



Hornberger's Blog

Obama's Preemptive Strike and FDR's Court-Packing Scheme

by Jacob G. Hornberger, Thursday, April 5, 2012

People are taking President Obama to task for suggesting that the Supreme Court should not interfere with the will of Congress by declaring his healthcare legislation unconstitutional. Critics are reminding Obama that under our system of government it is the responsibility of the federal judiciary to determine the constitutionality of congressional enactments, including even those that are approved unanimously by Congress.

But let's give credit where credit is due. At least Obama hasn't yet done what liberal-conservative icon Franklin Roosevelt did when the Supreme Court was declaring his New Deal programs unconstitutional. FDR proposed a radical restructuring of the Court that would have enabled him to pack the Court with additional FDR legal cronies who would sustain the constitutionality of his programs.

Conservatives can call Obama a socialist all they want, but it was FDR, whom conservatives revere just as much as liberals do, who foisted both socialist and fascist programs onto the United States.

Sure, today public-school teachers and university professors refer to FDR's New Deal measures as simply "free-market reforms that saved free enterprise." That's been the official line that has been drummed into the minds of American students for decades.

The truth is not pretty. FDR's economic programs were pretty much a mirror image of what Hitler, Mussolini, and Stalin were in Germany, Italy, and Russia.

See, for example, the book [Three New Deals: Reflections on Roosevelt's America, Mussolini's Italy, and Hitler's Germany, 1933-1939](#) by Wolfgang Schivelbusch or [this review](#) of the book by the Cato Institute's David Boaz.

Don't forget that the FDR administration, with the approval of Congress, nationalized and confiscated the gold of the American people, notwithstanding the fact that such coins had been the official money of the American people since the founding of our nation. That was no different in principle from the nationalization of private property taking place under Stalin and the communists in the Soviet Union.

FDR also brought into existence Social Security, a socialistic program in which the state takes money from one group of people — the young and productive — and redistributes it to another group, the elderly. That revolutionized American life, not only leading directly to Medicare and Medicaid but actually to the entire panoply of welfare state programs, including farm subsidies, education grants, foreign aid to dictators, and all the rest.

Where did FDR get the idea of Social Security? From German socialists. That's where the idea originated. Otto von Bismarck, the Iron Chancellor of Germany, had taken the idea and run with it, bringing it to Germany before FDR brought it to the United States. That's why the Social Security Administration here in the United States carries a bust of Bismarck [on its website](#). By the time Roosevelt brought us Social Security, Hitler's Germany already had it.

FDR imposed the National Industrial Recovery Act on Americana businesses and industries. It encouraged businesses and industries to form giant cartels that had the authority to collude to set wages and prices. With its combination of business and the state, it was a fascist program straight out of Mussolini's economic playbook. In fact, FDR's infamous Blue Eagle campaign, a high-pressure propaganda campaign that came with the NIRA, would have made Mussolini proud.

Economic regulations and government-business partnerships? FDR, Hitler, and Mussolini all loved them and believed in them. Unlike Stalin, who favored complete state ownership of the means of production, FDR, Hitler and Mussolini favored leaving the means of production in private hands but subject to strict governmental regulation, control, and direction.

Obviously, FDR's socialist and fascist programs were contrary to the heritage of economic liberty on which America was founded. Thus, not surprisingly, the

Supreme Court began declaring much (but, unfortunately, not all) of his New Deal programs unconstitutional.

FDR, like Obama, was outraged. How dare the Court interfere with the will of the majority? Doesn't the Court know that the United States is in a severe economic crisis, just like Germany, Italy, the Soviet Union, and the rest of the world? The Constitution is not a suicide pact! Desperate times require desperate measures!

But the Court's position was simply that the law was the law. The Constitution sets forth the delegated powers of government and it provides for no extraordinary powers due to economic emergency or crisis. If the Constitution did not authorize FDR's programs, it was the responsibility of the federal judiciary to declare them unconstitutional. If people didn't like that, they could amend the Constitution to authorize FDR's economic revolution.

Although FDR's court-packing scheme went down to defeat, FDR and the statists ended up winning the war. As pro-Constitution judges began retiring, FDR was able to replace them with his statist legal cronies, who promptly let it be known that the Supreme Court would never again interfere with majority will when it came to matters involving economic liberty.

Roosevelt's revolution was complete. Seizing on a temporary economic crisis, he was able to effect a permanent revolutionary transformation of American life, from one based on free enterprise and free markets to one based on socialism and fascism.

Of course, just as people in Cuba are not permitted to question or challenge Fidel Castro's communist-socialist revolution, Americans are not supposed to question or challenge FDR's socialist-fascist revolution. Everyone is expected to mentally accept and embrace that the revolutionary change that FDR brought to our land was nothing more than a much-needed reform that saved America's free-enterprise system.

Obama's pressuring of the Court to declare his healthcare program constitutional might or might not be successful. But even if the Court declares it unconstitutional, nothing fundamental will change, given that both conservative and liberal justices and judges adhere strictly to the same lie of the lie that most Americans adhere to — a lie that revolutionized American economic life eighty years ago and that continues to do so.

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