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“Court Reform” or Popular Revolution, a New Constitution, and a Socialist Supreme Court?



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Liberal Democratic critique of existing institutions is hopelessly tame. What’s really required is radical reconstruction — revolutionary transformation.

Look, for example, at all the current liberal and Democratic Party anger over the grotesque corruption of right-wing Supreme Court justices, with the far-right so-called justice Clarence Thomas in the lead. I won’t bother to review the details here: they are a quick Google search away and include various revolting monetary and non-momentary gifts from wealthy and powerful interests and individuals seeking “justice” in their favor. It is of course completely disgusting. As the old working-class slogan goes, “money talks, bullshit walks.”

According to top Republicans in the US Senate, the Democratic Party-controlled upper Congressional body’s investigation of Clarence Thomas and his perverse friendship with Harlan Crow, a Texas billionaire, is nothing more than a smokescreen for a “radical left-wing attack” on the very legitimacy of the Supreme Court. Summarizing the view of his fascist party, Senator Lindsey “Gaslight” Graham (R-SC), says that “This assault on Justice Thomas is well beyond ethics... It’s about trying to delegitimize a conservative court that was appointed through the traditional process. This is an unseemly effort by the Democratic

left to destroy the legitimacy of the Roberts Court. It's put people at risk. It's put their personal safety at risk."

Let's get six things clear.

First, there's nothing "radical left" about the Democratic Party or any of its Senators. The dismal, dollar-drenched Dems are a deeply conservative, militantly capitalist and imperialist party dedicated to upholding the nation's established class rule social order and imperial system.

Second, there's nothing unseemly about trying to de-legitimize the pro-gun, anti-environment, arch-plutocratic, white-supremacist, and militantly patriarchal "Roberts Court," which has rendered numerous horrific right-wing decisions that "put people at risk," mostly notably millions of women and girls placed in harm's way by the brazenly anti-democratic *Dobbs v. Jackson* decision – an all-too successful effort to re-impose the female bondage of forced motherhood.

Third, the "Roberts Court" isn't "conservative." It is ruled by a Donald Trump and Mitch McConnell-crafted Christian Fascist majority that is radically revanchist. It seeks to turn the clock back on history by cancelling core human, civil, social, environmental, and labor rights won by past social movements.

Fourth, it's not really "the Roberts Court." It's the Alito-Thomas-Kavanaugh-Gorsuch-Coney-Barrett Court. Let's just call it the High Handmaid Court (HHC).

Fifth, the HHC was not really "appointed through the traditional process." Two Senatorial acts of remarkable non-traditional right-wing chutzpah created the HHC. The first such act was the Republican-controlled US Senate's refusal to even consider a centrist Supreme Court appointment advanced by the center-right Democratic President Barack Obama following the death of the far-right justice Antonin Scalia in the late winter and early spring of 2016. Even before Obama nominated Merrick Garland for the Court, and indeed just hours after Scalia's death was announced, then Senate Majority Leader Mitch McConnell (Rf-KY) declared any appointment by the sitting president to be null and void. The Republi-fascists' absurd argument at the time was that it was too close to the quadrennial presidential election coming later that year for Obama's appointment to be considered. McConnell declared that the next Supreme Court justice should be chosen by the next president — to be elected in the fall of 2016.

The second non-traditional and radical right-wing act came in October of 2020, when then-President Trump and still Majority Senate Leader McConnell followed the untimely September death of "liberal" justice Ruth Bader-Ginsburg by jamming through Trump's third far-right anti-abortion appointment to the newly consolidated HHC. Amy Coney-Barrett, a literal Handmaid in a Christian fascist male-supremacist cult (People of Praise), was approved by the US Senate on October 26, 2020, just one week prior to the 2020 presidential election!

It was far from “traditional” for the Senate to refuse to even consider a presidential appointment to the Court many months before a presidential election, as in 2016, and for the Senate to then confirm an appointment to the Court just days before a presidential election, as in 2020. The radical, bald-faced women-hating partisan hypocrisy driving the contrasting Senatorial actions four years apart was clear as day.

Also un-“traditional” and un-“conservative” was the radical lying that each of Trump’s three successful HHC appointees – Neil Gorsuch, Brett Kavanaugh, and Coney-Barrett – engaged in during their Senate confirmation hearings. Each of these future fascist judges falsely claimed during these hearings to view women’s right to an abortion as settled law under the 1973 *Roe v Wade* decision.

Sixth, as the liberal *New York Times* columnist Jamal Bouie rightly notes, the Democrats are really and excessively *holding back on seriously attacking the Court’s legitimacy*:

“Just a handful of Democrats in the House of Representatives called for Justice Thomas’s resignation after reports that he accepted lavish trips and gifts from Crow, and Senate Democrats have been careful with the issue. There’s been no attempt to subpoena either Justice Thomas or Chief Justice John Roberts — who was politely asked by letter, last month, to come before the Senate Judiciary Committee ... What’s more, Democrats still speak as if they hold the Supreme Court in high esteem. They defer to its judgments and trust it enough to think that it could, with a little prodding, handle its own ethics issues. The goal of their questions and investigations is not to delegitimize the court as much as it is to shore up the court’s legitimacy — to protect its standing in a world where most Americans take a dim view of most American institutions” (emphasis added).

Bouie goes further, arguing that the Democrats ought to question the legitimacy not just of what he calls “the Roberts Court” (what I call the HHC) but of *the Supreme Court itself as an institution*. “The problem of the Supreme Court,” Bouie writes, “isn’t that its members are mired in ethics scandals (although they are.). It isn’t that it’s been captured by a network of conservative apparatchiks and right-wing billionaires (although it has). No, the problem of the Supreme Court is that it is *a powerful and unaccountable branch of government whose traditional role has been to protect the rights of property and the prerogatives of the privileged above all other concerns.*” (As Bouie ads, that judgement is not invalidated by the post-WWII Warren Court period, when the body issued some decisions objectively allied with the interests of workers, Black Americans, immigrants, gays, and women. That was an anomalous era in Supreme Court history, long over.)

