

0. FDR: YOU'VE GONE TOO FAR! - Story Preface

1. FDR: YOU'VE GONE TOO FAR!

2. ENGLAND: WE'VE HAD IT!

3. SURE YOU WANT TO BE PRESIDENT?

4. WE DON'T APPROVE!

5. THE PRICE WE PAY

6. WHAT A COUNTRY!



On February 5, 1937, President Franklin Roosevelt proposed increasing the number of Supreme Court justices. His critics responded that the President was just trying to "pack the court" with people likely to support his agenda. Lots of political cartoons followed. This one, published in the Waterbury, Connecticut "Republican," on the 14th of February that year, criticizes the court-packing plan by asking this question: "Do We Want A Ventriloquist Act In The Supreme Court?"

In 1937, FDR had a running battle with the United States Supreme Court. He was unhappy that the high court was striking down some of the laws that the President's Administration favored.

In his "fireside chat" of March 9, 1937—while complaining about the U.S. Supreme Court and attempting to rally his base— FDR told the American people:

We have, therefore, reached the point as a Nation where we must take action to save the Constitution from the Court and the Court from itself. We must find a way to take an appeal from the Supreme Court to the Constitution itself. We want a Supreme Court which will do justice under the Constitution—not over it. In our Courts we want a government of laws and not of men.

I want—as all Americans want—an independent judiciary as proposed by the framers of the Constitution. That means a Supreme Court that will enforce the Constitution as written—that will refuse to amend the Constitution by the arbitrary exercise of judicial power—amendment by judicial say-so. It does not mean a judiciary so independent that it can deny the existence of facts universally recognized.

Roosevelt thought the high court was filled with nine old men whose independent decisions stood in his way. He wanted to "pack the court" with like-minded thinkers so he could implement his social policies. How would that happen? In the same fireside chat, FDR laid-out his plan:

What is my proposal? It is simply this: whenever a Judge or Justice of any Federal Court has reached the age of seventy and does not avail himself of the opportunity to retire on a pension, a new member shall be appointed by the President then in office, with the approval, as required by the Constitution, of the Senate of the United States.

That plan has two chief purposes. By bringing into the judicial system a steady and continuing stream of new and younger blood, I hope, first, to make the administration of all Federal justice speedier and, therefore, less costly; secondly, to bring to the decision of social and economic problems younger men who have had personal experience and contact with modern facts and circumstances under which average men have to live and work. This plan will save our national Constitution from hardening of the judicial arteries.

The number of Judges to be appointed would depend wholly on the decision of present Judges now over seventy, or those who would subsequently reach the age of seventy.

If, for instance, any one of the six Justices of the Supreme Court now over the age of seventy should retire as provided under the plan, no additional place would be created. Consequently, although there never can be more than fifteen, there may be 'only fourteen, or thirteen, or twelve. And there may be only nine.

There is nothing novel or radical about this idea. It seeks to maintain the Federal bench in full vigor. It has been discussed and approved by many persons of high authority ever since a similar proposal passed the House of Representatives in 1869.

Of course, everything about "this idea" was "novel" and "radical." FDR wanted to expand the number of Justices from nine to fifteen. He, of course, would appoint those six additional people.

Newspapers and political cartoonists had a field day with FDR's blatant efforts to get rid of the "checks" when it came to the "balance" of his agenda.

- "YES," was the only word FDR wanted to hear from the Supreme Court. And the only qualifying test for the job was whether a candidate could shout it - loud and clear!
- The *Washington Post* saw the President as a kind of Samson who was attempting to destroy American democracy.
- Not content to merely pack the court, FDR pushed Congress to pass legislation which furthered his agenda.
- A few rulings in his favor were not enough. The *Arizona Republic* parodied the President: "I want an umpire I can depend on to call every pitch I make a strike!"
- Despite the President's wishes, the Senate Judiciary Committee found his court-packing proposals to be "needless, futile and utterly dangerous." After all, an independent judiciary is the "only certain shield of individual rights."
- Public opinion on the issue strongly turned against FDR and helped defeat his quest to pack the court with like-minded jurists.
- As he wistfully looked at the trash-canned "Protective Power of the U.S. Supreme Court," one voter observed: "Yes, I voted for Roosevelt. But **not for that!**"
- Not one to accept defeat, the President thought he'd put his plan "on ice" until he could resurrect it in a different form. He never did.

If the people, through negative public opinion, ultimately defeated FDR's plans to implement *his* legal agenda, there certainly was historical precedent for it. Wouldn't it be interesting to know George III's actual thoughts when his former subjects told him—their *King*—they'd had enough?

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