

## **Constitutional Corner: Progressivism, What It Is and What it Believes. Part 3: Two More Progressive Presidents.**

Note: this is the third installment in a series exploring Progressivism. The topic is also the subject of our discussion on my weekly radio show: “We the People – the Constitution Matters,” broadcast live on Friday mornings from 7-8am on WFYL radio, AM1180. The show can be heard live on the station’s website: [www.1180wfyl.com](http://www.1180wfyl.com), or via a recorded podcast. The public is invited to join the discussion.

### **Franklin Delano Roosevelt and Lyndon Baines Johnson.**

Taking on a review of FDR and LBJ is a bit unsettling. Both men were revered by millions of Americans, FDR for “saving us from the Great Depression” and “leading us to victory in WWII,” and LBJ for signing the Civil Rights Act of 1964 and unleashing America’s great “War on Poverty.”

I remember where I was when I heard of the assassination of JFK. Likewise, most Americans of my parent’s generation could recall where they were then they heard of the death of FDR. After Roosevelt's death, an editorial by *The New York Times* declared, "Men will thank God on their knees a hundred years from now that Franklin D. Roosevelt was in the White House."<sup>1</sup> His funeral procession on April 14, 1945 was attended by 300,000 spectators.

The reverence paid to both presidents is evidence of the pervasiveness of Progressivism and progressive thought in America. Progressives eagerly overlook the men’s faults and violations of Constitutional order and focus on the “great things” both did.

Well, today we will peel back the veneer, the picture painted by progressive historians and see what these presidents actually accomplished and the effect some of the programs they initiated is having still to this day.

James Madison, in an address to the Virginia Assembly in 1785, said that Rulers who exceed the commission from which they derive their authority ... “are Tyrants [and] [t]he People who submit to it are governed by laws made neither by themselves, nor by an authority derived from them, and are slaves.”<sup>2</sup> These words are as true today as they were then. The American people are slowly becoming slaves to a government that knows no limits to its power.

In some cases we have been lulled into believing that government is only acting in our best interest: “It’s for our own good,” we hear. Other times we are shamed into accepting programs we know will be harmful to the constitutional order of the future: “You don’t want another

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<sup>1</sup> [https://en.wikipedia.org/wiki/Franklin\\_D.\\_Roosevelt#Last\\_days.2C\\_death\\_and\\_memorial](https://en.wikipedia.org/wiki/Franklin_D._Roosevelt#Last_days.2C_death_and_memorial)

<sup>2</sup> James Madison, Memorial and Remonstrance against Religious Assessments, 20 June 1785.

Great Depression, do you?” “Don’t you think there should be a “safety net” to keep people from falling into abject poverty?”

Neither of these men brought with them the academic embrace of progressivism of a Woodrow Wilson. I’m sure neither man could describe Hegelian Historicism or Rousseau’s theory of Social Contract. But both were big men, physically and politically,<sup>3</sup> and they knew that “big things” must be done to keep their parties in power.

Let’s examine the two men in chronological order.

### **Franklin Delano Roosevelt**

Franklin Delano Roosevelt was born in 1882 to a prominent upstate New York family. He shares an uncanny set of parallels with his 2<sup>nd</sup> cousin Theodore Roosevelt; not just graduating from both Harvard and Columbia Law School, as did Teddy, but also serving as Assistant Secretary of the Navy under Woodrow Wilson, while Teddy had served in the exact same position under William McKinley. Both Roosevelts served as Governors of New York -- Teddy, a single two-year term from January 1, 1899 to December 31, 1900 and Franklin, two terms served thirty years later.

While Teddy overcame asthma and poor eyesight, Franklin’s “thorn in the flesh” was the polio he contracted in 1921 at age 39. He overcame polio’s most debilitating effects, but it cost him the use of his legs for the remainder of his life.

FDR easily defeated incumbent president Herbert Hoover in 1932 when it became obvious Hoover had no solution to the continued depression. Roosevelt then proceeded to enact some of the same programs he had tried as New York’s Governor to mitigate effects of the deep depression. While commentators of the times, and for many years after, credit FDR’s “New Deal” programs with lifting the U.S. out of the Great Depression, many historians and economists today believe instead that these initiatives served to lengthen and perhaps even worsen the depression.