Yes. Well said!

Okay, so what is to be done? What does Bouie propose? Here’s where his seemingly “radical left” critique turns to mush. “The only option,” he writes, “is to try to change [the Court’s] size and structure,” in order to produce “a court that is much weaker than it has been in recent

history...[and] to remove it as much as possible from the decisions that shape our lives, rather than to leave it with a leading role in the affairs of we, the people.”

So, who is going to do that and how? Bouie clearly sees this as a project for the dismal, decrepit, and dollar-drenched Dems, the *Hollow Resistance* party of neoliberal imperialism that Sheldon Wolin once accurately described as “the inauthentic opposition.” Sorry, but that’s not going to happen. Longtime corporate-imperialist Dems like Dick Durbin, Joe Biden, and Chuck Schumer et al. are not about shaking things up.

As Bouie must know, moreover, they couldn’t change the size and structure of the Court even if they tried. Not under the governance and electoral rules that Joe “Nothing Will Fundamentally Change” Biden has absurdly called “the envy of the word for 240 years.” Court expansion would require bold action by Congress and the rightmost (now neofascist) major US party has too much power in the national legislature to permit such action. Thanks to rampant right-tilted gerrymandering, the ridiculous right-tilted malapportionment of seats in the US Senate, and the Senate filibuster (which requires 60 of 100 Senate votes for a measure to pass), the Republi-fascists are far too powerful for anyone to seriously entertain Court restructuring.

A Biden-appointed blue-ribbon commission has already ruled out Court expansion, reflecting Dem fears that it would be perceived as a “partisan” move and set a precedent the Republicans would exploit when they had a chance.

What Bouie says is “the only option” is pretty much out of the question minus a mass popular upheaval he shows no signs of wanting to spark.

How about we get serious? It’s long past time trying to get anything decent and democratic done within this maddening governance order, what I call “bourgeois democracy, American Style,” replete with an archaic charter from when the Bourbons still ruled France. What’s really required and cannot be spoken in supposedly “left” liberal circles is a radical reconstruction of the US political superstructure. We need to move off the killing confines of the 18th Century slaveowners’ constitution that we are still so sickeningly straightjacketed by in the 21st Century. Two Senators for every state regardless of population size, leading to drastic inflation of the power of the nation’s most revanchist regions? For real? An unnecessarily bicameral legislature with a remarkably powerful upper chamber? Seriously? Presidents not elected by a national popular vote but through a preposterous state by state Electoral College that renders millions of votes superfluous while concentrating presidential campaigns in a small number of contested states? Say what now? Lifetime-appointed federal justices put in place to validate and make “constitutional” campaign finance plutocracy and authoritarian gerrymandering (and national firearms saturation and forced motherhood and much more terrible to mention) by undemocratically elected presidents and a badly malapportioned Senate? Hello? Extreme states’ rights for fifty separate US jurisdictions free to implement vicious policies that are opposed by a great majority of US Americans – for

example, malevolent abortion bans across most of the US South in the wake of the High Handmaid Court's openly medieval *Dobbs v Jackson* decision? Excuse me?

We are mired in these profoundly un- and anti-democratic Minority Rule rules from the age of Louis XVI because it has long served the interests of our capitalist ruling class for us to be mired in them. What's required now is a revolutionary movement to fight for a new social and political order with a new socialist constitution. That constitution would include judicial review but would be the outcome of a popular revolution that would never create the kind of craven, corrupt, and reactionary courts and judges that rule so illegitimately and lethally in the US today. It would be upheld by a socialist Supreme Court dedicated to serving the common good and opposing all forms of oppression and inequality. Hideous atrocities like Clarence Thomas, Brett Kavanaugh, Sam Alito, Amy Coney-Barrett, Neal Gorsuch, John Roberts and the Citizens United and *Dobbs v. Jackson* decisions could never reign under such a constitution, which would shed ridiculous things like the Electoral College, extreme states' rights, gerrymandering, campaign plutocracy, corporate media, malapportioned and super-powerful upper legislative chambers, and more.

That's what an actual "radical Left" would say. And that, of course, is precisely the sort of thing that a Jamal Bouie could never say and still expect to keep his prestigious and well-paid position at the nation's capitalist-imperialist paper of record *The New York Times*.

Charters matter. Here's one to consider, courtesy of the Revolutionary Communist Party of America: *Constitution for the New Socialist Republic in North America (Draft Proposal)*. It has a Supreme Court, incidentally. I can already see the eyes rolling and the jaws dropping. Yes, imagine the chutzpah of actually drafting an alternative constitutional set-up to help move humanity beyond the current interrelated messes of capitalist class rule, imperialism, racial oppression, savage patriarchy, ecocide, religious insanity, and fascism – what might be called "the seven evils that are interrelated." (Feel free to suggest changes or write a better one, fellow "radical lefties." Got something superior? Show it. Seriously)

The existence of a revolutionary socialist draft constitution doesn't really fit the longtime bourgeois trope about how "the radical Left" is *only against things and has nothing that it's for* – that it's all "anti." Nonsense. There's an accurate translation for that charge: "*you have an alternative vision, and we don't like it.*"

This essay originally appeared on *The Paul Street Report*.

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Paul Street's latest book is *This Happened Here: Amerikaners, Neoliberals, and the Trumping of America* (London: Routledge, 2022).