

America's Most Consequential Elections: From FDR to Reagan

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[00:00:02.7] Jeffrey Rosen: Hello, friends. I'm Jeffrey Rosen, President and CEO of the National Constitution Center, and welcome to We the People, the weekly show of constitutional debate. The National Constitution Center is a nonpartisan nonprofit chartered by Congress to increase awareness and understanding of the Constitution among the American people. This week, I'm joined by Michael Gerhardt of UNC School of Law and Andrew Busch of Claremont McKenna College to discuss Michael's new book *FDR's Mentors: Navigating the Path to Greatness*, as well as several of Andrew's books about President Reagan. We explored the elections of 1932 and 1980, which elected Presidents Roosevelt and Reagan, how Roosevelt and Reagan transformed the constitution, and how they shaped America. I'm excited to share the conversation. Enjoy the show.

[00:00:53.7] Jeffrey Rosen: Hello, friends. Welcome to the National Constitution Center and to today's convening of America's Town Hall. I'm Jeffrey Rosen, the President and CEO of this wonderful institution. Let's inspire ourselves as always by reciting together the National Constitution Center's mission statement. Here we go. The National Constitution Center is the only institution in America chartered by Congress to increase awareness and understanding of the US Constitution among the American people on a nonpartisan basis. Those inspiring words came from the Bicentennial Heritage Act of 1988, the year after the bicentennial of the Constitution. The act was signed by President Ronald Reagan, and we're here today to discuss the constitutional legacies of President Reagan and President Franklin Roosevelt and the pivotal elections that brought them to the White House. It's now a great pleasure to introduce our distinguished panel, two great friends of the NCC and two great scholars of the American presidency. Andrew Bush is the Crown Professor of Government and George R. Roberts Fellow at Claremont McKenna College. He's the author of more than three dozen scholarly chapters and more than 20 books involving the Constitution, America's Presidents, and political campaigns, a wonderful body of work, including the Constitution on the Campaign Trail and books on Ronald Reagan, including the one that we're here to discuss, which is Ronald Reagan and the Politics of Freedom.

[00:02:24.4] Jeffrey Rosen: Michael Gerhardt is the Burton Craiger Distinguished Professor of Jurisprudence at the University of North Carolina. He is the author of many important books and articles, including *The Forgotten Presidents*, *Lincoln's Mentors*, and the book that we're here to

discuss today, which is coming out in just about a week, and we're so thrilled to celebrate its publication, *FDR's Mentors: Navigating the Path to Greatness*. Welcome, Andrew and Michael. It's so great to have you. And Michael, why don't we start with you, 'cause FDR comes first. You discuss so many important mentors of FDR, ranging from presidents like Andrew Jackson and Thomas Jefferson to people like his headmaster, Endicott Peabody, and his colleagues and aides. Tell us about some of FDR's mentors.

[00:03:19.5] Michael Gerhardt: I'm happy to do so. I also just wanna thank you and everybody at the National Constitution Center for the opportunity to join you tonight. It's always a privilege, so I appreciate it very much. One of the things that intrigued me about Franklin D. Roosevelt was how he became such a notable president. In many respects, he was encountering and even, one could say, perhaps collecting teachers and mentors on the path that he followed that eventually resulted in his becoming president. Among them were first, as you just mentioned, Endicott Peabody. Franklin Roosevelt, largely unhappily, was sent by his parents to boarding school at the Groton School, a great school in Massachusetts. The headmaster there was Endicott Peabody, who was a very famous educator at that time in the early 20th century. And Peabody and Roosevelt formed a special relationship while Roosevelt was a student, and they maintained that relationship for over 40 years. Peabody died about a month after Roosevelt's fourth election to the presidency, but there's ample correspondence between the two of them. Roosevelt often soliciting Peabody's opinion and Peabody often offering his opinion without being solicited. But there were others as well. You mentioned Andrew Jackson. Roosevelt was very influenced by Jackson because Jackson was, in Roosevelt's estimation, a populist capital D democratic president, which is exactly what FDR wanted to be.

[00:04:54.2] Michael Gerhardt: And even FDR tried to emulate him, even to the point that at his second inaugural, he fashioned the stage and platform like Jackson's home. In addition, there was Woodrow Wilson, President Wilson, for whom FDR worked for seven years as assistant Navy secretary. Those seven years coincided with World War I, which is a great opportunity for Roosevelt to learn leadership and learn about leadership during war. A couple of other mentors that sort of recur throughout his time becoming president. First, is Lewis Howe, a little-known New York journalist, but basically the brains behind the man, if we will. A chief strategist, or curmudgeon, but a very influential one that taught both Franklin and Eleanor how to be successful politicians. And in addition, there's Al Smith, the governor of New York. There was kind of a love-hate relationship between FDR and Al Smith. At one time, Smith is kind of grooming FDR, but later sees him as a threat.

[00:06:05.6] Michael Gerhardt: But the Roosevelts are learning both from what Smith did right and wrong. Smith ran unsuccessfully as his party's nominee a couple times for President. Roosevelt kind of notes the mistakes, and he is not gonna repeat them when he runs for the presidency.

