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FDR and Chief Justice Hughes: The President, the Supreme Court, and the Epic Battle Over the New Deal

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FDR *and*
Chief Justice
Hughes

JAMES F. SIMON



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Prologue

On the gray, chilly morning of November 12, 1921, Charles Evans Hughes, the fifty-nine-year-old U.S. Secretary of State, prepared to address delegates to the first international disarmament conference in more than a decade. Hughes hoped that the venue for the Washington Conference, Continental Hall, the quietly dignified building dedicated to the heroes of the American Revolution, offered more than a cosmetic contrast to the ornate French Foreign Ministry, the scene of the Peace Conference held in Paris less than three years earlier. If the disarmament conference proceeded as Hughes planned, discussions would rise above the stubborn, selfish negotiations of the Paris conference. He also expected participants to move beyond the grand platitudes of earlier disarmament conferences. Having insisted that the United States host the conference, he intended to pressure delegates representing the major naval powers (Great Britain, Japan, and the United States) to produce positive, tangible results that had eluded the world's best statesmen for two decades.

The distinguished Secretary of State, his full, white beard immaculately groomed, sat in the center seat of a large U-shaped table. He was flanked, on his right, by the U.S. delegation, which he had handpicked to project bipartisanship. It included Republican Henry Cabot Lodge, chairman of the Senate's Foreign Relations Committee, and Oscar Underwood,

the Democratic leader of the Senate, as well as Elihu Root, the respected former U.S. senator and Secretary of State. On Hughes's left sat Arthur James Balfour, the chief of the British delegation. Prince Tokugawa, descendant of the first ruling Shogun, represented Japan's royal family, but Admiral Baron Tomosaburo Kato, the shrewd minister of the navy, was his country's chief negotiator. Premier Aristide Briand of France also sat at the table, as did government leaders from Italy, Belgium, the Netherlands, and Portugal.

The delegations were surrounded by three hundred journalists, including the veteran foreign correspondent Henry Nevinson of the *Manchester Guardian*, editors of *The Times* of London and the *Shanghai Shun Pao*, and the midwestern sage William Allen White of the *Emporia [Kansas] Gazette*. The author H. G. Wells carried press credentials, as did William Jennings Bryan, the three-time Democratic presidential candidate and former Secretary of State. The gallery was filled with dignitaries: Vice President Calvin Coolidge, Chief Justice William Howard Taft, Associate Justices Louis Brandeis and Oliver Wendell Holmes, Jr., Mrs. Warren G. Harding, the president's wife, and Alice Longworth, Theodore Roosevelt's daughter.

Balfour initiated the formal proceedings by making the motion, unanimously approved by the delegates, that Hughes serve as permanent chairman of the conference. The Secretary of State then rose, briefly acknowledged the applause, and began his speech. He recounted the disappointing history of earlier disarmament conferences, dating back to the 1898 conference convened by Tsar Nicholas II of Russia at The Hague. At the outset, Hughes's manner was stiff and impersonal, reminding reporters who had covered his losing campaign as the Republican Party's presidential candidate in 1916 of his tendency to be thorough and excruciatingly dull.

But when Hughes introduced his disarmament proposal, his voice suddenly rose to a dramatic, commanding pitch. "Competition—in armament—must stop," he said emphatically. Actions, not words, were needed to end the competition, he declared, and promised that the United States would take the lead. On behalf of the U.S. government, he said, he was authorized to scrap all American warships under construction, including six battle cruisers and seven battleships (costing more than \$330 million), as well as fifteen existing battleships. The total number of capital ships to be eliminated comprised an aggregate weight of 845,740 tons. No nation had ever made such an offer to reduce its armaments. Hughes paused to let the delegates absorb his stunning statement.

When the excited whispering throughout the conference hall subsided, Hughes turned his attention to the British and Japanese delegations, demanding that their nations make comparable sacrifices. For Great Britain, he said, it meant halting construction on four enormous "Hoods," the Royal Navy's giant new warships, as well as the destruction of nineteen other battleships. The British scrap heap, he added, must include HMS *King George V*, the battleship viewed most reverentially by His Majesty's Royal Navy. While Balfour scribbled notes on an envelope, an astonished Lord Beatty, Great Britain's First Sea Lord, hunched forward in his chair and cast a menacing look at the Secretary of State. Hughes had sunk more British warships than "all the admirals of the world had destroyed in a cycle of centuries," the *Guardian's* Nevinson later wrote.

Hughes manhandled the Japanese fleet with equal fervor. Baron Kato, who had appeared supremely pleased when Hughes devastated the American and British naval arsenals, was chagrined to hear what the Secretary of State had in mind for his navy. Hughes insisted that plans for eight Japanese warships be abandoned, an additional seven battleships and cruisers under construction be scrapped, and that ten older ships be destroyed. The toll included the giant *Mutsu*, the pride of the Japanese Empire.

"With the acceptance of this plan," Hughes concluded, "the burden of meeting the demands of competition in naval armament will be lifted." As a result, "[e]normous sums will be released to aid the progress of civilization."

