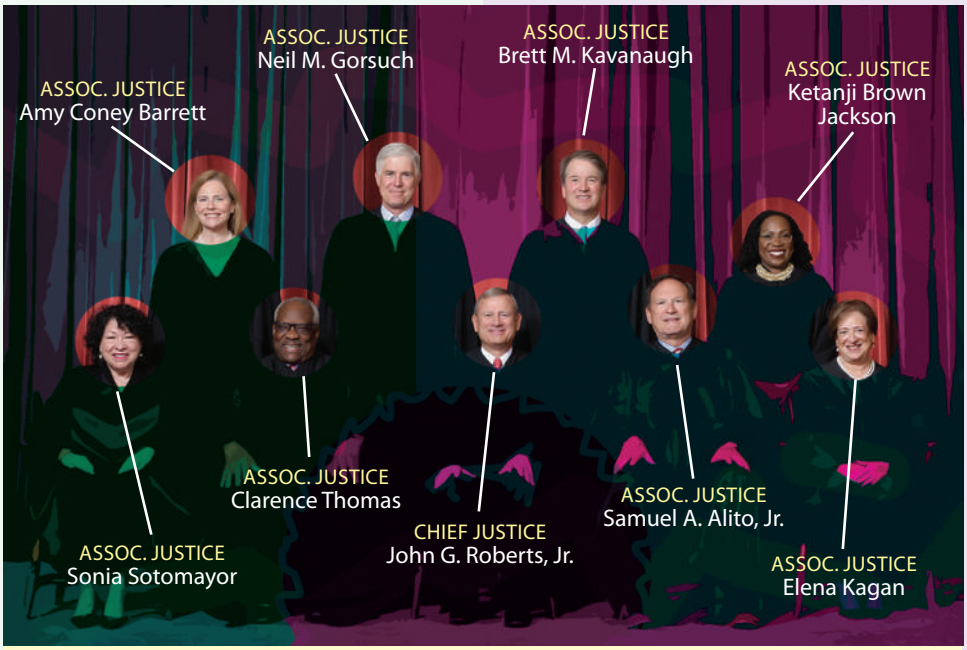
We The Supreme Court, Human And Constitutional Rights In America

By Tarcisio Beal

No one doubts that the Supreme Court of the United States (SCOTUS) plays a central role in the American political system. Its function in upholding the rights and freedoms enshrined in the Constitution cannot be underestimated. It not only passes judgement on many important cases, but also sets the pattern for the entire judicial system. That means that federal and state judges are supposed to follow the guidelines set up by the SCOTUS to validate the ideals of the Constitution. That's why the selection of its judges is central to preserving our democratic system. However, the record of the American political system shows that the SCOTUS has often failed miserably in upholding basic human and political rights by either prolonging, justifying, or exemplifying the utmost disregard for basic human and political rights. To a large extent, for better or worse, the Court has often made decisions tied to partisanship, reflecting the mindset and the desires of powerful politicians in control of the Congress and the Presidency. The early victims of the inaction or decisions of the SCOTUS have been mostly Native Americans and Blacks, then Catholics, and, lately, Jews and Asians. We should note, however, that the record of American history also points to dozens of prominent defenders of the human and civil rights of all its citizens.



The Supreme Court as composed June 30, 2022 to present. Nine Justices make up the current Supreme Court: one Chief Justice and eight Associate Justices. The Honorable John G. Roberts, Jr., is the 17th Chief Justice of the United States, and there have been 104 Associate Justices in the Court's history. Credit: Fred Schilling, Collection of the Supreme Court of the United States

Mistreatment and utmost violence against Native Americans were already present on the so-called **"Manifest Destiny,"** the concept that European, white supremacy was willed by God, a concept now resurrected by archconservatives. The Pilgrims who settled in New England's Plymouth Plantation were Puritan or Calvinist believers in white superiority. William Bradford, a leader of the Pilgrims who, in 1637, burned down a village of the Pequot Indians and killed all survivors, thus reported the massacre:

> Those who escaped the fire were slain with the sword, some hewed to pieces, others run through with their rapiers, so as they were very quickly dispatched and very few escaped. It was conceived they thus destroyed about 400 at this time. It was a fearful sight to see them frying in the fire and the streams of blood quenching the same, and horrible was the stink and scent thereof; but the victory seemed a sweet sacrifice, and they gave the praise to God who had wrought so wonderfully for them, thus to enclose their enemies in their hands and give them so speedy a victory over so proud and insulting an enemy.

Wow! In 1732, the British Gal. Jeffrey Amherst advised one of his lieutenants to destroy the Amerindians in this disguised manner:

> You will do well to try to inoculate the Indians by means of blankets in which smallpox patients have slept, as well as by every other method that can serve to extirpate this execrable race. I should be very glad if you scheme of hunting them down by dogs could take effect.