I point you to “*New Deal or Raw Deal? How FDR’s Economic Legacy Has Damaged America*,” by Burton Folsom,<sup>4</sup> which convincingly shows that the New Deal hindered recovery from the depression and continues to damage the American economy today. Desperate to find something, anything that would actually lead to economic recovery, Roosevelt next provoked the Japanese until they launched their surprise attack on Pearl Harbor, leaving America no choice but war -- a war Roosevelt welcomed. “Comprehensive research has shown not only

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<sup>3</sup> FDR was 6’2”, LBJ an imposing 6’4”

<sup>4</sup> Burton Folsom, Jr. “*New Deal or Raw Deal? How FDR’s Economic Legacy Has Damaged America*” (Simon & Schuster: New York, 2008)

that Washington knew in advance of the attack [at Pearl Harbor], but that it deliberately withheld its foreknowledge from our commanders in Hawaii in the hope that the "surprise" attack would catapult the U.S. into World War II."<sup>5</sup> Those unwilling to conclude the New Deal itself pulled America out of depression, point instead to the wartime economy as the true savior. In *"FDR Goes to War,"* Folsom demonstrates that while the war quickly cured the country's chronic unemployment, it did so at great cost: national debt soared from \$49 Billion to almost \$260 Billion.

Knowing that America and its Allies would ultimately prevail in both Europe and the Pacific, Roosevelt prepared for the return and departure from active duty of America's servicemen and women. Rather than trust the free enterprise system to find jobs for these millions of workers, Roosevelt established the National Resources Planning Board and charged it with finding or creating jobs. According to Charles Merriam, vice-president of the NRPB, the U.S. government was to be the "final guarantor" of needed jobs if the private economy failed to create them.<sup>6</sup>

Not being an economist, I feel out of my league getting into the "nuts and bolts" of all the various New Deal agencies and their economic effects. But I can summarize the whole New Deal program by saying that Roosevelt never encountered a problem which he thought a new government program couldn't fix; the hallmark of a true Progressive.

As a constitutionalist, to my mind the greatest affront perpetrated against the American system during FDR's reign was his attempt to pack the Supreme Court with "yes-men" Justices. Here's the background:

In his first term, faced with the economic emergency of the lingering depression, FDR rushed many "New Deal" proposals through the Congress; many of these were then challenged in the courts. When appeals reached them, the Supreme Court routinely struck down the legislation as an overreach of Constitutional authority. Typical of today's progressive journalism, Wikipedia quotes Chief Justice Charles Evans Hughes as saying that the Court's action was because much of the New Deal legislation was "so poorly drafted and defended" that the court did not uphold it. Apparently its constitutionality was not in question. In reality, that was precisely what the court found at fault.

In [\*Panama Refining Co. v. Ryan\* \(1935\)](#), [\*Railroad Retirement Board v. Alton Railroad Co.\* \(1934\)](#), [\*Humphrey's Executor v. United States\* \(1935\)](#), [\*Louisville Joint Stock Land Bank v. Radford\* \(1935\)](#) and [\*Schechter Poultry Corp. v. United States\* \(1935\)](#), the administration suffered defeat after

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<sup>5</sup> James Perloff, *"Pearl Harbor: Hawaii Was Surprised; FDR Was Not,"* accessed at:

<http://www.thenewamerican.com/culture/history/item/4740-pearl-harbor-hawaii-was-surprised-fdr-was-not>.

<sup>6</sup> Burton Folsom, Jr. & Anita Folsom, *"FDR Goes to War, How Expanded Executive Power, Spiraling national Debt, and Restricted Civil Liberties shaped Wartime America,"* (Simon & Schuster: New York, 2011), p. 282.

defeat at the hands an often unanimous court. The Constitution would be upheld; the President's actions exceeded his authority. Hearing the last three decisions, which were announced on the same day, the President became "distressed and irritable." Roosevelt remarked at a press conference that the *Schechter* decision had "relegated [the nation] to a horse and buggy definition of interstate commerce."

