

FDR's Plea to End "Strict Construction"

The stock market crashed in October 1929 after Herbert Hoover had been in office a mere 10 months. The Great Depression was upon us, and upon the world. Hoover and his bankers tried to stabilize the economy by imposing a wide range of government regulations, and raising tariffs to shut out foreign competition. Nothing they did rectified increasing unemployment, falling prices, and bank collapses. Hoover lost the '32 elections. Franklin Delano Roosevelt took office March 4th, 1933, and held that office for the next 12 years. He immediately instituted massive government intervention schemes in hopes of shifting monetary resources from one area of the economy to another.

He tried price-fixing, job-sharing, and government construction projects to put a limited number of people to work. However, none of his ideas for "fixing" the Great Depression ever worked; instead, the United States experienced a far worse depression, for a far longer time, than Europe did. His radical policies were opposed by many who thought them utopian and ineffectual. But Roosevelt was a hugely popular president, and he chose to muster his political forces in order to gain legal sway.

In the spring of 1935 Justice Roberts joined with four other justices to invalidate the Railroad Retirement Act. In May, the Court threw out a leviathan piece of FDR's social agenda, the National Industrial Recovery Act. In January 1936, a split Court ruled the Agricultural Adjustment Act unconstitutional. In another case from 1936 the Court ruled New York State's minimum wage law unconstitutional.



On February 5, 1937 FDR sent a special message to Congress proposing legislation granting the president new powers to add additional judges to all federal courts whenever there were sitting judges 70 or older who refused to retire. Characterizing his argument as a reform needed to help relieve the workload on the courts, FDR made it clear that he wanted to pack the courts. FDR wanted to appoint six new Justices to the Supreme Court (and 44 judges to lower federal courts), remove the constitutional restraints, and pass his social programs without judicial opposition.

The debate was heated and widespread for six months. FDR was rebuffed. Even so, the Court buckled when Justice Roberts, formerly opposed to FDR's programs, switched sides. Beginning with a set of decisions in March, April and May 1937 (including the Social Security Act cases) the Court sustained a series of FDR's legislative initiatives.

The following September 1937 speech was FDR's plea to the American people, asking for their support. They had been persuaded for years that the Great Depression was an issue of

the rich against the poor, the powerful against the weak, those who had against those who had nothing. They understood neither politics nor economics, and class-warfare looked very inviting to them, as long as FDR played the role of Defender of the Weak. They did not realize that what had been sustaining the Great Depression was in fact FDR's legislation, and his insistence on micro-managing the marketplace. If you would like an in-depth analysis of what happened, I highly recommend Burton Folsom's book, *New Deal or Raw Deal*, for a thorough, documented look at FDR's failed economic policies that continue to this day.

Address on Constitution Day

Franklin D. Roosevelt

September 17, 1937

One hundred fifty years ago tonight, thirty-eight weary delegates to a Convention in Philadelphia signed the Constitution. Four handwritten sheets of parchment were enough to state the terms on which thirteen independent weak little republics agreed to try to survive together as one strong nation.

A third of the original delegates had given up and gone home. The moral force of Washington and Franklin had kept the rest together. Those remained who cared the most; and caring most, dared most.

The world of 1787 provided a perfect opportunity for the organization of a new form of government thousands of miles removed from influences hostile to it. How we then governed ourselves did not greatly concern Europe. And what occurred in Europe did not immediately affect us.

Today the picture is different.

Now what we do what we do has enormous effect not only among the nations of Europe but also among those of the Americans and the Far East, and what in any part of the world they do as surely and quickly affects us.

In such an atmosphere our generation has watched democracies replace monarchies which had failed their people, and dictatorships displace democracies which had failed to function. And of late, we have heard a clear challenge to the democratic idea of representative government.

We do not deny that the methods of the challengers, whether they be called "communistic" or "dictatorial" or "military", have obtained for many who live under them material things they did not obtain under democracies which they had failed to make function. Unemployment has been lessened, even though the cause is a mad manufacturing of armaments. Order prevails, even though maintained by fear, at the expense of liberty and individual rights.

So their leaders laugh at all constitutions, predict the copying of their own methods and prophesy the early end of democracy throughout the world.

Both that attitude and the prediction are denied by those of us who still believe in democracy — that is, by the overwhelming majority of the nations of the world and by the overwhelming majority of the people of the world.

And the denial is based on two reasons eternally right.

The first reason is that modern men and women will not tamely commit to one man or one group the permanent conduct of their governments. Eventually they will insist not only on the right to choose who shall govern them, but also upon the periodic reconsideration of that choice by the free exercise of the ballot.

And the second reason is that the state of world affairs brought about by those new forms of government threatens civilization. Armaments and deficits pile up together. Trade barriers multiply and merchant ships are threatened on the high seas. Fear spreads throughout the world, fear of aggression, fear of invasion, fear of revolution, fear of death.

The people of America are rightly determined to keep that growing menace from our shores.

The known and measurable danger of becoming involved in war we face confidently. As to that, your government knows your mind.