[00:06:19.5] Jeffrey Rosen: Fascinating and so many great details in the book about FDR's relationship with all of those important mentors. Andrew Busch, you note a crucial moment for Ronald Reagan. He identified the abandonment of the Democrats of Thomas Jefferson and his limited government philosophy as the moment that drove him from the Democratic Party to the Republican Party. Tell us about that crucial moment, and give us a sense of who some of

Reagan's most important mentors were when he was growing up and in college and in his crucial political formation, including his relationship with Barry Goldwater.

[00:07:01.1] Andrew Busch: Right. So, Reagan grew up as a Democrat. He says that he voted for Franklin Roosevelt four times but by 1962. He switched parties. He realized he hadn't voted for a Democrat since Harry Truman in 1948. And, in his autobiography, he talks about how, in his view, the Democrats had abandoned Jeffersonianism and that that was really kind of what drove him at varying points. I'm not quite sure when he first mentions that, but throughout his time as a Republican, he would say frequently that the, he didn't leave the Democratic Party. The Democratic Party left him that was the way he would formulate it. It's a little ambiguous because he claims to have voted for Roosevelt four times. On the other hand, Roosevelt claimed to be following Jefferson in the famous Commonwealth Club address.

[00:08:10.2] Andrew Busch: He drew the distinction between Jefferson and Hamilton and put himself down on the side of Jefferson. But I think, Reagan concluded definitively by 1962, and I think gradually throughout the 1950s, that the Democrats were getting further and further away from any sort of notion of limited government or decentralization states rights, any of those sorts of Jeffersonian things. So, that was important to him. There were other factors, other mentors, you could say living and dead. He was educated in economics at Eureka College before the heyday of Keynesianism. And so he was trained in what you might call classical economics and was definitely influenced by people you could call kind of neoclassical economists, maybe in the era of Keynes, especially people like Milton Friedman.

[00:09:22.0] Andrew Busch: And also he was very fond of Friedrich Hayek, who wrote a famous book the Road to Serfdom in 1844 that warned against government power in the economy. He was influenced by personal influences as well. His brother Moon was more conservative than he was initially, and seems to have had some influence on his thinking. And he really came to be a major figure. He sprung onto the national scene politically in the 1964 campaign when he gave a speech for Barry Goldwater that wound up being re-shown and videoed and reshown on TV by the Goldwater campaign that really led to him running for governor of California. There were some California businessmen who saw the speech, said, "We love this guy. Let's get him to run for governor." And that was the beginning of his political career in a lot of ways.

[00:10:36.6] Andrew Busch: The one other person I would mention, or the one other force that I would mention is William F. Buckley and the National Review. He was very fond of the National Review, and the National Review played an important role in the conservative movement because it took these different strands of conservatism that you could see in the early 1950s, and it wove them together and gave a kind of forum for these different elements to find some coherence among themselves to build a coalition. And that coalition that sort of notion that the anti-communist, the free market folks and the traditionalists like Russell Kirk, that coalition is really what Reagan represented. What signified his political philosophy going forward.

[00:11:28.9] Jeffrey Rosen: So, interesting to note all of those important influences and Reagan's evolution. Of course, those videos of Reagan in conversation with William F. Buckley and his 64 speech for Goldwater are all on YouTube, and they're riveting to watch today.

Michael, Andrew just noted this fact that Reagan in the Commonwealth Club address draws a distinction between Hamilton and Jefferson and puts himself on the side of Jefferson. The only book he ever endorsed was Claude Bower's book on Jefferson and Hamilton, which FDR celebrates and says that he's on the side of democracy and Jefferson is opposed to aristocracy and Hamilton. And yet he presides over the largest expansion of the administrative state in American history, making him an unlikely Jeffersonian.

[00:12:22.7] Jeffrey Rosen: Describe both how he invoked Jefferson, even though he was championing big government, and how central was big government to the crucial campaign of 1932. Was it a plan that he had or did it just sort of evolved and he justified it in Jeffersonian rhetoric after the fact?

[00:12:40.0] Michael Gerhardt: I think that FDR was thinking about Jefferson for a long time and we can track that through his life. The very last speech he wrote, which he never got to deliver, was about how Jefferson really, and his philosophy served as a foundation for the New Deal. And so Roosevelt really took from Jefferson not any lesson about how government should be small, but government should be effective, and it should be responsive to the people, and it should really be supportive of the people's welfare. And Roosevelt always thought and always tried to draw a connection between himself and Jefferson. So, one theme of at least my book, and I'm sure others is where do presidents look for some guidance and role models? And Jefferson was certainly one for FDR. Another which I should mention is his distant cousin, Teddy Roosevelt. Teddy Roosevelt exerted enormous influence over FDR, particularly as FDR was young and growing into manhood. FDR literally modeled himself on Teddy Roosevelt, dressed exactly the same way, acted the same way, saw all the same positions in government that Teddy had had. And I think what Roosevelt took from people like Teddy Roosevelt or from Jefferson and others, was that they all cared about the public interest. They were all in, at least Jeff in Roosevelt's mind, progressives. And so he then thought he was following that tradition when he was president of the United States.

