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NOTHING TO FEAR

FDR'S INNER CIRCLE AND THE HUNDRED DAYS THAT CREATED MODERN AMERICA

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In late January 1933, Roosevelt visited Muscle Shoals with a delegation that included Norris. Afterward, he gave a speech from the portico of the state capitol in Montgomery supporting the project in which he said he hoped to move a bill on it through Congress quickly. When Roosevelt told Norris that it should be a happy day for him, Norris responded, with tears in his eyes, "I see my dreams come true." Later, in Warm Springs, Roosevelt expanded on his remarks. The project he was envisioning, he told reporters, would be "probably the widest experiment ever conducted by a government." It would include, he said, low-cost hydroelectricity, flood control, and reforestation, and it would eventually employ 200,000 people.[34]

Roosevelt's sweeping vision for Muscle Shoals, Moley observed, had "out-Norrised Norris." There were plenty of critics, including *The Washington Post*, which insisted it made no sense "in this period of hard times" to "waste still more of the taxpayers' money on this futile project." But Roosevelt was not deterred. In a March 13 letter, he asked Norris to take the lead in drawing up a new Tennessee Valley bill. The most controversial issue it would have to resolve was whether the project should include transmission lines, in addition to dams, which would give the government the ability to deliver electricity directly to consumers, putting it in head-to-head competition with power companies. The power companies were bitterly opposed to government-owned transmission lines, but Roosevelt decided that he wanted them for Muscle Shoals. He had become convinced that publicly owned transmission lines were key to keeping electricity rates reasonable.[35]

On April 10, Roosevelt sent Congress a bill to create the Tennessee Valley Authority. The TVA would, he said, be "a corporation clothed with the power of Government but possessed of the flexibility and initiative of a private enterprise." Roosevelt's goal was to follow the TVA with even bigger projects, which would, as Tugwell noted, "furnish yardstick power on a scale" that energy companies' "worst dreams had never pictured." In Congress, Democrats and progressive Republicans rallied to the bill. So many power executives showed up to oppose it that an extra day of hearings had to be scheduled. "The power companies are willing and want to work with the government toward the development of the valley," the vice president of

Tennessee Electric Power Company told Congress, "but we want to be protected." The biggest sticking point was the transmission lines, but the bill's supporters would not give in. "This is a national resource," Representative John Rankin of Mississippi declared, "and we should build lines to carry electricity to the ultimate consumer."[36]

On May 18, Roosevelt signed the TVA bill into law. The House had balked at including the transmission lines provision, but Roosevelt had held firm. At the signing, Roosevelt turned to Norris and asked, "George, are the transmission lines in here?" When told they were, Roosevelt jokingly asked where the representative of Alabama Power was. The signing was an emotional moment for the seventy-one-year-old Norris, who declared it the culmination of twelve years of struggling "on behalf of the common people against the combined forces of monopoly and human greed."[37]

Roosevelt's second reform initiative was the Securities Act of 1933. Its purpose, like the TVA's, was to use the government's power to rein in corporate excess. The villains this time were not greedy power companies, but dishonest issuers of stock. Stock market malfeasance was not as critical a problem as the farm crisis or mass unemployment, but the symbolism loomed large. The Crash of 1929 was widely regarded as the cause of the Depression, and the public blamed the crash in large part on lax government supervision of the stock market. Roosevelt, who regarded stock fraud as a moral issue as well as an economic one, had made the need for tighter regulation a theme in the 1932 campaign. He promised, in a speech in Columbus, Ohio, to promote "truth telling" in the sale of securities. "Government cannot prevent some individuals from making errors of judgment," he said. "But Government can prevent to a very great degree the fooling of sensible people through misstatements and through the withholding of information." When he took office, a law regulating stock sales was, Moley said, "a 'must' of the first order."[38]

