



Court Packing: It's As American As Apple Pie!

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The question on everyone's lips right now is, will Joe Biden expand the Supreme Court to counter Trump's own court packing plan? The answer is, of course he will. He would be an idiot not to. We saw what happened when a Republican dominated Senate — controlled by the **iron fist of Charles Koch** — obstructed every policy initiative of Barack Obama in the last two years of his administration. The odds are the Senate will revert to the control of the Democrats after this election, but the Supreme Court with Amy Coney Barrett on it will be in a position to do the same thing Republicans in the Senate were able to do, except the conservative tilt to the court could continue for decades.

What would that mean for America? An end to Roe vs. Wade. That's a given. But it would also likely mean the end of the Affordable Care Act, the end of gay marriage, a robust expansion of the right to bear arms, an expansion of employers's ability to force workers to toe the corporate line under the guise of religious freedom, a rise in restrictions on voting right, fewer environmental restrictions, and less protections for immigrants and asylum seekers. In other words, it could take the United States back to the the way things were during the Depression almost 100 years ago.

Make no mistake. A segment of American society has been livid about FDR's New Deal ever since it was enacted and those people have used their wealth to consolidate their political power. Fred Koch, father of Charles and David Koch, was one of the founders of the John Birch Society, a group of cranks and crackpots who used to be dismissed as irrelevant nut cases.

No more. The John Birch Society has now metastasized into a welter of well funded pressure groups such as the Heritage Society, the Cato Institute, the Federalist Society, and dozens more, all funded by **Charles Koch** and his younger brother David, now deceased. If you don't know about the **Federalist Society**, listen up. All of the (soon to be) 6 members of the conservative wing of the Supreme Court have been spoon fed its toxic mix of hard right philosophy throughout their careers.

Now consider this. The most pressing challenge to humanity is an overheating planet. Without leadership from the United States, the task of finding solutions to climate change will be immeasurably more difficult. Yet during her testimony last week, Amy Coney Barrett offered up the standard swill straight from the lips of Charles Koch. "I am not a scientist...." she said, a clear indication that she has every intention of defending the interests of fossil fuel companies with every fiber of her being. Given her willingness to be a dutiful soldier in the Charles Koch army, Joe Biden has no choice but to counter the hijacking of the Supreme Court by adding judges who are not knee jerk libertarians and slaves to conservative orthodoxy.

Can He Do That?

Expect to hear weeping and wailing from conservatives but as Joe Scarborough writes in the Washington Post, “Abraham Lincoln confirmed his opponents’ worst suspicions when he moved against the Supreme Court by signing the Judiciary Act of 1862, adding a 10th justice to the court. Following his assassination, Republicans in Congress reduced that number to seven in an effort to thwart Lincoln’s Democratic successor. Republicans then added two justices after winning back the White House in 1869.” As a result, Republicans controlled the Supreme Court for the rest of the 19th century and for the first 40 years of the 20th century.

Here’s a little history lesson, thanks to Scarborough. “Even before every state ratified America’s founding charter, George Washington signed a bill that placed just six justices on the Supreme Court. The second president, John Adams, reduced that number to five. Thomas Jefferson increased that number to seven. And the man who inspired the term “Jacksonian Democracy” added two more justices in 1837.

“Given such a powerful legacy, originalists, Republican politicians and right-wing bloggers would never dare suggest that adjusting the Supreme Court’s size was anything other than constitutional and consistent with the republic’s oldest traditions. To do so would condemn as un-American the Father of our Country, the author of the Declaration of Independence, and the first president to live in the White House.” He sums it up this way, “By their own actions, these radical Republicans have no standing to protest future changes to the court’s makeup. They have made their own bed. Now it is time for them to sleep in it.”

Senator Sheldon Whitehouse put it succinctly in his closing remarks to the Senate Judiciary Committee, in which he laid the wood to his Republican colleagues and told them to their faces that when the Democrats regain control of the Senate, it will be pay back time and there better not be any whining. Give a listen.

Does Barrett Actually Know What She Is Talking About?