He'd had enough; Roosevelt set about re-constructing the Court in his own image. In the "Judicial Procedures Reform Bill of 1937," introduced on February 5, 1937, the president proposed adding one new Justice to the Court for each sitting Justice who did not agree to retire upon reaching 70 and a half years of age. A maximum of six new justices could be added.

Roosevelt also appealed to the American people. In a Fireside Chat on March 9<sup>th</sup>, he accused the Court majority of "reading into the Constitution words and implications which are not there, and which were never intended to be there."

We should note here that the number of Justices on the Court is entirely at the whim of Congress. The very first Supreme Court had only six members and the number had swung back and forth over the years from a low of five to a high of ten Justices before settling back on nine. It was entirely within Congress's constitutional power to accede to the President's recommendation.

To its credit, however, the Republican-controlled Congress sent the proposed legislation off to the respective Judiciary Committees, where it languished and died. But a message had been sent, and it was received loud and clear -- at least at the Court.

On March 29, 1937, a mere seven weeks after the President had sent his "Court-packing" legislation to Congress, the Court handed down three decisions, all upholding New Deal legislation -- two of them unanimous: *Virginia Railway v. Federation* and *West Coast Hotel Co. v. Parrish*. The following month in five separate challenges, the National Labor Relations Act was found to be constitutional. In May, in [Helvering v. Davis](#) and [Steward Machine Company v. Davis](#), the new Social Security Act was deemed constitutional. Except for the two unanimous decisions previously mentioned, all these others were 5-4 decisions, with Associate Justice Owen Roberts (a familiar last name, but no relation to the current Chief Justice) proving to be the deciding vote -- leading to the misnamed "switch in time that saved nine." Roberts' new view of the Constitution was definitely a switch, but the "saving" had already been accomplished by the Congress.

Other actions of this President which defied the limited powers of Article 2 include: ordering the nation's banks to close (in his first week after taking office); issuing [Executive Order 6102](#) which confiscated all privately held gold coins, bullion, and certificates, requiring they be surrendered to the government in exchange for currency; personally setting the daily price of

gold – one time to what he thought was a “lucky number;” ordering Treasury Secretary Henry Morgenthau to manipulate the stock market to give the impression of turmoil, which Morgenthau refused to do; and signing an Executive Order taxing all personal income over \$25,000<sup>7</sup> at 100 percent. The remaining kings of the 20<sup>th</sup> century could only look on with envy.

Barely into his fourth term as president, FDR died of a massive cerebral hemorrhage on April 12, 1945, leading Congress to propose the 22<sup>nd</sup> Amendment, limiting U.S. Presidents to two terms.

### **Lyndon Baines Johnson**

Lyndon Baines Johnson, our 36<sup>th</sup> President, was born in 1908 in a small farmhouse in Stonewall, Texas. After working his way through college at Southwest Texas State Teachers College he found work for a short time as a high school teacher. He entered politics in 1930 by campaigning for a Texas State Senator in his run for Congress. His efforts resulted in a recommendation to Congressman Richard M. Kleberg, who hired him as his legislative secretary.

In 1937, Johnson was elected to Congress from the Texas 10th district in a special election to replace a deceased House member, and served there until 1949. In 1940, he applied for and received an appointment as a Lieutenant Commander in the Naval Reserve, and, when war in the Pacific broke out, he was called to active duty. He would go on to serve in the Naval Reserve until 1964.

As a sitting Congressman, and a Lieutenant Commander, Johnson was sent on a special assessment mission to the South Pacific for FDR (Johnson's political hero) where he was awarded the Silver Star for volunteering as an observer on a bombing mission. Although his plane turned back short of the target, either due to a mechanical malfunction or damage from enemy fighters (accounts varied) Johnson's Silver Star citation credits his “marked coolness in spite of the hazards involved.” Apparently that was enough to get you a Silver Star in 1941, at least if you were a sitting Congressman serving in a war zone.

