

Franklin Roosevelt's Proposal for Reforming the Supreme Court: 168 Days of National Debate

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Grade Level: High

Duration of lesson: 1-2 periods

Overview:

Despite the dire conditions of the Great Depression of the 1930s, Franklin D. Roosevelt was faced with several legal and political obstacles to the passage of the New Deal. In response to a conservative Supreme Court that overturned Congressional legislation on such issues as child labor and minimum wage for women, FDR proposed a Judicial Branch Reorganization act, which would “pack the courts” with younger, New Deal-friendly justices. The proposal backfired, causing the ire of Southern Democrats and citizens who held the Supreme Court as a sacred institution. But although Roosevelt’s proposal failed, a judicial revolution followed when the Supreme Court itself decided to defer to Congress on matters of socioeconomic reform, and passed FDR’s New Deal programs.

By analyzing the primary sources and interest groups involved, students will begin to grasp the complex legal struggles surrounding the fight against the Depression, before World War Two arrived to alleviate America’s economic problems. In addition, the lesson provides insight into the agenda of Southern Democrats in the early twentieth century, who defied FDR and fought to maintain white supremacy in their states.

Related [National History Standards:](#)

Content Standards:

Era 8: The Great Depression and World War II (1929-1945)

Standard 2: How the New Deal addressed the Great Depression, transformed American federalism, and initiated the welfare state

Historical Thinking Standards:

Standard 2: Historical Comprehension

- B.** Identify the central question(s) the historical narrative addresses.
- C.** Read historical narratives imaginatively.
- D.** Evidence historical perspectives.

Standard 3: Historical Analysis and Interpretation

- B.** Compare and contrast differing sets of ideas, values, personalities, behaviors, and institutions.
- C.** Differentiate between historical facts and historical interpretations.
- D.** Consider multiple perspectives.
- J.** Hypothesize the influence of the past.

Standard 4: Historical Research Capabilities

- A.** Formulate historical questions.
- C.** Interrogate historical data.
- D.** Identify the gaps in the available records, marshal contextual knowledge and perspectives of the time and place, and construct a sound historical interpretation.

Lesson Objectives:

- Students will identify the difficulties facing presidential decision making.
- Students will identify the elements of President Roosevelt's court reform proposal
- Students will determine arguments for and against President Roosevelt's Supreme Court Reorganization Plan
- Students will assess the short term impact the failure of this plan had on President Roosevelt and the New Deal.

Topic Background

President Franklin Roosevelt's battle with Congress and the American people over his 1937 proposal to reorganize the Supreme Court by increasing the number of justices, often referred to as the "court packing scheme," was an event of considerable significance in both legal and political terms. Even though Roosevelt lost this particular fight, the interplay of events surrounding the battle ultimately assured the safety of such important New Deal programs as the Social Security and the National Labor Relations Acts. In addition, while some historians such as Barry Cushman found evidence that the Court's move to a more expansive interpretation of the Constitution actually pre-dated the court-packing debate, it is still a tenable argument that the national dialogue resulting from the aftermath of FDR's bombshell proposal effectively solidified the shift. For the next 50 years no significant piece of socioeconomic legislation, either state or national, would be subsequently overturned on appeal.

The change from an era of "judicial supremacy" to one in which the Supreme Court deferred to Congress on such socioeconomic issues was indeed a change so extraordinary that one historian, at least, has dubbed it "the Constitutional Revolution of 1937" (Leuchtenburg, *The Supreme Court Reborn*). But ironically for Roosevelt, the fury of congressional reaction to the court-packing proposal, even among some of the strongest New Deal supporters, virtually assured that even the huge roar of approval given Roosevelt in his landslide victory over Alfred Landon in the 1936 presidential election would prove insufficient to the task of expanding the New Deal in more radical directions. His political goodwill in Congress, already weakened by his failure to forcefully intervene in the militant sit-down strikes then sweeping through America's industrial heartland, was further squandered on the court fight. Indeed, conservatives in both parties were so aroused by the proposal that few New Deal reforms of any significance were passed by Congress after 1937. Roosevelt's second inaugural promise to the "one-third of a nation (still) ill-housed, ill-clad, and ill-nourished" to provide enough for those who have too little would go effectively unrealized until the massive mobilization associated with World War II brought a welcome and resounding end to the Great Depression.

Roosevelt's Judicial Branch Reorganization proposal came against an ominous backdrop of the judicial nullification of key New Deal programs by a majority of the nine sitting judges on the Supreme Court. This pattern of judicial rejection of socioeconomic programs enacted by the legislative branch was not new. The Court's use of judicial review to overturn regulatory and social reform legislation had occurred with predictable regularity since the late nineteenth century. The decade of the 1920s had seen the Supreme Court apply the judicial veto to some nineteen statutes dealing with such issues as the prohibition of child labor and the establishment of a minimum wage for women. But in the 1930s, in the midst of the worst economic catastrophe our country had ever seen, the stakes were immeasurably higher.

