefferson, had carefully refrained from going farther than the statement of the new doctrine, without granting Marbury any specific measure of redress of his grievance. Thus there was a deadlock. Marshall and the Federalist Party had their doctrine embodied in a decision of the Supreme Court, but Jefferson, with Congress and the country behind him, refused to bow to the decision.

So unpopular was this new doctrine of judicial veto of legislation, with its usurpation of power on the part of the Supreme Court, that John Marshall, its author, never again dared to repeat its expression in a decision in all his ensuing 30 years as Chief Justice. To have done so would have created a crisis out of which the Supreme Court would certainly

have emerged with its power definitely curtailed. For 50 years the decision in the case of "Marbury versus Madison" slumbered in the archives, and no Supreme Court Justice dared propose to exercise this questionable power. But though slumbering in the archives, this decision remained a judicial precedent, awaiting a more favorable moment for revival and effective enforcement.

Thus did the first great struggle in that long line of battles that led to the present constitutional crisis end in a compromise. Jefferson had gained the immediate victory. But John Marshall had laid down a doctrine and a precedent which was to lead directly to the Civil War and rally all reactionary forces in American life down to the present day.

In these modern days, the reactionaries wish to bolster up the power of the Supreme Court by assigning to it the special role of "bulwark of the Constitution," of the protector of national unity. But to accomplish this it is necessary for them to ignore, to try to forget, the history of the Supreme Court in the time of Jefferson's presidency. For in that period the Supreme Court, acting as the chief political instrument of the party of reaction, the Federalists, was deeply involved in conspiracies to overthrow the Constitution, to betray the very independence of the nation.

The Federalists were the party of the Constitution—but only so long as they ruled the land under that Constitution. When Jefferson and the Democratic Party brought to an end the Federalists' 12 years of misrule and oppression, the Federalists rapidly moved away from their position of being champions of national unification and passed over to the championship of states' rights against the central government, of secession and disunion, and went so far as to enter into conspiratorial relations with the agents of the British Empire, plotting to cut off the New England and Eastern states from the Union, to unite them with Canada for submission to the British Crown. That their conspiracy came to nothing in the end was due, not to their own lack of determination and zeal in their treasonable efforts, but to the exceptional success of

the policies of Jefferson, which brought such economic progress to the country as to cut the ground out from under the Federalists and take their mass support away from them. These well-established facts of American history are conveniently forgotten by those who would glorify the role of the Supreme Court, because in these treasonable conspiracies the court, through its Chief Justice Marshall, was an active participant.

John Marshall, one of the chief leaders of the Federalist Party, by no means retired from active politics when he ascended the Supreme Bench. During Jefferson's first term, the judiciary under Marshall used their positions as rostrums for political harangues against the administration, and to organize the opposition. When, in the election of 1804, the Federalist campaign against Jefferson collapsed, and he was re-elected by a majority which swept into his ranks most of the former strongholds of the Federalists, that party degenerated so completely that it became involved in the fantastic adventure of Aaron Burr, Vice-President of the United States in Jefferson's first term, who plotted with British and Spanish imperialists to cut off the great Western territories of Louisiana (purchased by Jefferson from Napoleon) by a military *coup d'état*. It was in the circumstances of the collapse of Burr's treasonable enterprise that the Supreme Court, through its Chief Justice Marshall, came into the open as the last refuge of treason against the Constitution and the country's independence and unity.

Burr's conspiracy had collapsed when his confederates among the high officers of the U. S. Army became frightened and withdrew from the adventure, betraying their own treasonable conspiracy to Jefferson. Burr himself was caught while attempting to flee the country to Mexico, after his military expedition had been dispersed. He was placed on trial on charges of treason before the court over which John Marshall presided. The evidence of Burr's treason in the hands of the government was overwhelming and complete. But Chief Justice Marshall was there to protect the traitor in his treason, and he did his job effectively.