At Roosevelt's direction, Moley had started working on the problem back in December. Busy as he was, Moley had enlisted Samuel Untermyer, a prominent New York securities lawyer, to come up with a bill. Untermyer, an old-line progressive, had been counsel to the House Committee on Banking and Currency, better known as the Pujo Committee, when it held hearings in 1912 into the "money trust," Wall Street financiers who exerted a pernicious influence on the nation's finances. The hearings had generated national headlines and had prompted states to adopt "blue sky" laws, so called because they imposed limits on stock issuers, who were known for trying to sell unsophisticated buyers "everything but the blue sky." During this "money trust" era, Untermyer and his fellow progressives had failed to pass a federal securities law, but now Roosevelt was giving them another chance. In January, Untermyer delivered a draft of his securities bill. Moley could see right away that there were problems with the bill, which made the dubious suggestion that the power to regulate securities should be given to the Post Office.[39]

While Untermyer was drafting his securities bill, Roosevelt asked Commerce Secretary Daniel Roper and Attorney General Homer Cummings to take on the same project. Duplicate assignments of this sort would be a common occurrence during the New Deal. On another occasion, Moley recalled, Roosevelt had asked five people to take on the same project "and was flabbergasted when they all turned up with elaborate reports." In the case of the securities bill, Moley believed the duplication was simply the result of Roosevelt's absentmindedness. But Roosevelt may also have figured that with two bills being drafted, he would get two approaches to the problem, allowing him to choose the one he liked best. When he realized that two securities bills were being produced, Roosevelt did what he generally did in such circumstances—he invited all of the drafters in to meet with him so they could agree on a single draft.[40]

When Roosevelt sat down with Untermyer, Roper, and Cummings it became clear their bills had gone off in different directions. The Untermyer bill took on stock sales in general, and held out for the Post Office as the regulatory body. Roper and Cummings had brought in Huston Thompson, a former chairman of the Federal Trade Commission, to help them with their draft. The Roper-Cummings-Thompson bill was limited to new stock issues, and put the regulatory power in the Federal Trade Commission. At the meeting with Roosevelt, both groups dug in. Roosevelt gave up hope of combining the two approaches, and settled on the Roper-Cummings-Thompson

bill. The Roper-Cummings-Thompson bill addressed a far smaller part of the problem than Untermyer's bill. The portion it carved off was also of little immediate consequence, since the Depression had all but ended the issuing of new stocks. In going with the Roper-Cummings-Thompson bill, Roosevelt may have wanted to start out regulating a manageable part of the problem, or he may simply have been acting out of loyalty to his Cabinet members. He insisted, though, that there would be a future bill that covered trades of existing stocks.[41]

Roosevelt sent the Securities Act of 1933, also known as the Truth in Securities Act, to Congress on March 29. His congressional message, which was drafted by Moley, said that while government could not vet every new stock, it could insist that issuers provide full and accurate information to prospective buyers. "This proposal adds to the ancient rule of *caveat emptor*," Roosevelt said, "the further doctrine 'let the seller also beware.'" The bill was initially well received. "The measure is in the main so right in its basic provisions," *The Wall Street Journal* declared that "the country will insist upon its passage." When members of Congress looked closely, however, the bill struck them as riddled with problems. Some provisions seemed too draconian, including one giving buyers the right to return stocks for a full refund if a registration statement was untrue in any material respect. At the same time, *New Republic* columnist John T. Flynn insisted that the bill did too little. "There is hardly a stock abuse which ran wild during the last dozen years which would have been curbed if this bill had been on the statute books," he wrote. In the face of growing resistance in Congress, Sam Rayburn, the chairman of the House Commerce Committee, which had jurisdiction over the bill, urged Moley to come up with a new draft.[42]

Moley asked Felix Frankfurter to take on the project. An old friend of Roosevelt's from the Wilson administration, Frankfurter had turned down the position of solicitor general, but he remained a trusted adviser. "Three of us will arrive at the Carlton Friday morning," Frankfurter wired Moley. "Please reserve room for us." When he showed up, it was in a group of four: himself, James Landis, Benjamin Cohen, and Thomas Corcoran, who was already living in Washington. Landis, a young colleague of Frankfurter's at