During the Great Depression of the '30s, the Supreme Court "frequently went out of its way to frustrate the Roosevelt administration" (Leuchtenburg, *The*

Supreme Court Reborn, 215). In an intensified effort to halt the expansion of governmental power, the Court reinvigorated doctrines that had seldom before been used to invalidate an act of Congress. In 1935, a keystone of the New Deal, the National Industrial Recovery Act (NIRA), was unanimously shot down by the Court, citing, in addition to the more commonly invoked intrastate/interstate distinction, a prohibition against the delegation of Congress' lawmaking powers to the executive branch. Within months of this decision, the Agricultural Adjustment Act (AAA) had its regulatory authority challenged by the Court and was declared to be an unconstitutional usurpation of powers specifically reserved for the states. This decision was rapidly followed by the 1936 *Tipaldo* decision, a 5-4 ruling which invalidated a New York state minimum wage law on the constitutional basis that it was an infringement on freedom of contract. Faced with the prospect that this pattern of Supreme Court nullification of New Deal programs would continue as long as the current crop of justices was on the bench, and knowing that lawsuits challenging the constitutionality of all the major legislation passed by Congress in 1935 were now working their way through the judicial system, Roosevelt decided to act.

On February 5, 1937, citing the need to inject new blood into the Court and to assist the justices with their heavy workload, the President surprised Congress when he delivered a message proposing, among other things, that he be given the authority to add one new justice to the Supreme Court, up to a maximum of 15, for every justice over the age of 70 who refused to retire. Considering that the number of justices in this over-70 category was then six of the nine, this proposal would translate into a significant change in the Court's composition; but even so, as Historian David Kennedy points out, the proposal itself was not revolutionary or even entirely unexpected. After all, the number of Supreme Court justices is not specifically mandated in the Constitution, and had, in fact, varied over time, as Roosevelt carefully pointed out in his February 5th message. The United States had had as few as five and as many as ten at various points in its history, an adjustment that had created little fanfare in years past. During the 1936 legislative session, members of Congress had shown their own concern for the situation by introducing more than 100 pieces of legislation designed to more favorably define the balance of power between the legislative and judicial branches. Justice Department lawyers, as well, had struggled, unsuccessfully, for more than two years to draft a constitutional amendment that would effectively curb the Court's power. Clearly, there was awareness in many quarters that unless something was done, the country might see nearly all of the major New Deal programs of Roosevelt's first term in office vanish at the hands of an ultra-conservative Supreme Court.

Coming, then, on the heels of a decades-long agitation against "judicial supremacy," the substance of the plan was not particularly radical in itself. Roosevelt had proposed no new constitutional role for the Court. Traditional checks and balances were left intact. The proposal overall was but a fairly "modest challenge to the tradition of an independent judiciary (when weighed against) the prospect of entire New Deal extinction," but the outcry it provoked was anything but modest (Kennedy, 331). Congressional leaders had not been

consulted ahead of time, nor had there been any effort to prepare public opinion. The usually sure-footed Roosevelt had, this time, made a “disastrous political miscalculation” (Kennedy, 324). The first that even members of his own party knew of the reform proposal was when Roosevelt delivered it to them on February 5th. Both Congress and the country were thus caught by surprise at its timing and contents. The result of this “calculated risk” was ultimately to prove most costly to Roosevelt in political terms, alienating many of his friends in Congress and undermining his ability to hold together essential political alliances in furtherance of additional New Deal aims.

The immediate and widespread outcry against the proposal demonstrated that Roosevelt had seriously underestimated, too, the extent to which the Supreme Court had become a sacred institution in the estimation of the American people. In the months following his proposal, the Congress and the nation were thrown into turmoil. Roosevelt was accused of trying to undue the legacy of checks and balances bequeathed to succeeding generations by our Founding Fathers. He was denounced as a dictator in the making, attempting to enhance the powers of the presidency at the expense of the two other branches. His own belief that voters in three previous elections – the 1932 and 1936 presidential elections and the 1934 congressional elections – had given him an overwhelming mandate to implement all necessary reforms was belied by a succession of Gallup polls in the weeks following the February bombshell, which showed opposition to the proposal among the American people hovering at around 53%. Roosevelt’s oft-expressed viewpoint, that in a democracy “rule by the people” meant that the Supreme Court needed to get in touch with the court of public opinion as expressed through the vote, was clearly not a convincing argument for the majority of Americans.