We must point out, however, that already in late 18th century, some of the Founding Fathers called for fair and humane treatment of the aborigines. In 1764, Benjamin Franklin lamented the massacre of the Conestoga Indians by Scot-Irish settlers of Pennsylvania (*A Narrative of the Late Massacres in Lancaster County*): "But our frontier people call themselves Christian! They [the Indians] would have been safer if they had submitted to the Turks!" In 1786, **Thomas Jefferson,** convinced that the Indians would be treated fairly, said the following: "It may be regarded as certain that not a foot of land will ever be taken from the Indians without their own consent. The sacredness of their rights is fell by all thinking persons in America as much as in Europe." **George**

Washington's 1795 **Seventh Annual Message to Congress,** noted that the government's protection of the Indians from the violence and lawlessness of the frontiersmen was insufficient: "The frequent destruction of innocent women and children, who are chiefly the victims of retaliation, must continue to shock humanity." But things did not turn to the better for the Indians, with the **Supreme Court giving the worst justification for the bloody conquest of the West,** to the point of saying that white supremacy was part of God's plan or of manifest destiny: Here's what it said in its **1832 case Caldwell v. Alabama:**

> When we contemplate the change which has been brought in this once savage wilderness in which we see our happy political institutions and the religion of the Bible displaced their barbarous laws and wretched superstitions… are we not compelled to admit that the Superintending Providence of the Being that first formed the earth is to be seen in this mighty change?"

In 1867, as the onslaught against the **Western Indians got** underway, Gal. John B. Sanborn wrote the following to the Secretary of the Interior:

For a mighty nation like us to be carrying a war with a few struggling nomads, under such circumstances, is a spectacle most humiliating and injustice unparalleled, a national crime most revolting, that must, sooner or later, bring down upon us or our posterity, the judgment of Heaven." '

The slaughter of the Indians turned into gradual extermination during the 19th century, especially in the West after the 1848 discovery of gold in California. The native population of the region went from 100,000 in 1848 to 30,000 in 1859, and by 1900 had been reduced to just 10,000. If an Indian stole a cow to feed his starving family, both he and his whole family were killed. Hunger also killed tens of thousands of the Plains' Indians because the white invaders were advised by the military to slaughter the buffalo and the bison, the two main sources of food for the area natives. The SC itself was justifying the mistreatment of the Amerindians across the South and the West, despite the findings of the 1867 Report to the Presidential Commission of Indian Affairs: "The history of the government connections with the Indians is a shameful record of broken treaties and unfulfilled promises… a sickening record pf murder, outrage, robbery and wrongs." Then, in 1869, the Court denied the territorial rights of the Native-American tribes in its **US v. Lucero** case, a justification of one of its most disgraceful decisions:

> **The idea that a handful of wild, half-naked, thieving, plundering, murdering should be dignified with the sovereign attributes of nations, enter into solemn treaties, and claim a country five hundred miles wide by one thousand miles long as theirs in fee simple, because they hunted buffalo and antelope over it, might do for beautiful reading in Cooper's novels or Longfellow's Hiawatta, but is unsuited to the intelligence and justice of this age or the natural rights of mankind.**

Still, the congressional *Ordinance of 1877* recommended that "the "The utmost good faith shall always be observed toward the Indians; their lands and property shall never be taken from them without their consent." Nevertheless, when, up to 1976, 3,400 Native-American women were sterilized without their consent, the SCOTUS did nothing.

On the issue of **slavery,** the record shows constant violation of the most basic human and civil rights. President **Andrew Johnson,** a South Carolinian democrat and Abraham Lincoln's Vice-President, was unbelievably racist. His well-known expression was "Damn the Negroes!" He vetoed the creation of the Freedman's Bureau and the 14th Amendment, which granted citizenship and the right to vote to the black men, but was overridden by Congress in June 1866. In 1857, the SC's ***Dred Scott's decision*** facilitated the denial of the basic human and civil rights of **African Americans** by the States by authorizing the use of state law against federal law, the opposite of the Judiciary Act of 1789. In the Judiciary Act of 1859, **Roger Taney,** head of the Supreme Court and a former slaveowner, spelled out the position of the Court's majority:

> Slaves have not and can never be citizens of the US because they have always been regarded as of an inferior order, so far that they have no rights that the white man is bound to respect. Besides – he added – when the Constitution was adopted, blacks were regarded as beings of an inferior order, so inferior that the white did not have to respect.

In 1873, Francis A. Walker. Commissioner of Indian Affairs, spelled out the routine mistreatment of Native Americans:

There is no question of national dignity, be it remembered, involved in the treatment of savages by a civilized power. With wild men, as with wild beasts, the question is merely of what is easiest and safest.