[00:14:18.8] Jeffrey Rosen: So, interesting you show so vividly how much he looked up to Teddy Roosevelt, and it's such a unusual melding the progressive eras, the time that Herbert Crowley praises Roosevelt and progresses for using Hamiltonian means for Jeffersonian ends, the expanding the size of government in order to achieve those Jeffersonian ends you talked about like caring about the public interest and economic well being, and FDR masterfully synthesizes those traditions. Andrew, tell us more about Reagan and Jefferson. You said that he was crossed with the Democrats for abandoning the tradition, but he presides over the Reagan revolution, which resurrects the Jeffersonian vision of limited government in direct reaction to the excesses of the New deal in the great society, which he's determined to roll back. How often did Reagan explicitly invoke Jefferson throughout his presidency and how self-conscious was his effort to restore the constitution of limited government?

[00:15:22.8] Andrew Busch: Well, he referred to Jefferson pretty frequently and other founders of the Federalist Papers. He was also quite fond of Alexis de Tocqueville and referred to Tocqueville frequently his vision of a vibrant civil society serving as a kind of counterbalance to maybe an overweening state. But the vision that you described definitely was his primary constitutional objective. And he laid it out in he laid it out from 1964 on really, if you watch his

speech for Barry Goldwater in 1964 and then watch let's say a speech from Reagan in 1984, you would actually not find a lot of difference except in some of the specific instances or details that he might be talking about. But philosophically that was his notion to try to restore limited government, try to restore some sense that I don't think he believed that he was going to roll back the New Deal.

[00:16:36.2] Andrew Busch: But I did think that he wanted to roll back the great society and I think he wanted to reinstate some at least approximation of enumeration of powers. So, he would refer, when he was talking about the defense, he would refer to how that was in his view, the chief function of government. There were these other things that were not he argued for abolishing the Federal Department of Education because you can't find it anywhere in the enumerated powers that the federal government has any responsibility over education. So, there was that notion and definitely he was very committed to trying to decentralize government or put greater emphasis back at the state level. I think he believed that over the previous 50 years, there had been too much centralization and government had become unbalanced, that Washington had become too powerful relative to the states. So, those were all things that he tried to accomplish. And in fact in his, not quite his final year of office, but late 1987, so, maybe a year and a half before he left office or less, he issued an executive order 12612, I think it was, that actually required federal departments and agencies to issue a federalism impact statement.

[00:18:20.2] Andrew Busch: If they were pursuing new policies, they had to come up with basically a federalism equivalent of the environmental impact statements that have to be done. What effect is this going to have on the relationship between the federal government and the states? Is it consistent with a federal system of decentralized power or not? That executive order didn't last very long. It wound up being rescinded by President Clinton in pretty short order. But I think was an indication of how important that was to him.

[00:18:51.0] Jeffrey Rosen: Absolutely fascinating the idea of a federal impact statement. Michael, tell us how the New Deal, regular story to state was constructed. It was a complicated story. There's the first new deal, which centralizes a lot of power. The Supreme Court strikes some of it down, and the second new deal was supposed to have been a little less centralized. Was it a self-conscious effort to expand government that FDR set out with, or was it in that famous spirit of experimentation, where he said, try something, if that fails, then try something else? Did it just sort of accrete on its own sort of tell that story?

[00:19:31.7] Michael Gerhardt: Well, that is a really important and central story in FDR's development as President. But the new deal's roots in some respects began before Roosevelt's president. When he's the governor of New York, he is leading the nation in trying to develop progressive solutions and responses to the Great Depression. And he's having some success. He later in the course of his campaign for president coins it as a new deal. And that phrase obviously sort of catches on. And I don't think Roosevelt was necessarily seeking to enlarge government, but he was trying to really invigorate the federal government's capacity to provide help to hurting Americans. So, he didn't think that states were in the ideal position to be able to handle a national economic crisis. The federal government was something he believed could be a force for good, and that belief itself put him at odds with a lot of corporate heads and more conservative Republicans at the time.

[00:20:52.9] Michael Gerhardt: And it wasn't so much bigger government that he was seeking to achieve, it was more consolidated federal power over the economy. It was that consolidation, I think, that really ticked some people off, but it was also what Roosevelt sought to do. And ultimately he did it with the help of, among other people, Francis Perkins, somebody else who was, I think, a mentor. She really spotted FDR when he was in the state legislature. And she was thinking back at that time this guy could be president. And she basically kind of tracks him and she becomes a key advisor on labor and helps him sort of fashion progressive policies to deal with unemployment and reinvigorating even the corporate sort of welfare at the time in America. So, I think it was right I think FDR was more incremental and more sort of seeking solutions. And sometimes they weren't consistent to the big problems that he was addressing, but the outcome of all that was a bigger government and that survived his presidency.