With Congress, too, in open rebellion against the court reform plan, its defeat was a certainty. Southern Democrats wanted no parts of the proposal fearing that a more liberal Supreme Court would eventually mean a death knell for their established institutions of white supremacy. Many Democratic liberals openly objected to what they saw as a compromising of a cherished tradition of judicial independence. And even his own Vice President, John Nance Garner, was noticeably unwilling to climb onboard the Roosevelt bandwagon this time.

In the end, it was not Congress that delivered the killing blow to Roosevelt’s plan, but the Court itself. On March 29, 1937, just seven weeks after the proposal was first delivered to Congress, the U.S. Supreme Court did the “greatest constitutional somersault in history” (Leuchtenburg quoted in Kennedy, 335) In a 5-4 decision, the Court effectively reversed its own decision in the *Tipaldo* case by voting to uphold a Washington state minimum wage law for women of exactly the sort that it had ruled unconstitutional only a few months previously. Later, and more importantly, the Court would uphold the constitutionality of the Wagner Act and the Social Security Act and, in fact, it would go on to uphold every New Deal statute that came before it from this point on! This shift in position by just one justice, Owen Roberts, was to decisively change the “ideological center of gravity” of the Court and signal a new willingness to allow Congress to have the final say on economic issues. “By

nodding his head instead of shaking it,” one observer noted, Justice Roberts “had effectively amended the Constitution of the United States” (Kennedy, 335). The Court had responded in its own way to the realities of 1937 America and thus brought to an end any serious consideration of Roosevelt’s reorganization proposal.

In time, retirements from the Supreme Court, nudged along by congressional passage of a bill giving the justices a full-salary retirement, would present FDR with the opportunity to appoint a total of nine new justices to the bench over the next eight years. The original court reform proposal, greatly reduced in scope, would eventually make its way through Congress as the Judicial Procedure Reform Act in August of 1937, but it applied only to the lower federal courts and contained no provision for adding new justices to the Supreme Court.

While the core New Deal programs were now constitutionally safe from judicial extinction, the heated battle had exposed such deep divisions in the Democratic Party that Roosevelt would never again be able to pull together the necessary support for new legislation. He had lost the battle to expand the Court, won the war for a shift in constitutional interpretation, and then, most ironically of all, lost the congressional support needed. Much of the decline in Roosevelt’s influence had to do with the impact of the court battle on the Democratic Party, which, although simmering since the mid-1920s, was exacerbated by the court packing debacle. Although the Democrats swept into power on the back of the emerging Roosevelt coalition of urban industrial workers, immigrants, African Americans, and the South, the coalition was fraught with volatile fault lines. None was more obvious or deadly for Roosevelt’s ability to successfully push his legislative agenda through Congress than the relationship between Southern Democrats, urbanized and unionized labor, and African Americans. Offended by the assistance given to labor, the impact of federal legislation on farmers and small businesses, and the promotion of favorable race legislation such as anti-lynching legislation, Southern Democrats openly resisted President Roosevelt after 1937. Embodied in the “Conservative Manifesto,” the anti-New Deal coalition of Southern Democrats and conservative Republicans quickly rendered Roosevelt impotent in Congress. Southerners’ command of the all-important committee chairmanships in Congress enabled them to impede any further fruits of Roosevelt’s New Deal reforms. Soon the whole court packing affair would be more or less forgotten in the midst of the country’s all-out mobilization for World War II, but the philosophical re-alignment of the Court, which was a Roosevelt legacy to future generations, would remain intact for the ensuing 50 years.

Annotated Bibliography:

Kennedy, David M. *Freedom from Fear: The American People in Depression and War, 1929-1945*. New York, Oxford University Press, 1999.

Kennedy’s Pulitzer Prize winning examination of the Great Depression, New

Deal, and World War II provides a helpful and extensive background to understanding the long and short-term significance of Roosevelt's court reform proposal. He gives attention to the fragility of the Democratic Party coalition which had supported Roosevelt's New Deal legislation in the past but now bucks him on the court reform issue. Kennedy lines up with those historians who see the proposal not so much as a political blunder, but as a calculated risk necessary to protect socioeconomic programs already passed and those yet to be born.

Leuchtenburg, William E. *The Supreme Court Reborn: The Constitutional Revolution in the Age of Roosevelt*. New York: Oxford University Press, 1995.

This book is one of the most widely quoted and authoritative resources on the court-packing controversy. Leuchtenburg puts the 1937 furor at the heart of what he terms a "constitutional revolution." Much of the book is devoted to analyzing, in great detail, patterns of court decisions in the months and years before February 1937 so that the significance of the Supreme Court's turnabout can be properly placed in an historical perspective.

