



## *To the Five Lawless Fanatics on the Supreme Court: All You're Deciding is Your Own Legitimacy*

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By Troubadour

There are no longer any surprises in the nihilism and depravity of the "American" conservative, because they proved a long time ago that bottomless moral and ethical freefall was both the root cause and the objective of their politics. There is no lie too gargantuan or too absurd, no crime too heinous, no hypocrisy too brazen, and no price paid by others too high if a conservative senses it will produce the slightest gain in power for themselves and their ideology, even if the gain is temporary. Nowhere is this more painfully obvious than on the United States Supreme Court, where five so-called "Justices" continue to sit in judgment over the laws of American society not on the basis of its Constitution, but by the arrogant whims of the conservative id and the criminally unheeded political interests of the Republican Party.

Once upon a time, there were **nine** Supreme Court Justices - not five - and more often than not their decisions were based on an understanding of, appreciation for, and loyalty to the underlying philosophy of a law-based society. Then, as now, there were legitimate differences of opinion among legal scholars as to how that philosophy was best applied - some erred on the side of verbal mechanics, while others took the more dangerous but more promising road of navigating the intentions behind the words. But whichever they chose, generally speaking, they made allowances for the fallibility of both words and intentions, recognizing that law is neither computer programming nor abstract art: It is inherently an act of balance among many things - a barycenter of rights and obligations, authorities and checks on authority, what is claimed and what is true, what is sought and what is possible.

What this meant was that a judge who typically favored a rigidly verbal philosophy of law could nonetheless hold that his own standards would, in a given case, lead to an

absurd interpretation if pursued to its very end. Likewise, one who favored a more holistic approach to legal interpretation could acknowledge that the wording of a law is simply too explicit, and the opposing language too implicit, to avoid sustaining it even if it is a foolish and inconvenient law. This flexibility is part of the definition of philosophy, because otherwise it would be ideology - and there is no such thing as a "legal ideology": Interpretation of law based on anything other than the philosophical tenets of law is, ipso facto, lawless - an exercise in religious pontificating rather than judicial discretion.

Unfortunately, America has had such people on the bench in the past - notably the Supreme Court that decided the [Dredd Scott](#) case, ruling essentially that a black man was not a human being because the words of applicable state laws declared so under discretion granted to them by federal law. These "Justices," if they were not merely being corrupt racists, were at least pharisees who apparently believed laws to be nothing more than words subject to no overall philosophical imperative. An example of the opposite perversion (albeit toward similar effect) was [Korematsu v. United States](#) upholding the mass-internment of Japanese-Americans during WW2 solely on the basis of race - a thoroughly lawless decision apparently based on nothing more than expediency in a climate of paranoia. Both decisions had vehement dissenting opinions.

Today, the Supreme Court is not under the control of either ideology - it's much, much worse than that. Antonin Scalia, Clarence Thomas, Samuel Alito, John Roberts, and Anthony Kennedy do not insist that laws always be interpreted by exact wording, nor do they insist decisions must be on the basis of expediency for the intentions behind the laws. And the inconsistency isn't part of any humble legal philosophy either: They don't shrink from verbal hair-splitting in order to uphold patently unconstitutional laws or strike down plainly valid ones, nor do they shrink from cavalier appeals to expediency or irrelevant political considerations in doing either. Because, in fact, their decisions aren't even part of a legal thought process, ideological or otherwise: The law, and even the principles of law, never even enters into it.

Basically, it comes down to this: **These five men believe their job is to come up with excuses to strike down liberal/progressive laws and uphold conservative ones.** Plausible excuses, if possible, but they have no problem being as absurd and surreal as necessary to meet that objective. Law and legal principles don't even come into the equation for them, let alone any remotely legitimate difference of opinion on how to apply a judicial philosophy. What these people do is not law, and as long as that continues to be their approach, they are not judges. They are not legal professionals of any kind, let alone officers of the court in the United States of America. Judgeship is not a feudal title that is inexorably attached to some individual's identity, lifetime appointment or not - it's a civil function, and they are quite simply failing to perform it.