There was but one way to save Burr from the consequences of his treason, to prevent the presentation of the evidence against him. While Burr was awaiting trial, Marshall had given him his freedom on bail, through a legal trick. The Federalist gentlemen and ladies vied with one another to heap public honors upon Burr while he awaited trial. He was feasted and lauded in the homes of the gentry. And in the midst of it all, shortly before the trial was to open, Chief Justice Marshall attended a great banquet given in honor of the traitor Burr, associating with those who openly defended his treason. When the trial opened, Marshall gave a ruling to define the crime of treason in such a way as to exclude all the government's evidence. In order to do this, he had to overthrow a previous ruling of his own, given but a few months before, and establish a rule which no jurist before or since has ever defended, and which was later rejected by the same Supreme Court. But it served the immediate purpose of excluding the evidence against Burr. The jury brought in a most unusual form of verdict: "Not proved by the evidence which has been presented." Marshall simply ordered the clerk of the Court to change the verdict to "Not guilty" and Burr was released.

Thus did the Supreme Court give aid and comfort to treason, and save that traitor whose very name has remained to this day the synonym of treason to the unity and independence of the nation.

In the case of Aaron Burr, and of the Federalist Party which aided and protected him, we have a close parallel with the development of Trotsky and the various groups and cliques which supported him in the Soviet Union. This case is the complete answer to those Americans like the Socialist leader, Norman Thomas, who rush to Trotsky's defense in connection with the recent Moscow trial of the Trotskyist Center, with the cry: "It is incredible that one who participated in the revolution should betray it, and betray it to a foreign power." In all revolutions, there have been those who would later betray it if they could, and in the American bourgeois revolution

we have a perfect example in the case of Aaron Burr. But just as John Marshall could pronounce Burr "Not guilty" by excluding the evidence, so can Norman Thomas today give the same verdict to Trotsky upon similar principles. As John Marshall saw fit to attend a banquet in honor of Burr on the eve of his trial, so Thomas can appear in a public meeting on behalf of Trotsky on the eve of the Moscow trial. But no one can disguise the political character of both these parallel actions, as equally a service to reaction and treason.

The governmental system of the United States was originally built upon a compromise between the commercial and industrial Northeastern states, hostile to slavery, and the agrarian plantation Southern states, based upon Negro slavery. Despite constant conflict of interest and constant friction in government, this compromise was continued and extended from 1776 until the 1850's. In the middle of the nineteenth century, this system of compromise came to a crisis. It broke down under the blows of the rapid opening up of the tremendous territories of the West following the discovery of gold in California and other Western territories.

The famous "gold rush" to the West of 1849 changed the course of American history, and affected the whole world, as was testified most illuminatingly in the writings of Marx and Engels at the time. The rapid occupation of a new continent, and the erection of a whole series of new "sovereign states" to take their place within the existing union of states, immediately raised the slavery issue as one that could no longer be settled by compromise. If slavery was introduced into the new territories, that would mean that control went to the South and with it control of the federal union as long as slavery existed. If, on the other hand, slavery was prohibited in the new territories, that would mean that control would go to the Northeastern states, and with it hegemony over the federal union. For the slave-owning South the issue was further sharpened by the urgent need of ever new lands upon which to constantly extend the plantation system, if slavery was to continue at all, even in its old territories, because its

backward agrarian system was rapidly exhausting the lands of the original slave states. The struggle for the West would necessarily decide the issue of the continuance of slavery or its abolition.

Into this struggle entered the Supreme Court, then as always the tried and trusted instrument of the most reactionary social and political forces in the land. In its famous decision in the case involving the runaway slave, Dred Scott, it revived the forgotten doctrine of John Marshall in the case of "Marbury versus Madison." It declared that the institution of slavery, antedating the Constitution and the union of states, could not under the Constitution be restricted by the government of the federal union, either in the established slave states or in the new states to be created. If this decision remained as the law of the land, then the victory of the South and of slavery over the whole country was assured.

Both the two major parties, Whig and Democratic, split on this issue in the 1860 election, and a new party, the Republican, formed in 1856, forged to the front on the issue of restraining slavery from extension into the new Western territories. The Republican Party, in a three-cornered contest, gained only a minority of the popular vote, but with a majority of the electoral vote of the states, elected Abraham Lincoln as President. Within a few months after Lincoln's assumption of office, the South had opened the hostilities which began four years of Civil War. This bloody conflict was required to override the Dred Scott decision of the Supreme Court, and to amend the Constitution in the only way in which it has ever been fundamentally amended.

