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The courts have served as an anti-democratic force for much of U.S. history

Many Today's Supreme Court is no exception.

The Washington Post
David A. Love
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The U.S. Supreme Court heard oral arguments on a sweeping new abortion law in Texas on Monday. The law, which went into effect in September, bans abortions after six weeks and relies on private-citizens-turned-bounty-hunters to enforce the law at \$10,000 a head. The court's decision not to block enforcement of the law before it went into effect places the legitimacy of the high court in question.

Today's Supreme Court may be the most conservative it has been [since the 1930s](#), and its recent decisions only highlight that its right-wing supermajority is captive to anti-democratic forces and the result of the corruptive influence of [dark money](#), which has supported the confirmation of extreme conservative justices. Despite claims to the contrary, conservative justices have left the unmistakable impression that they are political operatives. Justice Clarence Thomas recently appeared at a Heritage Foundation event featuring Senate Minority Leader Mitch McConnell (R-Ky.) singing the justice's praise, for example.

However, this is not the first time, nor is it a rare moment when the judiciary stood against democracy and civil rights. For most of its existence, the court has not been a [moderate, apolitical body](#), but rather has oppressed marginalized groups and protected White male landowners, the group long considered ideal political citizens, who wrote the Constitution, and for whom the Constitution was written.

"First, as a matter of historical practice, the court has wielded an antidemocratic influence on American law, one that has undermined federal attempts to eliminate hierarchies of race, wealth and status," [Nikolas Bowie](#), an assistant professor of law at Harvard Law School, testified to the Presidential Commission on the Supreme Court of the United States that was formed last spring. "Second, as a matter of political theory, the court's exercise of judicial review undermines the value that distinguishes democracy as an ideal form of government: its pursuit of political equality."

Bowie noted that Alexis de Tocqueville identified jurists as the American aristocracy, a privileged class with lifetime tenure who, as "the priests of Egypt," regarded themselves as "the sole interpreter of an occult science" of the Constitution. He also pointed out that the Supreme Court has consistently protected the wealthy, invalidated federal laws enacted to increase political equality and has shown

deference to Congress when it passed laws that harmed “racial, religious or ideological minorities” such as Native Americans, Chinese immigrants, those who live in U.S. territories, Muslim refugees and others.

In the 1857 decision in [*Dred Scott v. Sandford*](#), for example, the Supreme Court blocked citizenship for Black people and ruled that Congress had lacked the authority to pass the [*Missouri Compromise*](#), which banned slavery in new territories. The court’s majority was composed of five justices from slavery states, including Chief Justice Roger B. Taney, a former enslaver who was ardently proslavery.

In delivering the opinion of the court, Taney wrote of Black people, “They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect.” This philosophy justified slavery, enabling Black people to be “bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it.” The decision ruled the hallmark of the platform of the new Republican Party, banning the extension of slavery, unconstitutional.

Similarly, in 1896 in [*Plessy v. Ferguson*](#), the court gave the green light to Jim Crow racial segregation laws that Southern states enacted after Reconstruction to disempower, repress and terrorize Black people under the fraudulent doctrine of “separate but equal.”

[*The Insular Cases*](#) of 1901 reflected the “manifest destiny” philosophy of conquest and White supremacy at the turn-of-the-century, leaving the residents of territories the United States acquired in the Spanish-American War — Puerto Rico, Guam and the Philippines — as second-class citizens not entitled to full protection under the Constitution. Those people were, according to the Supreme Court, [*“savages,” “uncivilized” and “alien races”*](#) and [*“foreign in a domestic sense.”*](#)

The Supreme Court further revealed its racism in [*Korematsu v. U.S.*](#), when it shamelessly upheld the wholesale incarceration of 120,000 Japanese Americans in detention camps during World War II.

Certainly there are examples in which the high court has upheld the rights of the marginalized and disadvantaged. However, as [*Vinay Harpalani*](#), associate professor of law at the University of New Mexico, has noted, “even when the U.S. Supreme Court makes rulings that seem to favor people of color, those rulings usually serve the interests of wealthy, elite White Americans.”

Harpalani cited how the *Brown* decision stemmed in part from Cold War strategy and the need for the United States to appeal to people in African, Asian and Latin American countries. “Racial segregation at home did not bode well in this context, especially when contrasted with communism’s emphasis on equality,” Harpalani said. “So civil rights advances like *Brown* also had the effect of increasing America’s global economic and military reach, which of course benefits elite White Americans the most.”

Several justices have protested that they are not partisans. Flanked by McConnell at the University of Louisville's McConnell Center, Justice [Amy Coney Barrett](#) recently said, "this court is not comprised of a bunch of partisan hacks," but is instead governed by "judicial philosophies."

Similarly, Justice [Samuel Alito](#) insisted the Supreme Court is not "a dangerous cabal" that is "deciding important issues in a novel, secretive, improper way, in the middle of the night, hidden from public view," and criticized journalist [Adam Serwer](#) for calling judicial impartiality a lie and accusing the imperious court of nullifying *Roe v. Wade*. Liberal Justice [Stephen G. Breyer](#) affirmed that "it is a judge's sworn duty to be impartial, and all of us take that oath seriously."

But history shows there is every reason to believe the judiciary will continue to uphold property rights over human rights under its current configuration, and following the original intent of the Founders, promote the interests of the Founders' demographics.

No one believes judges — or journalists, or scholars — have no opinions. The question is whether justices will be fair and seek justice for the people. The liberal Warren court (named for Chief Justice Earl Warren) that ruled in favor of equality and expanded criminal and voting rights in the 1950s and 1960s was an outlier in U.S. history. Unless court reform is enacted to fundamentally change the institution, the judiciary will continue to erase our basic rights — not only abortion and civil rights, but also labor rights aimed at addressing economic inequality, LGBTQ rights, environmental justice and more — and destroy what is left of our multiracial democracy.

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