The record of these five judicial impostors is extensive and often surreal. In [Bush v. Gore](#), three of the five in question (plus two no longer on the bench) infamously declared the loser of a US presidential election the winner, and Scalia (seemingly the avatar of both the past and current five's collective depravity) reasoned that it was justified because George W. Bush would otherwise face legitimacy issues in office: In other words, the

actual election didn't matter - what mattered was creating the most convenient legal basis for the Republican candidate to assume office. This is the five's understanding of the purpose of election law in the United States: To assure that Republican candidates take office as easily and expeditiously as possible. Elections are just inconvenient impediments to this objective.

It was with this in mind that the conservative court made their second most infamous - and probably most damaging - decision, [Citizens United v. Federal Election Commission](#). Although plenty of supposedly limited issues were examined, Citizens United boiled down a pernicious absurdity at the heart of over a century of corporate privilege - the idea that a business organization is a person under the law, granted Constitutional rights over and above those of its individual constituents. This, the ludicrous principle of [corporate personhood](#), has been cultivated by the Republican Party into a violent wealth-supremacist ideology whereby the owners of businesses are literally superhuman because they embody more than one person - much as Kings and Popes refer to themselves as "We" rather than "I."

Again, it had nothing to do with the law - the five were simply asked to clear the way for unlimited amounts of anonymous funding to flow into Republican Party coffers, and did so. After the brutal smackdown of 2008, the GOP needed restrictions on its campaign funding sources removed so as to effectively compete with the large number of small donations (i.e., from ordinary citizens) that Barack Obama had gotten, and the only way to do that was to open the floodgates for unlimited corporate and foreign funding of their campaigns. This is what they told the five to do, and this is what the five did, guaranteeing that 2010 would see a Republican resurgence. As they believe the purpose of the First Amendment is to enable Republicans to control public opinion with propaganda, they interpreted the law accordingly. And if they suddenly discovered that Democrats gained a bigger advantage from the decision than Republicans, they would accordingly reverse themselves without delay.

So we see that the corruption of the five is unrestrained even by its own perverse rationalizations: When an argument they've made in the past to serve Republican interests is used to argue on behalf of liberal/progressive agendas, the five will typically contradict themselves and take a completely different stand, sometimes even mutually exclusive to their earlier opinion. When a state passes conservative legislation in direct violation of federal law, the five will tend to uphold it as a legitimate expression of state's rights. When a state passes legislation more liberal than federal law, the five will tend to declare for federal supremacy even if there is no contradiction between the state and federal statutes. The reason is that, once again, the law is not what they are deciding - what they are deciding is what best advances conservative politics, and that can be completely different from moment to moment. According to the five, conservative states are practically sovereign countries when a Democrat is in the White House, and liberal states might as well be little more than federal administrative districts when a Republican controls the federal government.

The five are not against "judicial activism," as conservatives love to protest - they're against judicial *professionalism*. In fact, they're kind of against the entire concept of a judiciary - an independent, professional branch of government as insulated as possible from lobbying and other influences outside the legal community. Scalia in particular seems to revel in the kind of networking, palm-greasing, and conflict-of-interest-inducing relationships one more typically associates with elected leaders, sometimes to the point of socializing with people who have cases before the bench prior to hearing them - something actual legal professionals would immediately recognize as unethical. But, you see, it's not unethical from his perspective: Quite the contrary. How is he to know what to decide until the conservative party in the case tells him what kind of decision will best serve their interests? If he observed ethics, he would have nothing to go on but the law, and that's a slippery slope to liberalism.

