

JUDICIAL TYRANNY AND THE ATOMIZED SOCIETY

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The arrogance of the judiciary has been rubbed in our faces for several years. SCOTUS members have noticed that people are demanding accountability, and they don't like it. One member, John Roberts, scolded us:

"The court has always decided controversial cases and decisions always have been subject to intense criticism and that is entirely appropriate," Roberts told a gathering of judges and lawyers in Colorado Springs. But he said that disagreement with the court's role of deciding what the law is has transformed into criticism of its legitimacy.

"You don't want the political branches telling you what the law is. And you don't want public opinion to be the guide of what the appropriate decision is," said Roberts, who added, to laughter, "Yes, all of our opinions are open to criticism. In fact, our members do a great job of criticizing some opinions from time to time. But simply because people disagree with an opinion is not a basis for criticizing the legitimacy of the court."

Amy Coney Barrett, speaking at the Mitch McConnell Center at the University of Louisville, demanded that we believe she's just a simple vessel for determination of the one true law:

"My goal today is to convince you that

this court is not comprised of a bunch of partisan hacks,” the conservative Barrett said, according to the Louisville Courier Journal. She said the high court is defined by “judicial philosophies” instead of personal political views.

“Judicial philosophies are not the same as political parties,” Barrett said.

These two, like other members of the Court, want you to believe that they are not political, certainly not politicians. It’s unfunny hypocrisy that Roberts has pursued a political vendetta against the Voting Rights Act his entire career. They all got their positions through politics, and they all have strongly held ideological views. If Barrett’s “judicial philosophy” isn’t political, why do all her decisions enforce the positions of the Republican Party, its media and donor arms, its think tanks and foundations, and its armed brownshirts?

Barrett asks you to examine her opinions to see if they sound result-driven. This is from a speech at the Ronald Reagan Library.

“Does (the decision) read like something that was purely results driven and designed to impose the policy preferences of the majority, or does this read like it actually is an honest effort and persuasive effort, even if one you ultimately don’t agree with, to determine what the Constitution and precedent requires?” she asked.

Well, I’ve read Dobbs. It’s political hackery. Sure, you can find defenders, like Barrett’s good buddy Richard Garnett, a Notre Dame law professor. But Dobbs has been eviscerated by historians, legal scholars, practicing lawyers, and lay readers. Alito calls the reasoning of Roe v. Wade was egregiously wrong from the

start, and says it's reasoning is exceptionally weak, as if somehow that makes it different from any other decision he doesn't like. The tone of Dobbs is sneering, condescending, and ridiculous. The opinion ignores the potential impact on the lives and health of women. Only people who like the result will be impressed. Everyone else sees that it solely based on the fact that they have 5 votes to strip our Constitutional rights.

The arrogance of Alito and the other Republican appointees has infected many lower court judges. Let's look at a couple of cases.

First, in a case in Fort Worth TX, 26 Navy Seals refused to get the Covid vaccine in violation of orders, claiming it was a violation of their religion. Reed O'Connor, a federal district judge. granted a preliminary injunction barring the Navy from enforcing its rule requiring vaccination nationwide, and barring the Navy from taking any action against the plaintiffs. For example, the Navy couldn't reassign the Seals or take any action to protect other sailors. This was too much for Brett Kavanaugh and John Roberts, who joined the three Democratic appointees in staying the injunction. The injunction was in effect for two months.

Sam Alito, Clarence Thomas and Neal Gorsuch dissented. They think religious freedom, as they construe it, is a higher value than Art. 2 of the Constitution, which provides that the President is the Commander in Chief. The dissenters write "These individuals appear to have been treated shabbily by the Navy, and the Court brushes all that aside. I would not do so, and I therefore dissent." The dissenters say that the Navy has to find some accommodation for any alleged religious objections at every stage of litigation. The bare assertion of religious claims overrides Art. 2.

Here's a fun fact about the case:

Ms. Prelogar [the US Solicitor General] wrote that the injunction had already

forced the Navy, against its military judgment, to send one of the plaintiffs to Hawaii for submarine duty. In general, she wrote, "Navy personnel routinely operate for extended periods of time in confined spaces that are ripe breeding grounds for respiratory illnesses, where mitigation measures such as distancing are impractical or impossible."

Another fun fact: in a similar case in the Middle District of Florida, another District Judge, Steven Merryday, granted a preliminary injunction to a Navy captain who commanded a ship, but refused to get the vaccine on religious grounds. The Navy refused to deploy the ship.

The judge in the first case, Reed O'Connor, in a separate case, ruled that ACA insurance plans didn't have to cover PrEP, a group of drugs used to prevent HIV infections, because some guy doesn't want to support a plan that he's just sure encourages homosexuality which he says is against his religion. This decision is ridiculous. Drugs don't encourage homosexuality. But Reed O'Connor doesn't care. Religious claims must be upheld at every stage.

O'Connor also declared that the Congressional system for determining what preventive care must be covered by ACA plans is unconstitutional as a violation of the appointments clause. That's laughable. We have all kinds of boards to evaluate aspects of health care and other government functions. It takes experts to find objective experts for such administrative tasks. But O'Connor knows best how to manage health care. He's the guy who declared the ACA unconstitutional.

Other judges have issued nationwide injunctions against actions of Congress and the Executive branches with varying degrees of legal merit. For example, a judge in Hawaii enjoined enforcement of the travel ban of the previous

administration. Eventually it was upheld in part and stayed in part. Here's a short neutral discussion.

Now consider the scribblings of Aileen Cannon in the Mar-a-Lago search warrant matter. I have not seen a single reputable lawyer defend her actions. I don't have words for her absurd interference with the purely executive function of investigating potential crimes.

These cases show a fundamental change in the role of the judiciary in our crumbling government. Courts at all levels now feel free to overturn the decisions of Congress and the Executive Branches for any reason at any stage of the proceedings on any grounds.

Everyone knows this and uses it to stop everything they don't like. For example, the SEC is making a rule requiring reporting companies to disclose information about their impact on climate. As soon as the rules go into effect the climate-deniers will file suit, and no doubt will find a compliant judge to issue a preliminary injunction which will delay the rules indefinitely. The Guardian explains their legal argument:

Some opponents claim that requiring companies to publish climate-related information infringes on their right to free speech. Others (often the same ones) say that the rule exceeds the SEC's legal authority.

By accepting facially absurd arguments, and then through years of delay, courts protect the status quo at the expense of democracy. And if the lower courts won't, you can bet the totally non-political SCOTUS will.

The Atomized Society

Neoliberalism teaches that there is no such thing as society. There is only a group of solipsistic atomized individuals seeking their personal satisfaction without regard to anyone

else. It's a perfect description of the plaintiffs in these cases. The Seals don't want to get vaccinated, but they want all the benefits of being in the Navy, and claim to be willing to follow all other orders. The anti-gay guy who doesn't want to participate in ACA plans thinks he should get all the other benefits of insurance plans, but that no one should get any benefit he doesn't like. The anti-abortion zealots put their moralizing claims over the will of the majority, as polls show repeatedly. Pig-rich corporations think they shouldn't be subject to democratic rules they don't like, but want the benefits of operating here.

This is anti-democratic, yes, but it's also a sign of a failing nation. It is the ultimate triumph of neoliberalism: me first, me only, enforced by the judicial power of the state.