Harvard Law School, was an expert on blue sky laws, and a former law clerk to Justice Louis Brandeis whose book *Other People's Money* laid the groundwork for regulating the securities industry. Cohen was a soft-spoken lawyer who had helped Frankfurter fight for minimum wage laws and other progressive causes. William O. Douglas, the New Deal lawyer turned Supreme Court justice, would later call Cohen "the best and most intelligent man in the New Deal." Corcoran—or "Tommy the Cork," as he would soon be known—was working at the Reconstruction Finance Corporation. A former student of Frankfurter's, Corcoran was the most outgoing of the three. The arrival of Frankfurter and his three young draftsmen was a milestone for the New Deal. Landis, Cohen, and Corcoran were among the first Frankfurter protégés to join the administration—a group that would soon acquire its own nickname, Frankfurter's "Little Hot Dogs." Corcoran and Cohen would go on to become a famous New Deal team, Cohen taking the lead in writing some of the era's most important laws and Corcoran in lobbying for them. Moley was impressed with Cohen and Corcoran when he first met them, but he was wary. After getting to know them better, it seemed to him that "they entertained a deep suspicion of bankers, of Wall Street lawyers, and of corporation lawyers in general."[43]

After Frankfurter returned to Harvard, Landis, Cohen, and Corcoran settled into the Carlton Hotel and worked around the clock. By April 8, they had a new draft securities bill. It borrowed from the Roper-Cummings-Thompson draft and from the British Companies Act, which required issuers of securities to file a prospectus in advance. In Britain, a government office merely checked that the prospectus was properly signed and dated. The Cohen-Landis-Corcoran bill was more demanding, requiring that a registration form be filed with the FTC thirty days before the stock was issued and authorizing the commission to block the stock issue if there were misrepresentations or important omissions. On April 10, the Frankfurter group attended a House Commerce Committee meeting. With Roosevelt's help, they convinced Sam Rayburn, the committee chairman, that their draft should be the basis for the new law. Cohen and Landis worked on revisions, clashing often in the process. "Teamwork," Cohen complained to Frankfurter, "is impossible." Landis wanted to give the FTC authority to specify what information stock issuers had to disclose. Cohen, who was more skeptical of Wall Street, wanted the bill to state in detail what was required. The dispute went all the way up to Roosevelt, who sided with Cohen.[44]

On April 21, a final draft was complete. At the insistence of Moley, who had become big business's go-to man in the administration, Rayburn met with a group of corporate lawyers led by John Foster Dulles. Dulles's group had a list of ways they wanted the bill watered down. Rayburn listened politely but did not yield. The committee reported out the Landis-Cohen bill to the full House. Rayburn arranged for debate to be capped at six hours, and for amendments to be limited. He made the first appeal for the bill, arguing that as much as half of the $50 billion in new stocks that had been issued in recent years had turned out to be worthless. The result, he said, had been "tragedy in the lives of thousands of men and women who invested their life savings." The House passed the Landis-Cohen bill on a voice vote on May 5. "Rayburn did not know," Landis later said, "whether the bill passed so readily because it was so damned good or so damned incomprehensible." On May 8, the Senate passed its own version of the bill. Rayburn presided over the conference committee that was charged with reconciling the two bills. He used his position to ensure that the House version won out.[45]

On May 27, Roosevelt signed the Securities Act of 1933. Selling securities "is really traffic in the economic and social welfare of our people," he declared, which "demands the utmost good faith and fair dealing." The new law was a victory for the administration's Brandeisians, who insisted that big business had to be closely regulated to ensure that it did not trample on the public. The act, which marked the federal government's first intervention into the stock market, alarmed Wall Street. *Time* magazine lamented that corporate lawyers had been outsmarted by Frankfurter, and worried that "the so-called Securities Act had made it practically impossible for any corporation to raise any new capital." While *Time* was sounding the alarm for capitalism, reformers were complaining that the bill did not go far enough. It did nothing to regulate the sale of existing stocks, nor did it require the government to evaluate the quality of new issues, as long as all of the required information was provided. In a *Fortune* article, Frankfurter declared the new law "a modest first installment of legislative controls," and insisted that more remained to be done.[46]