That is their record. These five are, as another diarist aptly put it, "nakedly partisan" - there is no longer any pretense that they serve the Constitution of the United States of America. Rather, they are partisan occupiers of a necessarily non-partisan civil authority, and the damage they have already done to this nation and many others besides is incalculable. Over the past decade and change, they indirectly brought about a war of aggression by overthrowing our electoral process to put a homicidal maniac in power, impoverished millions, eviscerated the American economy by enabling the corruption of its regulatory institutions, and have caused untold suffering downstream throughout the justice system with their blatant perversion of a system intended to protect people, turning it instead into a machine for upholding the power and privilege of barbaric and criminal cabals. And we've let it happen, because although we care, the destruction of their rights for most people has been a slow process.

This is different. Healthcare is a routine necessity of every human being, and it's impossible not to notice its absence - especially once people are exposed to a system that enables them rather than stomping on their faces the way that private insurance does for most people. Millions of Americans who had no practical access to healthcare now have it thanks to the Obama administration's reforms - millions of families who can spend money making their children happy and educated because they're not forced to mortgage their entire lives for the privilege of *being* alive. I don't think I'm being melodramatic to say that millions of lives are at stake, and - as shameful as it is - it's a totally different situation when the lives in question are our own rather than the defenseless victims of a foreign war. Even Bush and Cheney understood that, and wisely refused to try fueling their atrocities with any sort of draft army: As long as they let the American victims of their crimes choose themselves, the sorrow of the families wouldn't turn to rage.

Healthcare is something else entirely. There is no opting out of this war, because it's a conflict between all living things and entropy - between the proverbial best laid plans, and the randomness of a world made of far deeper intricacies. We are each already in the thick of it, every day doing what we can to avoid that bullet with our name on it - a drunk driver weaving down the road, someone not covering their mouth when they cough, a slippery staircase, a single cell in your body losing its ability to stop reproducing itself, and so on. Countless people make it their mission in life to fight this war and move the

front lines just a little bit further ahead - scientists, doctors, technologists, etc. - and along with them nurses, technicians, and other medical-related professions serve patients when they're forced to confront illness or injury. So, basically, to stand in the way of access to healthcare would essentially be switching sides against all mankind.

I realize that "Justices" Scalia, Thomas, Alito, Roberts, and Kennedy very likely *want* to strike down Obamacare - I bet they want it so badly they can practically taste it. Their job as they see it, after all, is to serve the Republican Party and conservative politics, and striking down this program would do both. Republicans hate the idea of President Obama's biggest campaign promise succeeding, and are enraged to the point of frenzy with the realization that every moment it continues is increasing his popularity and solidifying his legacy in history. They know that, like Social Security, this program will likely grow well beyond its humble roots and eventually come to be a core part of a renewed American safety net, and that enrages them even more. The idea of people who can't afford something receiving it through community action drives them up with the wall, because it strikes at the heart of their privilege and power - it undermines the moral value they invest in being rich, and says that ordinary people are not their inferiors, and do not live merely at the pleasure of employers. So I understand that they would be eager to strike down this program.

But I hope they will understand the broader context of what is being decided here, because it really isn't Obamacare on trial - that program, and far more that has yet to be passed into law, has already overwhelmingly been demanded by the American people. What's on trial is the integrity and relevance of the Supreme Court, because a decision along the lines those five partisan fanatics want will unambiguously declare that we don't even have a legitimately-constituted Supreme Court operating in this country - just a board of stenographers rubber-stamping memos sent to them from GOP headquarters. And once that legitimacy is gone, people aren't going to care what the five say anymore - that much is already well in effect, since nobody believes that a corporation is a person, and nobody would obey a law based on such a premise that in any way constrained their own behavior.

So the facts are this: **The people of this country do not agree to die**, and if they struck down this law the Supreme Court would be placing its own relevance and the viability of the Republican Party between the American people and the basic survival of their families. What do they imagine would be the outcome of making Americans choose between Republican leadership and their own families? If they believe the millions of people helped by this law would just accept having their lives and the lives of their loved ones threatened so that arrogant conservative millionaires could get their jollies, then they lack the wisdom even George W. Bush had.