2. The New Crisis and Its Possible Outcome

Now once again a deep-going social and economic crisis has produced a crisis of the Constitution. This crisis today is more fundamental than that which produced the Civil War. Once again the electorate has rejected the party of extreme reaction; but this time the majority is more decisive, 27 mil-

lions as against 17 millions in the popular vote, and 46 states against two in the electoral vote. And once again the Supreme Court has come forward as the bulwark of defeated reaction, has set itself as a barrier to prohibit, as contrary to the Constitution, those policies adopted by the nation in the vast plebiscite of the election of 1936.

The Supreme Court, by nullifying almost all the legislation embodying Roosevelt's policies, and thus closing constitutional doors against any measures of a progressive, democratic and nationally-unifying character, has brought the country to an impasse.

Roosevelt, and all the progressive and democratic forces which have gathered around him, must either surrender to the program of his defeated enemies of the Republican Party, the Liberty League, and the right-wing of his own Democratic Party—*or* he must take up the battle to overrule the Supreme Court, to bring that institution in line with the policies which aroused the enthusiastic support of the vast majority of the people.

Roosevelt has chosen to take up the fight. In his choice of weapons he has taken that one which promises the least fundamental victory, but the quickest one—to change the composition of the Supreme Court.

The Democratic Party, which Roosevelt heads, has an overwhelming majority of the members of both Houses of Congress. With his program clearly and indisputably within the constitutional powers of Congress to enact and enforce, it would seem that Roosevelt's victory in this fight should be quick and overwhelming.

But this is not so clear in the actual relation of forces. Among the Democratic Congressmen, particularly in the Senate, there is a strong right-wing which on this issue is combining forces with the Republicans, probably as a prelude to a more permanent political regrouping in the country at large.

In the Senate a little group whose votes will be decisive are carefully sitting on the exact middle of the fence, swaying with the political winds and trying to make up their minds

as to which side of this issue will best advance their future political careers.

It is this relation of forces which has made it necessary for Roosevelt to go to the country with an appeal for the support of the masses. In this appeal the dominant note is, of necessity, a clear and unmistakable call to the workers and farmers, those whom Roosevelt speaks of as the "underprivileged," to rally against the forces of monopoly capital, of entrenched privilege and greed.

The battle over the Supreme Court has reached an intensity far beyond that of the Presidential election last year, unprecedentedly bitter as that was. The Republican Party, the Liberty League forces, the Manufacturers Association and the Chambers of Commerce, have been joined by those reactionaries who a year ago still remained for various reasons in the camp of Roosevelt. The Democratic Party is now in process of being split much more seriously and fundamentally than Al Smith and his "Jeffersonian Democrats" were able to split it in 1936.

The shifting of the upper classes to opposition, and the lower classes to support of Roosevelt, is on the Supreme Court issue more pronounced than ever. For the first time in national politics class divisions appear as the all-dominating feature of a decisive political struggle.

The working class, the farmers and the toiling middle classes are in overwhelming majority supporting Roosevelt's proposal for reforming the Supreme Court. This is particularly true of the organized labor movement. Even the reactionary leaders of the American Federation of Labor, while desperately fighting against the progressive industrial unions of the Committee for Industrial Organization headed by John L. Lewis, are forced by their membership to join in support of the Roosevelt plan in this fight, except for a few extreme reactionaries like William Hutcheson of the Carpenters' Union. Organized labor, in the midst of great strikes and organizing campaigns, in which it faces the courts as its most dangerous enemies, rallies like one army to support the fight to curb

these courts and exercise over them at least a minimum of popular control.

In this fight the Communist Party has militantly taken its stand shoulder to shoulder with the organized workers and the forces of popular democracy. Without sharing any of the illusions about the efficacy of Roosevelt's policies to fundamentally solve the political and economic problems of the country, the Communist Party recognizes unqualifiedly that in this battle the forces of reaction, fascism and war are concentrated more and more in the camp opposing Roosevelt's plan, while the forces of a popular democracy, and first of all of the labor movement, are rallied in its support. In such a line-up there is but one possible place for the Communists, on the side of democracy. When the masses of our country are aroused to battle against entrenched privilege, monopoly capital and political reaction, there is no third or neutral position.