[00:22:08.7] Jeffrey Rosen: So, interesting that distinction you draw between big government and more centralized power to help Americans in the economy. Andrew, that attack on consolidation, of course, goes way back in American history. Andrew Jackson attacks the bank on those grounds, but he defends the union on the grounds that C section is unconstitutional. And again, back to Hamilton and Jefferson, the charges that Hamilton and Washington wanted consolidated government and Jefferson's insisting on states rights. Tell us more about Reagan's attack on consolidation. What's the difference between the Great Society, which you said he wanted to repeal and the New deal, which some elements of which he didn't, and how did he go about decentralizing government?

[00:23:03.6] Andrew Busch: Yeah, so, there were a number of differences, I think, that he perceived between the Great Society and the New Deal. One of them was just political reality. The New Deal had been around for 50 years, more or less. Its most popular programs were geared toward work and the middle class in a lot of ways. They were at least very broadly based policies. The probability of trying to get rid of or significantly change social security was not high. And not only, not high, but probably politically suicidal. On the other hand, the Great Society had not sunk such deep roots. And a lot of it was really aimed toward the war on poverty, not a kind of broad-based effort toward the populations. Although some programs like Medicare, you could say were that.

[00:24:04.6] Andrew Busch: But a large portion of it was more targeted, and more urban in character. And a lot of Americans didn't see it as something that they had a particular stake in. And I think politically it was an easier lift. But also the Great Society had just added a lot. I mean, if you look at the, if you talk about the issue of spending, federal spending went up, dramatically, from 1965 to 1980. And pretty much all in domestic, or almost all in domestic policy domestic care programs. And so.

[00:24:49.8] Andrew Busch: If you had a concern about centralization or if you had a concern about government spending you were a lot more concerned in 1980 than you were in 1965. Although Reagan was obviously already concerned in 1964. And there was a kind of twist to the the great society that you didn't see as much in the New Deal.

[00:25:12.7] Andrew Busch: And that was a kind of reconceptualization of federalism in which a lot of relationships started being built from the federal government directly to cities bypassing states. And as Reagan understood federalism and constitutionally this is not incorrect. The basic essence of federalism is the relationship between the federal government and the states. The states have a constitutional standing and local governments don't really have a constitutional standing. They're considered creatures of the state governments.

[00:25:50.9] Andrew Busch: And so Reagan saw those programs that tried to develop those direct relationship between the federal government and the local governments, I should say, as being one that kind of threatened the essence of federalism in some way by really diminishing the states as actors. So, he had a variety of reasons that he kind of picked on the Great Society more than the New Deal. What did he do?

[00:26:18.5] Andrew Busch: Well, he tried to cut the spending on those programs. Now, you have to understand that in Washington a spending cut means that you are choosing not to increase spending at the the rate that it would require to have maintain the current services baseline. It doesn't necessarily mean that you're actually spending less than you were the year before. And so there was some of that but there were also some programs that were cut more deeply.

[00:26:49.8] Andrew Busch: In terms of spending there were attempts to restrain regulation. If you look at the Federal Register it's not a perfect measure of regulation because there are a lot of things that go into the Federal Register. But when Reagan took office in or right before in 1980, there were 87000 pages in the federal register which is the compilation of newly promulgated regulations, proposed regulations and so on. And by the middle of his presidency that had been reduced to kind of the mid 40,000 range. So, it was still a lot more than the 1970 but it was a big push back relative to what it was in 1980. And there were institutional things that were done. So, the Office of Management and Budget was given the power of what's called central Clearance over regulation.

[00:27:44.5] Andrew Busch: So, if an agency or department wanted to issue a regulation for the first time, it actually had to go through the Office of Management and Budget at the end of the process before it got promulgated. And that meant that for the first time someone was actually adding them all up and trying to fashion a kind of national strategy of just how much regulation we wanted overall. So, those were some of the important things that he did.

[00:28:12.8] Andrew Busch: He proposed something called the New Federalism in 1982 which attempted to actually create a more I guess you could say restore a system of federalism in which there was a clearer delineation between what the federal government did and what the states did. The federal government would've taken over total responsibility for Medicaid but states would've taken over total responsibility for AFDC welfare community development programs and things of that sort.

[00:28:45.8] Andrew Busch: Congress would not go for it. Governors were afraid that they were gonna get stuck with a bill that was bigger than they could handle and the Congress wasn't willing to go for it. So, that did not happen but that was one of his objectives as well.

[00:29:02.8] Jeffrey Rosen: Absolutely fascinating to learn about the effort to roll back regulation, the proposal of the new federalism, his notion of the relation with the federal governments and the states really helps us to understand his constitutional vision. Michael many have described both the 1932 and 1980 elections as inaugurating new periods in American constitutional history of founding reconstruction.

[00:29:30.5] Jeffrey Rosen: Then we have the New Deal and the Reagan Revolution. What allowed Roosevelt to transform the Constitution? Did it take congressional victories as well as his fight against the Supreme Court and describe other elements of the revolution including his expanded notion of executive power and the vast increase in the number of executive orders he issued. And I don't know if this is too much to throw in for this round but perhaps also his role as a wartime president.

[00:30:02.9] Michael Gerhardt: Well, I think a lot of FDR's sort of revolution, so to speak, began when he was governor of New York. And at that time Roosevelt was aware of some national problems and, of course, the great depression strikes when he is governor of New York. And he is recognizing and saying to people we've gotta do something radical.