It's not even in question whether the American people ultimately get public healthcare - that's not what's before the Court, however much those five marionettes wish it was: The question is whether a year later they'll have to deal with cases of people pleading self-defense for committing acts of violence in order to secure their family's access to healthcare, because that is the future of bringing down the judicial hammer of Republican

arrogance on what little scrap of hope has been given to the American people. If the law is not respected by those charged with implementing and interpreting it, then it falls to ordinary people to do the job for themselves because they are not being protected. Conservatives have always adored this maxim when using it to excuse racist lynch mobs and gun nut arsenals, but something tells me they would be a little more jaundiced (no pun intended) about relatives of terminally ill indigents taking up the Charles Bronson banner. So I would prefer it if we could avoid testing the American people's resolve to be treated like human beings.

Now, you may note that the right-wing in this country has been attacking healthcare for a pretty long time, but for whatever reason they've never been definitively associated with that agenda - never come to be defined in the wider public imagination as people who want everyone else to suffer and die so they can feel better about themselves. But that all changed when the American people witnessed the debate surrounding the passage of President Obama's healthcare legislation - they saw Republicans doing what they've been doing for a long time, but this time without any attempt to sugarcoat or hide it: They saw a Party of, by, and for arrogant, entitled rich people turn into ranting, semi-coherent crackheads because someone other than they might get something from government. They saw Republican officials who receive public pensions and public healthcare plans foaming at the mouth and going into apoplectic fits of rage at the idea of anyone else getting them too.

And the American people got the message loud and clear: The GOP wants you to die, preferably in agony so that others in your community will be terrified into working harder to please their employers for the ever-receding promise of decent benefits. Folks now know that Republicans are against them having healthcare without an employer's permission, period. It is simply understood at this point that the GOP speaks for insurance company executives, not patients. But there is still room to muddy the waters in the course of a campaign - Republicans count on that fact to remain viable in a country that finds everything they stand for repugnant. After all, when one is a Republican, the words coming out of one's mouth need have no relationship to reality, ever: Reality is to a Republican candidate as law is to the five Lords of the Supreme Court - a complete irrelevancy.

At this point Mitt Romney can still turn on his heel once again and pretend to have spearheaded the healthcare program now serving millions of Americans who previously lacked access - and so can every other Republican running in a remotely moderate state. People know what the GOP is about, but it's in the back of their minds beneath all the immediate noise of an election - and easily buried beneath a reasonably competent snow job. But if a 5-4 court decision strikes down Obamacare - even just portions of it, let alone the centerpiece - the majority decision might as well be written on RNC letterhead, along with every single American's overdue notices on their medical bills. It wouldn't matter how finely-sliced the opinion is: Americans will blame Republicans for *all* of their healthcare-related frustrations, whether they relate to this program or not, because the understanding they already have about the GOP will crystallize and burst into

the forefront of the discussion. If they want that kind of baggage going into an already tough election, they are welcome to carry it.

Obviously Scalia et al don't care if they're remembered as corrupt, arrogant, mendacious, and unworthy of their office, so I wouldn't waste my time appealing to values they simply don't possess. I would simply say to them that authority comes from the willingness of others to obey, and their appointed man G.W. Bush knew that well enough not to predicate his legitimacy on Americans following his orders - we would have laughed in his face if he'd tried. So while there is room for plausible concern over some areas of the legislation, any decision that simply does the partisan bidding of the Republican Party, let alone does it in the language of some silly Cato Institute white paper will be treated as what it is: Nothing, written by no one of consequence, and frozen out of jurisprudence by every other judge who isn't also a member of the partisan team.

**7:02 PM PT**: I may have glossed over a nuance: "The five" refers to the ongoing pattern of five judges issuing lawless opinions in furtherance of the Republican Party, but it has involved a total of more than five over time.