It had taken two months, not the two weeks Wallace had hoped, to get the Agricultural Adjustment Act through Congress. As a result, the planting season was well under way when Wallace embarked on what Mordecai Ezekiel called "the greatest single experiment in economic planning under capitalist conditions ever attempted by a democracy in times of peace." Suddenly, the Department of Agriculture was the white-hot center of the New Deal. "From early morn until midnight and often later," Wallace would later say, dairymen, cotton growers, wheat growers, and cling peach producers showed up looking for ways "to make the new machinery whir into action in their behalf." Presiding over the frenetic scene was Wallace himself, easily the most energetic person in the building. He woke at five a.m. and walked three miles to the department offices, where he invariably worked late into the night.[47]

When Peek arrived to head up the Agricultural Adjustment Administration, he was still a committed McNary-Haugenite. "He plowed just one furrow... and plowed it straight," Russell Lord observed. The day the Agricultural Adjustment Act passed, he had asked Wallace to give him the powers the new law gave to the secretary of agriculture. Wallace turned him down, after checking with Roosevelt, but realized that the request was not an auspicious start to their working relationship. Peek also told Wallace that he wanted to use his position to dump surplus crops overseas, and Wallace said no to that as well. Wallace tried to persuade Peek to give up on McNary-Haugenism. He asked M. L. Wilson, who had become chief of the Wheat Division, to sit down with Peek and make a pitch for domestic allotment. Wilson returned from an hours-long meeting admitting defeat. "Did you ever try to corner an ornery old sow in a fence-corner?" Wilson asked Wallace. "First you whack her on the left side of her head, and she turns; then you

whack her on the right side; then zip! She's gone, right between your legs!" That, Wilson said, was how it had gone with Peek.[48]

Peek had a strong following within the department. "This is the man who ought to be Secretary," they would say as the hard-charging Peek arrived for a meeting, "and there," they would say, nodding toward the rumpled, soft-spoken Wallace, "is the man who is." The department broke into warring camps. On one side of the divide were Peek and his coadministrator, Charles J. Brand, who had played a large role in drafting the original McNary-Haugen bill. Heading up the other side was Jerome Frank, the University of Chicago Law School graduate Wallace had appointed to be counsel for the AAA. Frank was another protégé of Felix Frankfurter, who called him a "lawyer who watches the breadlines more closely than the price-quotations." Frank, in turn, brought in other so-called "urban liberals," including Adlai Stevenson, Abe Fortas, and Alger Hiss. Peek refused to rely on Frank for legal matters, and instead used his own salary to hire Frederic Lee, the drafter of the AAA, to be his private counsel. Peek insisted that Frank and his young, well-educated hires knew little about farming. They were socialists, Peek said, who wanted to change the AAA "from a device to aid the farmers into a device to introduce the collectivist system of agriculture into this country." Frank was just as critical of Peek, whom he regarded as right-wing, behind the times, and inflexible, and Brand, whom he dismissed as "a man of limited ability."[49]

Wallace's first order of business was getting the domestic allotment program started for wheat, which would be planted in the fall. In late May, he invited wheat farmers, processors, and consumers to a conference at the Department of Agriculture to discuss how to proceed. "We had no carefully prepared plan, but we knew that we had in that room all the elements necessary for one," Wallace said. The groups put their usual differences aside and agreed on how to proceed. By mid-June, half a million wheat producers had signed up. Wallace, with his spiritual connection to plant life, remained uneasy about taking farmland out of production and, even more so, about destroying crops. He was fortunate, however, in the case of wheat. With the