During the hearings last week, Amy Coney Barrett told the Senators, “I interpret the Constitution as a law, I understand it to have the meaning that it had at the time people ratified it. That meaning doesn’t change over time and it is not up to me to update it or infuse my policy views into it.” This is a distillation of the originalism doctrine that is central to conservatives who have been suckled by the Federalist Society. Antonin Scalia was a leading proponent of originalism and it is no coincidence Barrett, who once clerked for Scalia, should echo the sentiments of her mentor.

In a paper authored by Barrett, she wrote, “Originalism maintains both that the constitutional text means what it did at the time it was ratified and that this original public meaning is authoritative. This theory stands in contrast to those that treat the Constitution’s meaning as susceptible to evolution over time.”

But James Boule, writing in the New York Times, argues that the focus on the Constitution as written in 1787 completely misses the importance of subsequent amendments. “The Civil War fractured an already divided country and shattered the constitutional order. What came next,

Reconstruction, was as much about rebuilding that order as it was about rebuilding the South. The Americans who drafted, fought for, and ratified the Thirteenth, Fourteenth and Fifteenth Amendments did nothing less than rewrite the Constitution with an eye toward a more free and equal country.”

He makes reference to historian Eric Foner who wrote **The Second Founding: How the Civil War and Reconstruction Remade the Constitution**. He says, “So profound were these changes that the amendments should not be seen simply as an alteration of an existing structure but as a ‘second founding,’ a ‘constitutional revolution,’ in the words of Republican leader Carl Schurz, that created a fundamentally new document with a new definition of both the status of blacks and the rights of all Americans.”

Boule then makes his case clearly and unequivocally. “Whereas the Constitution of 1787 established a white republic in which the right to property meant the right to total domination of other human beings, the Reconstruction Constitution established a biracial democracy that made the federal government what Charles Sumner called the ‘custodian of freedom’ and a caretaker of equal rights. To that end, the framers of this ‘second founding’ understood these new amendments as expansive and revolutionary. And they were. Just as the original Constitution codified the victories (and contradictions) of the Revolution, so too did the Reconstruction Constitution do the same in relation to the Civil War.”

Boule cites a dissenting opinion by Justice Joseph P. Bradley in 1871 in the case of **Blivew vs US** in which he offered a robust vision for what the Thirteenth Amendment could accomplish. Prior to the Civil War, he wrote, slavery “extended its influence in every direction, depressing and disenfranchising the slave and his race in every possible way.” Abolition meant not merely “striking off the fetters” but destroying “the incidents and consequences of slavery” and guaranteeing the freed people “the full enjoyment of civil liberty and equality.”

“If we were to try to build an ‘original meaning’ of the Constitution around the Reconstruction amendments,” Boule writes, “we might come to this view of the Thirteenth Amendment, which could open the doors to vastly more aggressive federal action to reduce racial discrimination, racial inequality and other ‘badges and incidents of slavery.’” A similar approach to the other amendments would be equally transformative: The “‘privileges and immunities’ of citizenship, for example, might include the right to education and employment. And a Congress fully empowered to secure voting rights could act very aggressively to head off those states that seek to deprive their residents of equal access to the ballot.

“To take the Second Founding seriously is to reject a vision that binds us to the Constitution as it was in 1787. It is also to embrace a broader vision of the ‘framing’ of American democracy, one that looks to the reconstruction of the country after its near-destruction as much as to its birth and founding. As a matter of history, the Constitution is neither fixed in meaning nor in structure. The men who wrote and ratified it disagreed as much about what it meant as we do today. But even if it had a singular meaning, you would still have to make a choice about which Constitution to adhere to, either one written to secure the interests of a narrow elite or one written for the sake of us all.”

The Take Away

Just as Tyrannosaurus Trump cares for no one other than himself and refuses to protect the interests of all Americans, Amy Coney Barrett and the right wing cabal on the Supreme Court will interpret the law to favor the wealthy and the well connected. Jimmy Buffett warned us years ago, “Power is a dangerous drug; it can maim it can kill.” The power accumulated by conservatives over the past 40 years — spurred on by the dystopian vision and bulging wallet of Charles Koch — have created a less inclusive society, one that disparages women, people of color, immigrants, and the poor. Without a rebalancing of the Supreme Court by President Biden, those trends will continue to accelerate and keep America from resuming its rightful place in the world as a leader on the pressing issues that confront the global community.