Leuchtenburg, William E. *Franklin D. Roosevelt and the New Deal, 1932-1940*. New York: Harper and Row, 1963.

Leuchtenburg's earlier examination of the New Deal years devotes less than a chapter to the court-packing controversy, but by broadening the picture he locates the February 5th proposal within the context of other events happening at the same time which influenced the reaction of Congress and the American public at large. In particular he looks at how the ongoing spate of sit down strikes in the industrial sector and Roosevelt's reluctance to intervene fed a more general fear that maybe he was going too far this time. The description of Congressional fallout in the wake of Roosevelt's reform plan is concise and helpful to understanding the long term impact of his modest proposal.

Vocabulary

Court-Packing: The name given to The Judiciary Reorganization Bill of 1937 (called the Court-packing Bill by its opponents). This bill was a proposal by President Franklin Delano Roosevelt for power to appoint an extra Supreme Court Justice for every sitting Justice over the age of 70. This was proposed in response to the Supreme Court overturning several of his New Deal measures that were designed to help the United States recover from the Great Depression.

Teaching Procedures

Materials Needed:

- Student internet access is required to complete the lesson
1. Initiate the lesson by soliciting the students' reactions to a recent presidential decision. Solicit from students why they supported or opposed the president's decision and how that decision impacted the president's power. Ask:

How could the Supreme Court check the president's decision?

How could Congress check this decision?

Why were checks and balances added into the Constitution?

What other factors could impact the success of a presidential decision?

Focus students on the power of the press, public opinion, and the other two branches of government, disputes within political parties, and other factors.

2. Distribute copies of Resource Sheet #1, "Judicial Branch Reorganization Plan," and instruct students to read the excerpts of FDR's February 5, 1936 message to Congress, issued in response to the difficulties he faced once the Supreme Court began to dismantle parts of his New Deal programs, and:
 - Underline the sections which explain what President Roosevelt wanted Congress to do
 - Circle the reasons Roosevelt provided in support of his proposal
3. Review students' answers and using the information found in the Content Narrative, explain to students the proposal made by President Roosevelt and clarify their understanding of the specific provisions of the proposal and its reception by asking:

How would this proposal potentially benefit the President?

What do you think would be the reaction of the American people to this proposal?

What do you think would be the reaction of Congress to this proposal?

What do you think would be the reaction of the nine Supreme Court justices?

4. Distribute to students copies of Resource Sheet #2, "Interpreting Primary Sources: Cartoons," or Resource Sheet #3, "Interpreting Primary Sources:

Letters,” and review the directions on the worksheets. Instruct students using Resource Sheet # 2 to log on to the following website: <http://newdeal.feri.org/court/index.htm>. Each group of students will first click on to the “Cartoons” box and review the selected cartoons for three different calendar months. They are instructed to find *at least* one in each month that is opposed to Roosevelt’s proposal. For each cartoon selected students should complete the worksheet questions. Students using Resource Sheet #3 should log onto <http://newdeal.feri.org/court/index.htm>, click on to the “Letters” box and scroll through to select one letter in support of Roosevelt’s proposal and one opposed.

5. Reconvene class and have students provide a list of the reasons for and against the court reorganization plan and list these reasons on the board. Students should compile the same list on Resource Sheet #4, “Reaction to FDR’s Court Reorganization Plan.” Clarify student investigation by asking:

Which reasons are the most commonly expressed. (Place a star next to these).

Do the letters and cartoons suggest anything about how the authors felt about President Roosevelt?

Do the letters and cartoons seem to represent a cross-section of the population or do they reflect the opinions of a particular group?

Was this a good way to learn about the debate over the court-packing proposal? Why or why not?

What other sources or types of information might we need to learn to complete the story?

Using the information found in the content narrative explain to students the reception the Court Reorganization Plan received and the reasons for its failure. Be sure to emphasize both public outcry and the revolt within the Democratic Party.

6. As a tool to assess students understanding of the controversy and issues surrounding the proposal distribute copies of Resource Sheet #5, “Presidential Interview,” and have students complete the activity. If time permits allow students an opportunity to share their responses.
7. An extension activity could include having students examine the other resources available at <http://newdeal.feri.org/court/index.htm> and add reasons to their list of arguments for and against the Judicial Reorganization Plan.

Primary Source Annotation:

Most of the primary sources utilized in this lesson come from the website maintained by the New Deal Network affiliated with Columbia University found at <http://newdeal.feri.org/court/index.htm>. This well-maintained site is entitled *FDR and the Supreme Court* and it is an excellent source of documents, lesson plans, and primary sources of all types. Additionally, it includes an extensive bibliography. Other sources of related primary documents include the FDR Presidential Library and the National Archives. Both have extensive collections, but the NARA site can be cumbersome to use.