[00:30:29.8] Michael Gerhardt: We've gotta do something revolutionary. And you had quoted earlier his comment about we've gotta try things and if one thing doesn't work we'll try something else. But he was very self-conscious about characterizing it as a revolution. So, by the when he gets elected as president in 1932 he says, almost on the day he's elected, we're gonna prepare for something revolutionary. And he's really sounding that note preparing the American people for what's gonna be a different kind of administration. Administration that's gonna try things, experiment with things, and perhaps go in directions that hadn't gone before. So, all that's very deliberate.

[00:31:16.0] Michael Gerhardt: At the same time, Roosevelt, as a politician and as a president, generally speaking, did not put himself ahead of where the American people were. Instead, he tried to figure out where are things trending and where and once he figured out what might be popular with people, he would then try and push that. So, he is never getting too far ahead of public opinion. Instead, he was trying to sort of ride that wave or tame that wave in addressing these national problems. And one thing that comes from that is a recognition that the presidency could be a lot more proactive. So, that's when he begins to recognize the need for more executive orders, the recognition that Congress should be more progressive. The first 100 days of the administration, 15 major pieces of legislation are approved. Nobody else comes anywhere close to that degree of productivity. And that's partly the result of the fact that FDR had huge coattails. He brought in a governing coalition in Congress, which is gonna help him. Much of the history of his presidency is his efforts to keep that coalition together. And when it fragments, he builds another coalition.

[00:32:33.9] Michael Gerhardt: But all the while he's trying to do something which he himself characterizes as innovative and revolutionary. And once the war unfolds and he sees it coming, he is trying to ensure that America can be prepared for it. And that means he's gotta figure out how to increase productivity of armaments. He's told at the beginning of the Second World War,

when the US enters, it's gonna take about two years at least for the United States to develop the weaponry it needs to fight in Europe. It also needs to build more ships. And so along the way, what that meant was he had to increase his productivity, so he began using his own powers to try and kickstart that. And the end result is we end up with a more powerful presidency, a larger if not more effective government. I think he cared about effectiveness, but one last thing to think about is one of his advisors characterized FDR's sort of mindset.

[00:33:43.0] Michael Gerhardt: And he, and the advisor was responding to the idea that Roosevelt had some kind of big plan in mind. Instead, as this advisor said, and I'm paraphrasing, that's like saying that the mess in the kid's room was all by design. Referring back to Roosevelt, if you think it is just a patchwork of things that he puts together, and we then later think there's some pattern to it or impose a pattern on it. But from Roosevelt's perspective, he wasn't watching the pattern. He was looking at the bottom line, does this work? And if it works, keep pushing it.

[00:34:21.7] Jeffrey Rosen: Great way to sum it up and to trace it back to New York. Andrew the program was plugged as being about three elections, Lincoln, Roosevelt and FDR. One of our guests asks what the role of Lincoln is in this discussion, and I guess I'll ask the question this way: President Reagan is Jeffersonian about federal power, but he's Lincolnian and Hamiltonian about national security and the military as well as executive power. What was his relationship to Lincoln? When he talked about a second American revolution, did he see us as going back to the founding or to Lincoln? And how did he reconcile to take another of our questioners? Please help us reconcile the Jeffersonian and Hamiltonian traditions in FDR and Reagan. How did he reconcile his Hamiltonianism on foreign policy and executive power with his Jeffersonian as among state rights?

[00:35:30.9] Andrew Busch: Yeah, that's a great question. The, I think the short answer to that is that his view was that Hamiltonianism and he didn't describe it this way, he never described it as Hamiltonianism, but it's true his Hamiltonianism in terms of national security, I think he thought as was a simply unavoidable about a reality if we wanted to maintain liberty. And I think he perceived there being enormous dangers in the world, think about when he took office, the Soviets had just invaded Afghanistan. They had in fact added to their imperial holdings, if you wanna call it that about one country every six months. From 1975 to 1980, they had built up their military massively at a time when the US was cutting back on defense spending. And so, I think his view was that the first object of government, the first responsibility, the federal government at least, was to defend the country. And, if that took a kind of Hamiltonian vigor, then that's what it took. When it comes to executive power, it is an interesting question. I think the answer to that would just be that by 1980, I don't think there were any Jeffersonians left when it came to executive power. Except with the exception that people were Jeffersonian when they, when the other guy was in power, right. So.

[00:37:20.0] Andrew Busch: Republicans were Jeffersonian about executive power when Lyndon Johnson was president and Democrats were Jeffersonian about executive power when Richard Nixon and Ronald Reagan were president, but nobody was Jeffersonian on executive power on principle. And that might be a bad thing or it might be a good thing. It might just be, again, a recognition that in the world that we live in, maybe Hamilton had the better argument about executive power, at least to a degree, right? I would certainly not carry that too far. But I

just came back from a very interesting seminar held by a former retired colleague of mine who's writing a book on the early presidencies with a co-author.

