

Franklin D. Roosevelt on “Court-Packing”

Toward the end of Franklin D. Roosevelt’s first administration, the Supreme Court began to declare important new Deal legislation unconstitutional. In 1937 Roosevelt introduced legislation designed to change the makeup of the Court. Roosevelt’s proposal would empower the president to appoint a new member whenever an incumbent justice, who had been acting as a judge for at least ten years, failed to retire at the age of seventy; most conservatives on the Supreme Court were already over seventy. The maximum number of justices would be set at fifteen, six more than the court consisted of. Here is part of the President’s explanation of this bill.

When I commenced to review the situation with the problem squarely before me, I came by a process of elimination to the conclusion that, short of amendments, the only method which was clearly constitutional, and would at the same time carry out other much needed reforms, was to infuse new blood into all our Courts. We must have men worthy and equipped to carry out impartial justice. But, at the same time, we must have Judges who will bring to the Courts a present-day sense of the Constitution - Judges who will retain in the Courts the judicial functions of a court, and reject the legislative powers which the courts have today assumed...

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.

Franklin D. Roosevelt
Fireside Chat, March 9, 1937

Questions

- 1. What does Roosevelt give here as his reasons for presenting this bill?**
- 2. What do you think were his real reasons?**
- 3. What flaws can you find in his arguments?**
- 4. The president’s bill was referred to the Committee on the Judiciary. How do you think they responded to it?**