Hughes's idealism was tempered with a healthy dose of pragmatism. He well knew that his formula to reduce the world's most powerful navies would meet with stiff resistance from Great Britain and Japan. For the next two and half months, Hughes pressured and cajoled his British and Japanese counterparts in public meetings and behind closed doors. He did not win every argument. Japan refused to destroy the *Mutsu*, forcing Hughes to adjust the requirements for the United States and Great Britain to maintain a rough tonnage ratio among the three great powers. In early February 1922, Hughes announced the agreement between the three major naval superpowers to drastically reduce their fleets. The international accord was hailed as an historic achievement, and Hughes emerged as one of the world's leading statesmen.

While Hughes received accolades for his disarmament conference triumph, Franklin D. Roosevelt was being fitted with 14-pound braces that extended from his heels to above his waist. The braces were the latest and harshest acknowledgment that Roosevelt had infantile paralysis and might never walk again. Only a year earlier, Roosevelt seemed destined for high public office, perhaps the presidency. He was a descendant of one of the nation's most illustrious political families. His distant cousin, Theodore Roosevelt, had risen in the Republican Party to become president. Though Franklin's side of the family were Democrats, he had consciously patterned his political career on his cousin. Like Teddy, he had served as Assistant Secretary of the Navy and campaigned as his party's vice-presidential candidate. Though the Democrats' 1920 presidential ticket of Ohio governor James Cox and Roosevelt was trounced in the election, Franklin's political prospects remained bright. There was immediately talk that the handsome, athletic thirty-nine-year-old New Yorker might well head his party's national ticket in 1924 or 1928.

Roosevelt's high ambitions appeared to be irredeemably shattered on August 10, 1921. That was the day he went to bed with severe chills after a vigorous schedule of boating and swimming with his children near the family's summer estate on Campobello, a small island off the coast of Maine. He thought he had a bad cold, a diagnosis mistakenly confirmed by the local family doctor. Two days later, he had lost the ability to move his legs. Dr. Robert Lovett, a faculty member at the Harvard Medical School and the nation's leading expert on infantile paralysis, was summoned to Campobello. After Lovett examined Roosevelt, who was paralyzed from the waist down, he was certain that his patient had contracted poliomyelitis.

In September, Roosevelt was transported to New York by private railroad car. *The New York Times's* front-page story informed the public, for the first time, that the Democratic Party's rising star had polio and was to be treated at New York's Presbyterian Hospital by Dr. George Draper, Dr. Lovett's protégé. At first, Draper assured reporters that Roosevelt would walk again. But when his patient made no significant progress in the hospital, Draper began to doubt his early prognosis. He worried, moreover, that the extent of Roosevelt's debilitating disease might destroy the patient's psychological health as well as his body.

Only Roosevelt himself possessed absolute confidence that he would fully recover. By October, when he was discharged from the hospital to return to the family's town house on East 65th Street, he could pull him-

self up by a strap and, with assistance, swing himself into a wheelchair. A trained physiotherapist, Mrs. Kathleen Lake, came to the house three days a week, laid Roosevelt out on a stiff board, and stretched his legs. Franklin demanded that she administer the painful exercises every day. Throughout his ordeal, Roosevelt maintained his usual ebullience, gaily greeting family member and friend alike, often cheering them up.

A raging battle, meanwhile, was being fought in the family town house. Franklin's mother, Sara, had written off any future political career for her son and made plans for him to retire to Hyde Park, where she could lovingly care for him, as she had done for her elderly husband, James, before his death. But the imperious Sara faced a formidable challenge from Franklin's wife, Eleanor, and his wily and indefatigable political adviser, Louis Howe, who had moved into the house to plot Roosevelt's political comeback. They aggressively challenged every subtle maneuver by Sara to bring Franklin permanently home to Hyde Park. Eleanor supervised Franklin's physical recovery, while Howe worked laboriously to preserve Roosevelt's political future, sending out a steady stream of press releases and maintaining close contact with Democratic leaders across the country. Though Roosevelt remained paralyzed from the waist down, Howe continued to believe that he would be elected president of the United States.

Charles Evans Hughes's ascent to the nation's highest judicial office was predictable, if not preordained. No one was better equipped by training and experience to be Chief Justice of the United States. He had been a brilliant lawyer, a fearless investigator of corruption in the utilities and insurance industries, a progressive Republican governor of New York, and a former associate justice of the Supreme Court. In his extraordinary career, he had succeeded in almost every challenge he faced. The one exception: he narrowly lost the presidency to Woodrow Wilson in 1916. After his successful four-year term as Secretary of State, highlighted by the Washington Disarmament Conference, he returned to his lucrative private law practice in New York City and was elected president of the American Bar Association. He also remained active in the Republican Party, campaigning vigorously for Herbert Hoover in 1928 in his successful presidential campaign. After Chief Justice Taft died in the winter of 1930, Hoover nominated Hughes to be the nation's eleventh Chief Justice.