[00:38:11.3] Andrew Busch: And we had a workshop to go over the manuscript and one of my assignments was actually addressing the chapter that they had written on Jefferson. And what was striking about it was the number of times that Jefferson publicly proclaimed the importance of a kind of limited executive, but then found himself unable to actually act that way. Whether it was the Louisiana Purchase or giving orders to the Navy and the Mediterranean when dealing with the Barbary Coast pirates or other, there were some other issues as well, other situations. So, I think that Jefferson found it difficult in reality to be Jeffersonian as president. So, I guess I wouldn't hold that against Reagan too much. But he was definitely a mixture. He was not a pure Jeffersonian across every issue. I think that's fair to say.

[00:39:19.0] Jeffrey Rosen: That's just fascinating. Such great examples of the ways that Jefferson betrayed his own strict constructionist principles. My next book is on how that battle between Jefferson and Hamilton about national power and executive power and states rights defined all of American history. So, you're giving me a great tutorial on all these issues. And it's really striking how the debate goes back to the days of Jefferson and Hamilton themselves. Michael, same question to you for FDR. He wrote a college paper on Hamilton that he got a bad grade on. And yet, of course, he's always embracing Jefferson. Was FDR aware of the contradiction? Did he grapple with it? Or just was it one of those contradictions that he waved away? And how do you believe that he reconciled these two traditions?

[00:40:18.7] Michael Gerhardt: I think that one thing to keep in mind about FDR is he really did not have a high opinion as sort of academics. And he was not particularly interested in emulating sort of how an academic might think about things. He was very much a pragmatist. So, I think that's how he looked at Jefferson. That's how he looked at Hamilton. And particularly, what can I, FDR, derive from them? What can I learn from them that I can use now? Very utilitarian, very pragmatic. And I think that's how FDR approached most questions. He actually comments later when he's president of the United States that the economics he took in college, completely useless 'cause they had no connection to the real world. But his advisers were also frustrated because he wasn't interested in learning the sort of how economics works or economic theory.

[00:41:16.8] Michael Gerhardt: Instead, he's just being practical in figuring out, Okay, here's something Jefferson did or here's a thought or stance or position that Jefferson took which can provide a foundation for me. And so he found more of that from Jefferson than he did from Hamilton. And I think with Hamilton, yeah, he got a really bad grade in college for a poorly researched paper that he did. And that just reflects the fact that FDR was not a particularly interested student. His mind was elsewhere. His ambitions sort of directed him elsewhere. He quit law school at Columbia as soon as he passed the bar.

[00:41:58.1] Michael Gerhardt: He felt there was nothing he learned in law school that was useful. Later in life, the president of Columbia tells him, well, maybe you should you'd have done better maybe or maybe it's time you graduate and finish law school. And Roosevelt just laughs and says there's nothing useful to really learn in law school. So, that theme runs

throughout FDR's life. This idea that, Okay, I'm gonna find support where I can find it. But the other thing that's important for FDR is to connect the dots, to be able to connect what he was doing with an earlier tradition.

[00:42:33.8] Michael Gerhardt: He thought that was the most important thing he could do as president because it would give him a really firm foundation for whichever direction he wanted to go. So, he was always thinking back to, Okay, what is the foundation for this? So, people don't think it's FDR. They'll recognize, oh, it was Washington or Jefferson and Lincoln. Lincoln and Wilson had at least one thing in common. They were wartime presidents. And so for FDR, they were the models that he was gonna use. And, of course, he worked closely with Wilson during the First World War, basically as involved with that as anybody could possibly be. And in the time he was assistant Navy secretary, he was meeting a lot of the people that would later be admirals and generals in World War II. So, there was that connection as well. And so all along the way, FDR is he's got a thick Rolodex. He's also keeping in mind, how can I legitimize what I'm doing in terms of what went before?

[00:43:39.6] Jeffrey Rosen: You have such powerful chapters on his time in the Wilson administration with Josephus Daniels, who was another of his mentors, the southern white supremacist who presided over the Navy in World War I, and FDR learned so much from him.

[00:43:57.9] Jeffrey Rosen: Andrew, let's talk now about the courts. Of course, in the 1980s, President Reagan promised to appoint originalists and strict constructionist judges who would roll back some of the perceived excesses of the New Deal on the Great Society and restore limits on federal power that he said the framers would have intended. And in that project, he's succeeded dramatically, especially in recent years as the court's majority has turned to an originalist majority, and he's achieving his goal. Tell us about that crucially important project. Where did it come from? Ed Meese famously announced the originalist project in the '80s, but did Reagan think about turning the courts before he became president?

[00:44:46.8] Andrew Busch: There's been an issue. Supreme Court decisions have been an issue in presidential elections. Of course, there were some presidential elections long ago like 1860 where Supreme Court decisions, Dred Scott in particular, were quite important. But they had been somewhat, I won't say ignored, but they had not risen to that kind of level of concern until, I would say, the election of 1968, and you see Richard Nixon actually making a big deal out of the Supreme Court and particularly some of the more controversial decisions by the Warren Court on criminal procedure and obscenity and school prayer, things of that sort. And Nixon at that time called, his term for it was strict constructionists.