This is all the more true since the leading forces in both camps so clearly proclaim the fundamental issue. Roosevelt has placed his case upon the foundation of a "solemn assurance that in a world in which democracy is under attack" he is seeking "to make American democracy succeed"—"political and economic democracy"—which he has concretized as "one-third of a nation ill-nourished, ill-clad, ill-housed, who must be well-nourished, well-clothed, and well-housed." That is only a statement of aims, good as that may be, and not a program for attaining these aims—but the attack against the judicial dictatorship is the first practical step in any effective program to those ends, a step which can and must be supported with all energy.

On the other hand the reactionaries, while using the most extreme demagogy in their desperate defense of the Supreme Court dictatorship, are at the same time speaking openly and frankly of their fascist aims. It is no accident that Republicans, Liberty League Democrats and miscellaneous reactionaries are proclaiming their "crusade against Communism" in terms that would make Roosevelt also one of the hated Reds. It is no accident that from such a meeting recently, on

April 13, we have reports in the *New York Times* from which such quotations as the following can be cited, sounding as if they came from Hitler Germany:

> George U. Harvey, an aspirant for the Republican Mayoralty nomination, who spoke before Mr. Al Smith (Democrat), told the wildly cheering audience that if he controlled the New York police department he would rid the city of Communists in two weeks with the aid of a liberal supply of rubber hose. . . . Seated with Mr. and Mrs. Smith on the platform was Raoul Desvernines of the American Liberty League, who accompanied the former governor on his speaking tour in behalf of Alf. M. Landon in the last campaign. . . . Father Curran said he hoped to defeat the Reds by peaceful means, but he warned that "if they want it the way it was in Spain, we'll let them have it."

The reactionaries are also digging into past history to find documents with which to strengthen their arguments. One of the most popular in reactionary circles, copies of which have reached the desk of almost every businessman and employer in America during the past year, is the famous letter of Lord Macaulay, written to H. E. Randall of New York on May 25, 1857. The following quotations from that letter show the true anti-democratic face of the American bourgeoisie as it moves toward fascism:

> I have long been convinced—wrote Macaulay—that institutions purely democratic must, sooner or later, destroy liberty and civilization, or both. If we had a purely democratic government here (England), . . . either the poor would plunder the rich and civilization would perish, or order and property would be saved by a strong military government, and liberty would perish. It is quite plain that your government will never be able to restrain a distressed and discontented majority. For with you the majority is the government and has the rich, who are always a minority, absolutely at its mercy. The day will come when, in the State of New York, a multitude of people, none of whom has had more than half a breakfast, or expects to have more than half a dinner, will choose a legislature. Is it possible to doubt what sort of legislature will be chosen? . . . Either some Caesar or Napoleon will seize the reins of government with a strong hand, or your Republic will be as fearfully plundered and laid waste by barbarians in the twentieth century as the Roman Empire was

in the fifth. . . . Thinking this, of course, I cannot reckon Jefferson among the benefactors of mankind.

This bold and unequivocal repudiation of Jefferson, the founder of democracy in America, this appeal for the rule of the "rich who are always a minority," over the toiling masses of the people, this open appeal for "some Caesar or Napoleon" who is to "seize the reins of government with a strong hand" against the majority of the people if that majority attempts to exercise its democratic rights—here is the program of the reactionary bourgeoisie of the U.S.A., here is the true political countenance of the Supreme Court, that stronghold of reactionary autocracy in the heart of the American government, which defeats the democratic strivings of the American people, and will continue to do so until its power is broken.

The Roosevelt plan for reform of the judiciary is a first blow against the stronghold of reaction. Its success is, therefore, of vital interest to the working class, the farmers and the toiling middle classes of America, as well as to the democratic and peace-loving masses of all the world.

Address delivered at Carnegie Hall, New York, May 26, 1937.