In 1948, amid charges (and significant evidence) of voter fraud, Johnson won a Democrat senatorial primary by 87 votes and then went on to be elected Senator. He served as Majority Whip from 1951-1952, Minority Leader from 1953-1954 and then Majority Leader from 1954-1961, when he was chosen as JFK's running mate. These leadership positions reflect a consummate politician with a gift for deal-making. Historians Caro and Dallek consider Johnson “the most effective Senate majority leader in history.”<sup>8</sup>

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<sup>7</sup> About \$422,000 today.

<sup>8</sup> [https://en.wikipedia.org/wiki/Lyndon\\_B.\\_Johnson](https://en.wikipedia.org/wiki/Lyndon_B._Johnson)

One of Johnson's many accomplishments as Senator was passage of the "Johnson Amendment" in the 1954 U.S. Tax Code. The amendment prevents, to this day, American pastors from endorsing political candidates at risk of their church losing its tax-exempt status. What had prompted this was that in his bid for re-election, Senator Johnson had faced vociferous opposition from some local pastors -- this became Johnson's revenge. This silencing of America's pastors (those who accepted the threat at face value at least) flies in the face of protections under the First Amendment.

With Kennedy's assassination in 1963 (you remember where you were when you heard the news, right?) Johnson became President. He was re-elected in 1964 in a contentious race with Barry Goldwater.

As President, Johnson's first action was to push for passage of the Civil Rights Act that Kennedy had vigorously supported but which had met with Congressional opposition. "Master politician" LBJ was able to persuade and arm-pull until the votes came in for passage.

As he prepared for his re-election in 1964, he saw the need for a 'catchy' initiative. His staff coined the "Great Society," a collection of urban renewal, transportation, environmental, anti-poverty, healthcare reform, crime control, and educational reform initiatives. "The wildly utopian expectations (and experimental recklessness in social programs) brought modern liberalism into a crisis and dramatically expanded the administrative state, with all its cost and regulatory reach,"<sup>9</sup> says an unattributed article on the Heritage Foundation website. Johnson "launched" his "Great Society" initiative during a commencement speech at the University of Michigan on May 22, 1964.<sup>10</sup> In his address, which you can easily find on the web, his description of this "Great Society" is wildly utopic. Even though Johnson assured his audience that: "The solution to these problems does not rest on a massive program in Washington, nor can it rely solely on the strained resources of local authority," the result was one massive federal program after another.

Thanks to LBJ's "War on Poverty," we now have [43 million people on food stamps](#)<sup>11</sup> and the [percent of our population in poverty](#)<sup>12</sup> is back to where it was [50 years ago](#)<sup>13</sup> before the "War" began.

Johnson gave us both Medicare (1966) and Medicaid (1965). Experts expect Medicare to go bankrupt in 12 years.<sup>14</sup> As much as \$60 billion, almost 10% of Medicare's budget, is lost to waste, fraud, abuse or improper payments each year. Medicaid is in the process of bankrupting

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<sup>9</sup> <http://www.heritage.org/initiatives/first-principles/primary-sources/lbj-launches-the-great-society>

<sup>10</sup> <http://teachingamericanhistory.org/library/document/great-society-speech/>

<sup>11</sup> <http://www.fns.usda.gov/sites/default/files/pd/29SNAPcurrPP.pdf>

<sup>12</sup> <http://poverty.ucdavis.edu/faq/what-current-poverty-rate-united-states>

<sup>13</sup> <https://www.rt.com/usa/us-poverty-record-unemployment-800/>

<sup>14</sup> <http://hotair.com/archives/2016/06/24/oh-great-medicare-to-be-bankrupt-sooner-than-expected/>

the states. Fortunately, the Supreme Court provided the states some relief by ruling that the Medicaid expansion required by the Patient Protection and Affordable Care Act was unconstitutional.

The Head Start Program, food stamps, the National Endowment for the Humanities, the National Endowment for the Arts; “Lyndon Johnson’s Great Society was the New Deal on steroids,”<sup>15</sup> says Glenn Beck. The magic words: “Kennedy would have wanted this,” gave LBJ greater ease at expanding the welfare state than even FDR had in the Great Depression.