[00:45:49.6] Andrew Busch: That was what he promised to appoint. And so this was not a new issue in 1980, but Ronald Reagan was definitely attached to that notion. And it wasn't just for some of the reasons that Nixon was, some of the cases that Nixon didn't like. Reagan also didn't like some of the criminal justice decisions and so on. But Reagan also thought that the Supreme Court had probably allowed the federal government to intrude on matters of the states too far. He had maybe a broader ranging kind of structural notion of that.

[00:46:37.8] Andrew Busch: It had used the Commerce Clause or allowed the Commerce Clause to be used in a way that expanded federal authority beyond what Reagan thought made sense. And so Reagan did try to appoint people who would challenge that. And he appointed a large part of the federal judiciary. He had three Supreme Court justices plus a bunch of, more than half, I think 51% or something like that of the lower federal court, so district court and appellate court positions were appointed by Reagan by the end of his presidency. Certainly, if you look at it now, you would say what he hoped to achieve has become closer to reality.

[00:47:27.5] Andrew Busch: Even in the 1990s, there was a case, the Lopez case, where Supreme Court actually, for the first time since 1935, declared an act of Congress unconstitutional because it had exceeded the power of Congress in the commerce clause. And, of course, in more recent years, you've had on some social issues like abortion or affirmative action, conservative victories on the court, but many of those you can't, I would say Reagan would like that. He would support that. And it is what he was aiming for. But there's a limited degree to which he has direct responsibility for that, because a lot of his Supreme Court appointments wound up being people who did not actually follow the conservative lines.

[00:48:27.9] Andrew Busch: If you look at Justice Kennedy, who was appointed by Reagan after the Bork nomination fell apart in 1987, Kennedy was a key vote in declaring anti-sodomy laws unconstitutional. He was a key vote in the Obergefell case, declaring same-sex marriage to be constitutionally protected. At the same time, in some other issues, he was very strong on federalism. So, he wasn't, from Reagan's point of view, he didn't turn liberal you could say, but he was not consistently conservative. He was a swing vote. And the conservative position didn't really make huge gains until he was off of the court and was replaced by someone more consistent.

[00:49:27.5] Andrew Busch: So, Reagan began that movement. I think he paid a lot more attention to his Supreme Court and other, especially lower court nominations than I think Richard Nixon did. He had a whole unit in the Justice Department that vetted these people very carefully. But the results were mixed of the people he actually appointed. But he kind of started the ball rolling, I guess you could say.

[00:49:56.7] Jeffrey Rosen: Fascinating and great discussion of Reagan's frustration with his own nominees, but ultimate contribution to a change in our conception of the judiciary that would transform the bench. Okay. Michael, we've got about time for one round each. And then closing thoughts. I wanna ask you about FDR and the courts and back to Hamilton, Jefferson on the commerce clause. That was the central issue in the battle of the courts on the New deal. Should the Commerce clause be construed strictly to limit federal power to regulate the economy or after the switch in time that you describe, should it be construed liberally to allow government regulation? I guess, I'll ask how did FDR switch the courts? He got appointments, but was it a self-conscious ideology he had in mind? And I think I'll throw in there this broader question from Donald Leonard 'cause it's so relevant to our discussion. He says, I learned in political science that there were four realigning elections in American history, 1800, 1860, 1932, and 1980. What conditions prompted this ideological realignment that were sustained for several or many decades? Two big questions, but I know you can take a crack at each of them concisely.

[00:51:14.6] Michael Gerhardt: Well, I'll try. Well, with 1816 and 1932, they were transformative in large part because the nation was in horrible circumstances. There were dire threats and challenges to the preservation of the union and to the future of the country. That was true in 1860. It was true in 1932. One thing also, and I mentioned Lincoln and Roosevelt have in common is they are wartime presidents. But a third thing they have in common is that they are following presidents who were failures. Lincoln follows James Buchanan, who had a very different view of the constitutional power that the federal government should have. Lincoln didn't agree, especially in an effort to keep the union together, Lincoln was gonna do what he could to consolidate it. FDR follows Herbert Hoover, who would've agreed with that narrow construction of the Commerce Clause power. But that's an old way of thinking as far as FDR was concerned, horse and buggy, he described it, and FDR ends up being the first president in American history to go a full term without a single Supreme Court appointment.

[00:52:28.9] Michael Gerhardt: His first term, he gets zero Supreme Court vacancies. He's not able to make any. That makes him really unhappy. And he is really unhappy because in that first term, the Supreme Court is striking down foundational legislation for the New Deal, and it's doing it on the basis you just mentioned, the court by a thin majority is taking the position, the Commerce clause really doesn't give the federal government that much power. It's just a narrow power. And FDR begins to champion the idea of trying to push the court and ultimately does this through appointments to adopt a broader understanding of commerce clause power that would extend to enacting things like social security, things like workers' compensation, minimum wage, a lot of different things that FDR is sort of experimenting with at that time with, and the court begins to uphold those. But the critical thing I think to keep in mind as far as the court is concerned, Roosevelt believed that the justices were usurping legislative authority.