Roosevelt's paralysis discouraged virtually any serious thought of fu-

ture elective office outside of the family's home on East 65th Street. But by 1924, Roosevelt had mastered the use of his heavy braces and prepared to resume his political career. At the Democratic National Convention in Madison Square Garden, he moved slowly toward to the podium, leaning heavily on the arm of his strapping sixteen-year-old son James. At the podium, Roosevelt, though perspiring profusely from his exertion, beamed at the wildly applauding delegates, and delivered a rousing nominating speech for New York governor Al Smith. In confident, dulcet tones, he praised Smith as the " 'Happy Warrior' on the political battlefield." The delegates erupted in thunderous applause, a stirring tribute to Roosevelt as much as to the man he had nominated. Four years later, Roosevelt was elected governor of New York, and, in 1930, he was reelected by a landslide. Howe's political timetable called for Roosevelt to run for the presidency in 1936, after Hoover had completed what Howe presumed would be his second term. But Hoover's ineffectual response to the Great Depression destroyed his presidency and accelerated Howe's schedule. In November 1932, Roosevelt was elected president, beating Hoover in the electoral college, 472–59.

Shortly before his presidential inauguration on March 4, 1933, Roosevelt wrote a cordial note to Hughes, recalling their long friendship and expressing his admiration and respect for the Chief Justice. He asked if he might break tradition and recite the entire presidential oath. Hughes readily agreed and wrote that he "especially prized the opportunity of being associated with you in our great American enterprise."

In his inaugural address, Roosevelt promised "direct, vigorous action" to lift the nation out of the disastrous economic depression. Immediately upon taking office, he transformed his pledge of "a new deal for the American people" into a fusillade of legislative proposals to the Democratically controlled Congress. Congress responded by passing laws that shut down insolvent banks, regulated stock sales, imposed industrial codes, subsidized farmers, and put more than a quarter million unemployed young men to work in the Civilian Conservation Corps.

In official Washington, only the U.S. Supreme Court appeared immune to FDR's contagious spirit. The Hughes Court was anchored by four ideological conservatives intractably opposed to Roosevelt's New Deal.

The Court's liberal wing was led by Justice Louis Brandeis, supported by Associate Justices Benjamin Cardozo and Harlan Fiske Stone.

Chief Justice Hughes and his fellow Hoover appointee, Associate Justice Owen Roberts, held the balance of judicial power throughout the critical constitutional battles over New Deal legislation. By force of his commanding intellect and exemplary public service, Hughes was expected to lead the Court. But in which direction? He sometimes appeared to split the difference between the two warring factions, writing eloquent majority opinions protecting civil liberties but frequently joining the Court's conservatives in striking down New Deal statutes.

Roosevelt publicly derided the Court's anti-New Deal decisions as relics of a bygone "horse-and-buggy" era. His criticism did nothing to deter a Court majority that continued to declare one New Deal statute after another unconstitutional. Not even his triumphant landslide re-election appeared to influence the justices. Finally, in frustration and anger in early 1937, the president proposed a so-called reform plan that would allow him to appoint one new justice for every sitting justice seventy years of age or older. Because six justices were over seventy, including Hughes, the plan would have permitted FDR to stack the Court with new appointees favorable to the New Deal. His radical proposal raised two unsettling constitutional questions: Should a president be able to mold a Court to meet his political goals? And should ideologically driven justices be allowed to frustrate the public will? Both questions are as relevant in the twenty-first century as they were during the Great Depression.

Roosevelt's Court-packing plan created a dramatic confrontation between the President and Chief Justice. Roosevelt promoted his plan as an effort to bring new energy to an overworked and aging Court. But he did a poor job in disguising his true purpose: to undermine the power of life-tenured justices to thwart his popular mandate. Hughes proved more than a match for Roosevelt in defending the Court. He deftly rebutted the president's claim that the justices were incapable of keeping abreast of the Court calendar, and the proposal was resoundingly defeated. In grudging admiration of Hughes, Roosevelt later said that the Chief Justice was the best politician in the country. That was hardly the way Hughes would have chosen to be remembered, though there was much truth in the president's remark.

Shortly after the defeat of his Court-packing plan, Roosevelt made

the first of five appointments to the Court in less than three years. All of the new justices, from former Senator Hugo Black to Roosevelt's Attorney General, Frank Murphy, were Democrats and loyal New Dealers. But with each new Roosevelt appointee, Chief Justice Hughes seemed more assured in leading the Court. Administration insiders expected the president's third appointee, Harvard Law professor Felix Frankfurter, a Roosevelt confidant and scathing critic of the Court's anti-New Deal decisions, to challenge Hughes for the Court's intellectual leadership. But Frankfurter quickly deferred to Hughes and became one of his most avid admirers, ranking him as one of the nation's great chief justices.

Roosevelt was slow to recover from the Court-packing debacle. Emboldened conservative Democrats and Republicans blocked the liberal president's legislative agenda. Midway through his second term, Roosevelt appeared to be a weak, lame-duck president. But he never lost his confidence and, like Hughes, never ceded leadership. He outmaneuvered isolationists senators, many of whom had opposed his Court-packing plan, to expedite essential aid to Great Britain as the Allies hovered on the brink of defeat at the start of the Second World War.

When Hughes announced his retirement from the Court in June 1941, Roosevelt issued a heartfelt letter of regret and invited the Chief Justice to lunch at the White House. They talked alone, sharing for the last time their common bond of national leadership at a critical point in American history.