But it takes even more foresight, intelligence, and patience to meet the subtle attack which spreading dictatorship makes upon the morale of a democracy.

In our generation, a new idea has come to dominate thought about government, the idea that the resources of the nation can be made to produce a far higher standard of living for the masses of the people if only government is intelligent and energetic in giving the right direction to economic life.

That idea – or more properly that ideal – is wholly justified by the facts. It cannot be thrust aside by those who want to go back to the conditions of ten years ago or even preserve the conditions of today. It puts all forms of government to their proof.

That ideal makes understandable the demand of labor for shorter hours and higher wages, the demands of farmers for a more stable income, the demands of the great majority of business men for relief from disruptive trade practices, the demands of all for the end of that kind of license, often misnamed *Liberty*, which permits a handful of the population to take far more than its tolerable share from the rest of the people.

And as other forms of government in other lands parade their pseudo-science of economic organization, even some of our own people may wonder whether democracy can match dictatorship in giving this generation the things it wants from government.

we have those who really fear the majority rule of democracy, who want old forms of economic and social control to remain in a few hands. They say in their hearts: "If constitutional democracy continues to threaten our control why should we be against a *plutocratic* dictatorship if that would perpetuate our control?"

And we have those who are in too much of a hurry, who are impatient at the processes of constitutional democracies, who want Utopia overnight and are not sure that some vague form of *proletarian* dictatorship is not the quickest road to it.

Both types are equally dangerous. One represents cold-blooded resolve to hold power. We have so far engaged in a definite, and so far successful, contest against that. The other represents a reckless resolve to seize power. Equally, we are against that.

And the overwhelming majority of the American people fully understand and completely approve that course as the course of the present government of the United States.

To hold to that course our constitutional democratic form of government must meet the insistence of the great mass of our people that economic and social security and the standard of American living can be raised from what they are to levels which the people know our resources justify.

Only by succeeding in *that* can we ensure against internal doubt as to the worthwhileness of our democracy and dissipate the illusion that the necessary price of efficiency is dictatorship with its attendant spirit of aggression.

That is why I have been saying for months that there is a crisis in American affairs which demands action now, a crisis particularly dangerous because of its external and internal difficulties re-enforce each other.

Purposely I paint a broad picture. For only if the problem is seen in perspective can we see its solution in perspective.

I am not a pessimist. I believe that democratic government in this country can do all the things which common-sense people, seeing that picture as a whole, have the right to expect. I believe that these things can be done under the Constitution, without the surrender of a single one of the civil and religious liberties it was intended to safeguard.

And I am determined that under the Constitution these things *shall* be done.

The men who wrote the Constitution were the men who fought the Revolution. They had watched a weak emergency government almost lose the war, and continue economic distress among thirteen little republics, at peace but without effective national government.

So when these men planned a new government, they drew the kind of agreement which men make when they really want to work together under it for a very long time.

For the youngest of nations they drew what is today the oldest written instrument under which men have continuously lived together as a nation.

The Constitution of the United States was a layman's document, not a lawyer's contract. *That* cannot be stressed too often. Madison, most responsible for it, was not a lawyer; nor was Washington or Franklin, whose sense of the give-and-take of life had kept the Convention together.

The great layman's document was a charter of general principles, completely different from the "whereas" and the "parties of the first part" and the fine print which lawyers put into leases and insurance policies and installment agreements.

When the Farmers were dealing with what they rightly considered eternal verities, unchangeable by time and circumstance, they used specific language. In no uncertain terms, for instance, they forbade titles of nobility, the suspension of habeas corpus and the withdrawal of money from the Treasury except after appropriation by law. With almost equal definiteness then detailed the Bill of Rights.

But when they considered the fundamental powers of the new national government they used generality, implication and statement of mere objectives, as intentional phrases which flexible statesmanship of the future, within the Constitution, could adapt to time and circumstance. For instance, the framers used broad and general language capable of meeting evolution and change when they referred to commerce between the States, the taxing power and the general welfare.

Even the Supreme Court was treated with that purposeful lack of specification. Contrary to the belief of many Americans, the Constitution says nothing about any power of the Court to declare legislation unconstitutional; nor does it mention the number of judges for the Court. Again and again the Convention voted down proposals to give Justices of the Court to the Congress and the Executive, like the other subjects treated in general terms, would work itself out by evolution and change over the years.

But for one hundred and fifty years we have had an unending struggle between those who would preserve this original broad concept of the Constitution as a layman's instrument of government and those who would shrivel the Constitution into a lawyer's contract.

Those of us who really believe in the enduring wisdom of the Constitution hold no rancor against those who professionally or politically talk and think in purely legalistic phrases. We cannot seriously be alarmed when they cry "unconstitutional"; at every effort to better the condition of our people.

Such cries have always been with us; and, ultimately, they have always been overruled.

Lawyers distinguished in 1787 insisted that the Constitution itself was unconstitutional under the Articles of Confederation. But the ratifying conventions overruled them.