[00:53:38.5] Michael Gerhardt: He thought that the court was blocking Congress from doing what its job was. And once the vacancies begin, Roosevelt's able, over the course of three terms and an extra month or two, to appoint nine justices. That transforms the court. And it transforms the court into upholding New Deal legislation. So, we go from the time in 1935 when the court's striking down legislation for exceeding commerce clause power to the 1940s when a court unanimously is upholding a much more progressive orientation toward the Constitution. And that was the viewpoint that Roosevelt had. And he keeps pounding it away. He doesn't take it so much on the campaign trail, but it's clearly part of what's animating him in Washington. And at the beginning of his second term, he is determined to spring a surprise in the court. That's the court packing plan, and he expends way too much political coinage on it. It fails. That hurts him politically. And one thing we also see with FDR is with each election, it's by a narrower margin. He's not gonna lose, but he's losing some of that support. And by the time, of course, Truman comes into office, the democratic regime and party are, they're on the cusp of losing power. Roosevelt was able to keep it consolidated, but ultimately, and the most important thing about the consolidation is that it provided a firm foundation for the New Deal.

[00:55:19.8] Jeffrey Rosen: That was a masterful job in answering both questions. Beautifully done. Andrew. I think this is the last intervention 'cause we're nearly out of time, but what are your thoughts about Donald Leonard's important questions about what conditions prompted the ideological realignment? You don't have to talk about all of them, but in particular for Reagan, I

just want to say that your chapter about the failure of the Carter presidency is so memorable. What was it that prompted the Reagan reel on?

[00:55:49.6] Andrew Busch: Well, one of these cases, as Michael pointed out, there were crises. The crisis in 1980 was not as severe as the crisis in 1860 or 1932, which I think is one of the reasons that the realignment, to the extent that it was a realignment, was less complete, less thorough going. But in all of those cases, there had been a kind of intellectual groundwork laid in the sense that before the New deal, you have the progressives and others who had been kind of.

[00:56:32.3] Andrew Busch: Plowing the fields for the idea that the federal government should be more powerful and should have more economic say. And before 1980, you had a conservative movement that had been active for a quarter century kind of building that idea, just waiting for the moment when events would seem to validate a lot of their arguments. And that was during the Carter presidency, when you have inflation, you had unemployment. According to Keynesian theory, you weren't supposed to get high inflation and high unemployment at the same time. And yet we were. There were all sorts of social problems developing. You had foreign policy crises, as I mentioned, Soviets kind of running amok for half a decade. And then there were the Iranian hostage crisis on top of it.

[00:57:26.3] Andrew Busch: So, there was this cascading set of crises. Again, certainly not as severe as in 1932 or in 1860, but at least on the foreign policy side, if they had been mishandled, it could have been quite fatal to us all. And so, this was a situation of some gravity. And the perception among voters was that Reagan had acquitted himself well. He took that situation and whatever flaws there might have been, whatever problems there might have been, the crisis or the crises, because there were more than one, were overcome by the time he left office. And that left a kind of record that, because voters are pragmatic too, right? I think it's true. Franklin Roosevelt was largely pragmatic and so were voters. So, they look and they say, well, did this seem to work or not? In Reagan's case, it seemed to work. I think in Roosevelt's case, it depends what you're asking, but did it keep the country from falling apart and did it win the war against this existential threat? Yes.

[00:58:52.0] Andrew Busch: And so, and at the end of the Civil War, had the Republicans saved the union? Yes. At high cost, but so the crises had been met by these people to one degree or another. And voters remembered that and the bigger the crisis, the longer they remembered.

[00:59:17.3] Jeffrey Rosen: Crises have been met and the voters remembered it. Wonderful ending to a really illuminating discussion. Thank you so much, Michael Gerhardt and Andrew Busch, for these books we've been discussing. Michael's new book, *FDR's Mentors: Navigating the Path to Greatness*, and Andrew's book, *Reagan's Victory: The Presidential Election of 1980 and the Rise of the Right*. And thank you both for all that you do to illuminate American history, and in particular, the constitutional as well as political legacies of so many of our presidents. It's always an honor to host both of you at the NCC. Michael Gerhardt and Andrew Busch, thank you so much for joining.

[00:59:58.9] Jeffrey Rosen: Today's episode was produced by Tanaya Tauber, Lana Ulrich and Bill Pollock. It was engineered by Kevin Kilburn and Bill Pollock. Research was provided by

Samson Mostashari, Cooper Smith, and Yara Daraiseh. Please recommend the show to friends, colleagues, or anyone anywhere who's eager for a weekly dose of constitutional illumination and debate. Sign up for the newsletter at constitutioncenter.org/connect. And always remember that the National Constitution Center is a private nonprofit. We rely on the passion, generosity, and engagement of people from across the country who are inspired by our nonpartisan mission of constitutional education and debate. Support the mission by becoming a member at constitutioncenter.org/membership, or give a donation of any amount to support the work, including the podcast, at constitutioncenter.org/donate. On behalf of the National Constitution Center, I'm Jeffrey Rosen.