

Joe Biden Is No Franklin Roosevelt

Dragging Roosevelt into the Barrett nomination even to criticize Democrats about court-packing confers upon them a dignity that their evasive and deceitful conduct does not deserve.

by Conrad Black



One of the many absurd aspects of the current presidential campaign is the refusal of the Democratic nominees for national office to state whether they would attempt to increase the size of the Supreme Court by adding ideologically amenable members to it if the current nominee to fill the vacancy caused by the death of Justice Bader Ginsburg, Amy Coney Barrett, is confirmed. The refusal of former Vice President Joe Biden and of Senator Kamala Harris to answer the question is itself clearly an affirmative answer.

Biden's somewhat shirty assertion that "the people have no right to know" what his answer is to that question reminds us

of his stance during the spurious impeachment trial when he was asked about his son's inexplicably high income from a notoriously corrupt Ukrainian natural gas company—a country and an industry with which Biden's son had no familiarity whatever, other than that his father was managing Ukrainian affairs for the Obama Administration.

Joe Biden unctuously replied that he would not answer the question because he did not wish to distract the country from the well-founded effort to remove the incumbent president from office because of his criminal activity. (It was naturally beside the point that no crimes were alleged against the president even by the rabid impeachers Jerry Nadler and Adam Schiff, that the activities alleged were not impeachable, and that no probative evidence that he had committed them was adduced.)

It was not convenient for Biden to answer a highly pertinent question about the apparent financial skulduggery of his family and clear abuse on a grand pecuniary scale of the second-highest office in the country. And it does not suit his convenience now to answer the question of whether he wishes to unite the executive and legislative branches in the emasculation of the independence of the coequal judicial branch, itself a completely unconstitutional enterprise.

Because the only previous time that an administration attempted to increase the number of justices on the Supreme Court in the last 150 years was President Franklin D. Roosevelt's Judicial Procedures Reform Bill of 1937, that initiative has been much referred to in the current controversy, and generally thoroughly misrepresented.

It should be remembered that Roosevelt came to office in March 1933 with unemployment at 30 percent (over 15 million in a population of 125 million) with no direct federal relief for the unemployed, and with a collapsed financial system in which on Inauguration Day, the banks were closed in 46

states *indefinitely*. All stock and commodity exchanges had been shut down for more than a week.

The New Deal, which Roosevelt had promised in broad outline but without specificity, began with the reopening of the banks under Federal Reserve supervision with quantities of specially issued currency ready to prevent runs on banks from creating chaos, and authorizing Federal Reserve-sponsored mergers of banks where necessary to ensure their financial solidity, often with the federal government as temporary preferred shareholders. He followed with immense workfare programs in conservation and what would today be called infrastructure to absorb millions of the able-bodied unemployed in useful tasks which vastly enriched the country at a wage-scale that ensured that there was no cannibalization of the existing workforce.

Among the most ambitious of these programs was the Tennessee Valley Authority, which brought electricity to millions of rural homes in Southern states and effected flood control and drug control for vast swaths of America. The administration guaranteed bank deposits, underwrote endangered residential mortgages, and, by a free vote of farmers in each agricultural category, reduced production in order to ensure farm prices that would sustain the country's agricultural population while ensuring a stable food supply for the nation.

There followed more durable reforms, including the Social Security Act and the Securities and Exchange Act. The administration also raised the minimum wage, moderately reduced the workweek, engaged in traditional fiscal pump-priming, and effectively authorized both collective bargaining to increase income levels and cartelism to raise prices moderately. All of it was designed to reverse the deflation of the previous three years and get the vast ranks of the unemployed back to work.

This unprecedentedly ambitious program was strongly ratified at the midterm elections in 1934 with large increases in the

Democratic delegations to the Senate and House of Representatives and overwhelmingly ratified in 1936, when Roosevelt won one of the greatest electoral landslides in the history of contested American presidential elections—61 percent of the vote, 46 of 48 states, and an Electoral College majority of 523-8.

In a technical case involving a meatpacking firm, the Supreme Court determined in 1936 that aspects of the Agricultural Adjustment Act, the administration's principal farm legislation, were unconstitutional. Justice Louis Brandeis summoned the deputy White House chief of staff, Thomas G. Corcoran, to the robing chamber of the Supreme Court just before the announcement of the decision, and told him that the president would have to understand that the court would no longer tolerate a legislative program sponsored by the White House that exceeded the jurisdiction of the federal government.

The president presented his proposal to add justices to the Supreme Court, and it was unsuccessful. Senate Majority Leader Joseph T. Robinson (D-Ark.) advised Roosevelt that perhaps two justices could be added but no more. Roosevelt allowed the bill to be reduced to minor reforms not altering the composition of the court, and has been accused even by his vocal admirer Joe Biden of having made a "bonehead" move in presenting the court-packing measure.

In fact, the Supreme Court never bothered Roosevelt again. As it was an extremely elderly court, its justices began to retire and within five years Roosevelt, after his unprecedented reelection to a third term, had named seven of the nine members of the court, including such renowned jurists as Hugo Black, Felix Frankfurter, William O. Douglas, Harlan F. Stone, James F. Byrnes, and Robert Jackson.

It is difficult to imagine a fact situation more easily distinguishable from the current agitation of the left-wing

Democrats to expand the court preemptively, than FDR's defensive maneuver to deter the Supreme Court from invalidating a comprehensive program of economic recovery that was broadly successful and had been overwhelmingly endorsed by the electorate in both presidential and congressional elections between its invalidation of the agricultural measure and the presentation of his court reform bill. As FDR said at the time, "The Ohio River and the Dust Bowl are not conversant with the habits of the Interstate Commerce Clause," and invoked "sweating men piling sandbags on the levees at Cairo, Illinois."

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First published in