Unguarded, LBJ could be profane, even obscene. “Lyndon B. Johnson had a famously dirty mouth,”<sup>16</sup> says one Time.com article. He was unfaithful to his wife; but all Lady Bird Johnson could say when confronted was, “My husband loves people, and half of the people in the world are women.” [This amazing incident](#)<sup>17</sup> shows LBJ’s lack of respect for his military leadership and why the administration’s Vietnam strategy might have seemed incoherent.

Johnson devalued the American currency by stopping the use of silver in coins in favor of lesser metals. When frightened Americans tried to protect their wealth by purchasing gold, Johnson moved to make such purchases illegal. Americans wouldn’t legally buy gold again until 1971.

In true progressive style, at a 1965 commencement address at Howard University, Johnson attempted to redefine standard terms: “We seek not just legal equity but human ability, not just equality as a right and a theory but equality as a fact and *equality as a result*” (emphasis added). Not equality of opportunity, which had been America’s greatest claim to fame, but equality of outcome, progressivism’s “Golden Calf.”

In 1966, Johnson proposed a constitutional amendment to extend the term of office of U.S. Representatives to four years, citing the volume of business each Congress must attend to and the incessant need to run for re-election. In the same message to Congress he also suggested reform of the Electoral College, quoting Madison in support. Johnson particularly did not like the possibility, in a contingent election, of having a President and Vice-President, elected separately by House and Senate, from different political parties. “That possibility should not exist.”<sup>18</sup>

Because he had served less than 24 months of President Kennedy’s term, Johnson was constitutionally entitled to run for a second full term in 1968 but choose not to. The Vietnam War had split the Democrat Party -- “Hey, hey, LBJ, how many kids did you kill today,” was an

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<sup>15</sup> [http://www.glennbeck.com/2016/08/10/progressive-liars-part-x-lbj-part-ii/?utm\\_source=glennbeck&utm\\_medium=contentcopy\\_link](http://www.glennbeck.com/2016/08/10/progressive-liars-part-x-lbj-part-ii/?utm_source=glennbeck&utm_medium=contentcopy_link)

<sup>16</sup> <http://content.time.com/time/politics/article/0,8599,1995258,00.html>

<sup>17</sup> <http://jfkcountercoup2.blogspot.com/2012/07/lbj-joint-chiefs-day-it-became-longest.html>

<sup>18</sup> <http://www.presidency.ucsb.edu/ws/?pid=27582>

oft-heard refrain at public events. He was also concerned with failing health (Johnson had been a 60-cigarette a day smoker until his first heart attack in 1955).

Although he would later nominate Thurgood Marshall, the first black Justice to sit on the Court, Johnson regarded the Court with suspicion. He nominated an old friend, Abe Fortas, to the Supreme Court in order to have a “mole” that could supply him with inside information. Fortas’ nomination was turned down by the Senate.

According to biographer Randall Woods, Lyndon Johnson posed in many different roles. Depending on the circumstances, he could be:

“Johnson the Son of the Tenant Farmer, Johnson the Great Compromiser, Johnson the All-Knowing, Johnson the Humble, Johnson the Warrior, Johnson the Dove, Johnson the Romantic, Johnson the Hard-Headed Pragmatist, Johnson the Preserver of Traditions, Johnson the Crusader for Social Justice, Johnson the Magnanimous, Johnson the Vindictive” or “Johnson the Uncouth,” “LBJ the Hick,” “Lyndon the Satyr,” and “Johnson the Usurper.”<sup>19</sup> Interesting legacy.

After leaving the White House in January 1969, Johnson resumed his smoking habit, gained weight and died on January 22, 1973 of heart failure.

Once again, what can we learn from these two progressive presidents? FDR and LBJ both sought to do great things for America. Both Democrats took America into or continued us in wars that were expensive in lives and treasure. Both the “New Deal” and the “Great Society” initiatives contained costly programs that even today threaten to bankrupt the country if nothing is done to restructure them. “Progress at all costs” seems to be the progressive byword, no matter who pays.

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<sup>19</sup> [https://en.wikipedia.org/wiki/Lyndon\\_B.\\_Johnson#Personality\\_and\\_public\\_image](https://en.wikipedia.org/wiki/Lyndon_B._Johnson#Personality_and_public_image)