Lawyers distinguished in their day warned Washington and Hamilton that the protective tariff was unconstitutional, warned Jefferson that the Louisiana Purchase was unconstitutional, warned Monroe that to open up roads across the Alleghenies was unconstitutional. But the Executive and the Congress over-ruled them.

Lawyers distinguished in their day persuaded a divided Supreme Court that the congress had no power to govern slavery in the territories, that the long-standing Missouri Compromise was unconstitutional. But a war between the states overruled them.

Lawyers distinguished in their day persuaded the Odd Man on the Supreme Court that the methods of financing the Civil War were unconstitutional. But a new Odd Man overruled them.

The great Senatorial constitutional authority of his day, Senator Evarts, issued a solemn warning that the proposed Interstate Commerce Act and the Federal regulation of railway rates which the farmers demanded would be unconstitutional. But both the Senate and the Supreme Court overruled him.

Less than two years ago fifty-eight of the highest priced lawyers in the land gave the nation (without cost to the nation) a solemn and formal opinion that the Wagner Labor Relations Act was unconstitutional. And in a few months, first a national election and later the Supreme Court overruled them.

For twenty years the Odd Man on the Supreme Court refused to admit that State minimum wage laws for women were constitutional. A few months ago, after my message to the Congress on the rejuvenation of the judiciary, the Odd Man admitted that the Court had been wrong for all those twenty years, and overruled himself.

In this constant struggle the lawyers of no political party, mine or any other, have had a consistent and unblemished record. But the lay rank and file of political parties has had a consistent record.

Unlike some lawyers, they have respected as sacred all branches of their government. They have seen nothing more sacred about one branch than about either of the others. They have considered as most sacred the concrete welfare of the generation of the day. And with laymen's common sense of what government is for, they have demanded that all three branches be efficient, that all three be interdependent, and that all three work together to meet the living generation's expectations of government.

That lay rank and file can take cheer from the historic fact that every effort to construe the constitution as a lawyer's contract rather than a layman's charter has ultimately failed. When ever legalistic interpretation has clashed with contemporary sense on great questions of broad national policy, ultimately the people and the Congress have had their way.

But that word "ultimately" covers a terrible cost.

It cost a Civil War to gain recognition of the constitutional power of the Congress to legislate for the territories.

It cost twenty years of exploitation of women's labor to recognize the constitutional power of the States to pass minimum wage laws for their protection.

It has cost twenty years already – and no one knows how many more are to come – to obtain a constitutional interpretation that will let the nation regulate the shipment in national commerce of goods sweated from the labor of little children.

We know it takes time to adjust government to the needs of society. But modern history proves that reforms too long delayed or denied have jeopardized peace, undermined democracy and swept away civil and religious liberties.

Yes, time more than ever before is vital in statesmanship and government, in all three branches of it.

We will no longer be permitted to sacrifice each generation in turn while the law catches up with life.

We can no longer afford the luxury of twenty-year lags.

You will find no justification in any of the language of the Constitution for delay in the reforms which the mass of the American people now demand.

Yet nearly every attempt to meet those demands for social and economic betterment has been jeopardized or actually forbidden by those who have sought to read into the Constitution guarantees liberty, not license masquerading as liberty.

No one cherishes more deeply than I the civil and religious liberties achieved by so much blood and anguish through the many centuries of Anglo-American history. But the Constitution guarantees liberty, not license masquerading as liberty.

Let me put the real situation in the simplest terms. The present government of the United States has never taken away and never will take away any liberty from any minority, unless it be a minority which so abuses its liberty as to do positive and definite harm to its neighbors constituting the majority. But the government of the United States refuses to forget that the Bill of Rights was put into the Constitution not only to protect minorities against intolerance of majorities, but to protect majorities against the enthronement of minorities.

Nothing would so surely destroy the substance of what the Bill of Rights protects than its perversion to prevent social progress. The surest protection of the individual and of minorities is that fundamental tolerance and feeling for fair play which the Bill of Rights assumes. But tolerance and fair play would disappear here as it has in some other lands if the great mass of people were denied confidence in their justice, their security and their self-respect. Desperate people in other lands surrendered their liberties when freedom came merely to mean humiliation and starvation. The crisis of 1933 should make us understand that.

On this solemn anniversary I ask that the American people rejoice in the wisdom of their Constitution.

I ask that they guarantee the effectiveness of each of its parts by living by the Constitution as a *whole*.

I ask that they have faith in its ultimate capacity to work out the problems of democracy, but that they justify that faith by making it work now rather than twenty years from now.

I ask that they give their fealty to the Constitution *itself* and not to its misinterpreters.

I ask that they exalt the glorious simplicity of its purposes rather than a century of complicated legalism.

I ask that majorities and minorities subordinate intolerance and power alike to the common good of all.

For us the Constitution is a common bond, without bitterness, for those who see America as Lincoln saw it, "the last, best hope of earth."

So we revere it, not because it is old, but because it is ever new, not in the worship of its past alone, but in the faith of the living who keep it young, now and in its years to come.

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