Now, despite the efforts of the republicans to ease the dreadful conditions of African Americans during Reconstruction, the democrats' recovery of full power in the South spelled doom for them, in some States all the way to 1964. Gradually the **Klu Klux Klan,** born in Mississippi in 1866, began functioning as an unofficial gang of the Southern democratic party, using violence to prevent republicans from voting and targeting mostly African Americans. The Klansmen, who quickly raised their number to more than 60,000, constantly defied the 1870 Force Act and the 1871 KKK Act and spread all over the Southern and Southwestern States, carrying out the bloodiest violence against black people all the way into the 20th century. From **1889 to 1910, eleven Southern States** imposed laws of mandatory segregation between blacks and whites. Yet the voice of the SCOTUS was not heard at all. When democrat President Woodrow Wilson (1912-1920) failed to protect black officeholders who were being dismissed from their jobs because of their color, the Court said nothing. Wilson even argued that segregation for blacks was in their "best interest." He also imposed segregation even in the Armed Forces, a practice that lasted until 1952. In 1898.The Court also supported a number of political actions of the federal government. In 1898, it legitimized Grover Cleveland's efforts to destroy the labor unions by sending federal troops against the 150,000 railroaders of the Pullman Strike which had started in 1894.

It was **only in 1967 that the SCOTUS nullified the segregation laws of 16 Southern States and finally legalized interracial marriages.** More than once did the Supreme Court make the wrong decision, then later reversed itself. In 1890, in Plessy

v. Ferguson, it decreed that "separate but equal" schools for whites and blacks was constitutional; then, in 1954, it declared the opposite, and even instructed school boards to start desegregation "with all deliberate skill."

The SCOTUS also **disliked President Franklin Delano Roosevelt's New Deal** programs of the 1930s and was anti-labor to the point of **ruling, in 1933, that the National Labor Relations Act was unconstitutional.** It reversed itself in 1937, however, because of widespread popular reaction. Then also in 1935, as FDR was working with Congress to get the country out of the Great Depression (1.5 million homeless, 39% hungry), the Court decided that the National Industrial Recovery Act of 1933 was also unconstitutional. In 1938, it **declared unconstitutional the Agricultural Adjustment Act,** which was designed to help jobless farmers.

American Progress (1872) by John Gast is an allegorical representation of the modernization of the new west. Columbia, a personification of the U.S., is shown leading civilization westward with American settlers. She's shown bringing light from east to west, stringing telegraph wire, holding a book, and highlighting different stages of economic activity and evolving forms of transportation. This belies the fact that indigenous people were massacred at will and buffalo exterminated.

The SCOTUS's inaction or disregard for civil rights continued into the 1950s and for rest of the 20th century. In 1953, the Eisenhower Administration canceled the 1934 Indian Reorganization Act and adopted **"Termination,"** which took away tribal control of Indian affairs; and between 1973 and 1976, 3,400 Native-American women were sterilized without their consent, but Court said nothing. Yet, in 1954, it declared as unconstitutional the "separate but equal" clause of the "Brown v. Board of Education" case. However, thanks to the efforts of Martin Luther King and of the NAACP and the support of LBJ and the democrats, the Court ruled as fully constitutional the monumental Civil Rights Bill of 1964. But, in its 1992 "Freeman v. Pitts" case, it was still justifying old practices by allowing Atlanta's suburban school boards to refuse desegregation.

Women's rights is another area where the Supreme Court has been contradicting itself. Although the majority of judges had been chosen by President Richard Nixon, the Court ruled, in the 1973 **"Roe v. Wade"** case, that "women's rights include the right to control their own body."

Then, in 1989, in **"Webster v. Reproductive Health Services,"** it confirmed "Roe v. Wade," but allowed the States to impose all kinds of restrictions. It did the same in the 1992 with the **"Planned Parenthood v. Casey"** case. But now, in **2022,** the majority of the Supreme Court judges who were chosen by ex-President Donald Trump, have rejected the constitutional right of abortion by **declaring Roe v. Wade unconstitutional** and reinforcing the States' power to impose further restrictions. Only congressional legislation will restore the constitutional rights of women to their own body, which will now happen only if the democrats gain a substantial majority in both Houses of Congress and the present GOP gets out of its present undemocratic nightmare.

The Court has also been very slow in deciding between 7,000 to 8,000 appeals against the death penalty, partly because it takes 6 votes to deny appeals from the lower courts

On May 23, 2022, in *Shinn v. Ramírez,* Clarence Thomas wrote the justification of the SCOTUS's denial of the death sentences of David Martínez Ramírez and Barry Lee Jones, both locked in Arizona's death row. The State Supreme Court argued that "innocence is not enough to throw out Jones' conviction," although his defense attorney did a very poor job. Actually, despite the fact that at least three of the present SCOTUS judges are Catholics who are supposed to oppose the death penalty, the Court has frequently okayed its practice.

Finally, at a time when pollution of the environment is threatening the health of our society, with the USA contributing a great deal to the poisoning of the planet, the Supreme Court of the United States has failed miserably to do its part in saving the nation from natural disasters. It let Nixon's 1992 restrictions on clear air regulations to stand so as to accommodate big business. Now, in 2022, it has remained silent about the unconstitutional decisions of the lower courts. For example, the rulings of the Trump-appointed Judge Aileen Cannon on the ex-President's illegal storage of hundreds of high-security documents in his Mar-a-Lago's mansion and golf club should have prompted the SCOTUS's immediate action, yet the constitutional farce continues despite the efforts of the Department of Justice.

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