

October 2020

~ a Civic Commentary ~

## **SCOTUS Hokus Pocus ~**

### **Unpacking the Hacks on the Surreal Court**

#### **SUPREME SORCERY**

The untimely passing of Justice Ruth Bader Ginsberg has roiled the turmoil of American politics, gouged out the chasm of divisions ever deeper. She bore her usual courage with full knowledge and fear of this fateful moment for the High Court and Country, and could not hang on.

And so as she still lay in state, honored and mourned, the horror movie rolls on the rush to fill this seat::: all the inverted vermin roosted in the GOP belfry flutter and take flight in the sudden night, riled at the scent of blood on the body politic, and the spectre of lasting power... they swoop and screech old haunting lies & taunts as the Maestro vampire howls mockeries "*because We Won.*"

No, Senator Rommel from Utah, you are so wrong: You hear outrage not just because "...[your] liberal 'friends' got used to the idea of having a liberal court." ¶1 It's because Americans rightfully expect Jurists of genuine wisdom and merit in serving democracy & law in the broadest public interest, above politics. It just happens that such honest rational intellects disagree with everything you think, because you are so wrong... so you call them names like "Liberal" as an epithet.

Of course RGB was a paragon of judicial integrity and independence: There was nothing partisan in her legal intelligence and high scholarship - undeniable across the aisle, driven by good sense & tenacity, defining the terms in worthy fights. Her confirmation for the High Court drew overwhelming bilateral support in accord - but that was a different moment.

These days the process is riven with polemic strife, inflamed by the GOP's strident ideologies - now normalizing their motive to politicize the Courts and elevate devoted hacks to do their bidding on the bench. In our era Nixon started it with Rehnquist... McConnell and Trump have escalated it to total war for Conservative domination of the judicial branch.

So the flash announcement and fast-track nomination of Amy Coney Barrett five weeks before the election can be no surprise: The hypocrisies are shamelessly compounded, doubling down as always... and we're made to watch dazed and amazed, as RBG's persona & place on the Court are magically transmorphed to their stark antithesis: *Voilà, we're screwed.*

#### **CULT OF THE JURISPRUDES**

Like Kavanaugh, Barrett came up in protected privileged conclaves of legal education, nurtured in sycophant scholarship and rewarded in her career for obedience to conservative orthodoxies. She wields piety as a shield, as if this vindicates any extreme - but in truth this just makes her fast advancement more suspect.

In a prominent video clip, Barrett affirms that her "*sincerely held religious beliefs*" do not alter her legal judgments - invoking First Amendment jargon as an immunity from critique. ¶2 But her 'beliefs' are not at issue... it is the proselytic practice of religion to which he has committed her fealty and career, the troth to espouse those beliefs and the mandate to impose them.

In her prior appointment to the Seventh Circuit, she did not disclose her lifelong covenant to "*People of Praise*", a secretive patriarchal Catholic cult of high influence - nor her lawyerly mentorship under Leonard Leo, founder of the National Catholic Prayer Breakfast and a force in the Federalist Society, in avowed service to partisan ends. ¶3

Duly noted: Two kinds of people claim holy surety that what they say is wholly true just because they said it – lawyers and fundamentalists. Amy Coney Barrett is both... she is already lying about her bent and intent, and brings well-rehearsed deflections into the Senate hearings: As a nominee she is mandated to answer questions about her legal analysis on key issues, but refuses to do so on phony pretenses of neutrality and propriety. The stonewalling is unacceptable – she should be repudiated and sanctioned for Contempt of Congress.

Impending outcomes are obvious: She will kill ObamaCare (ACA) & *Roe v. Wade* - done deal, regardless of legal arguments yet unheard. More heated speculations go to how she might tilt the Election, validating voter suppression and specious challenges the GOP will bring to the Supremes. Brazen politics in the courts is now the norm, taken for granted... Outragous.

But her prior and predictable views on other litmus-test issues raise more enduring urgent fears: Barrett will inflict lasting damage on public interests *in re*: environment, climate, labor, public education, civil rights, executive powers, corporate immunities, etc. -- and more darkly the High Court will be demeaned as an institution, dragged down in lockstep subservience to right-wing jingo and fictions. The rules of evidence become meaningless where "alternative facts" can be conjured at will to suit foregone rulings... the Constitution is a thin pretense where religious dogma steps on principles of secular common law.<sup>14</sup>

## JUDICIAL HACKTIVISM

The self-exalted constitutional "originalists" in Scalia's mold purport to constrain Government powers in accord with the intent of the founders. They demand 'judicial restraint' from rulings interfering with expressly reserved legislative and executive powers, and decry the "activism" of legal dicta that might usurp or expand them. This is a deceptive sanctimony, just a cover for subverting social programs & protections (aka 'entitlements' & 'regulations'), based on a flawed linear reading of the document.

As stated the Constitution empowered the People to "*form a more perfect Union*", and enacted democratic government as common ground for their discourse and co-action to "*promote the general Welfare*".<sup>15</sup> Nothing in the ensuing text prohibits such purposes as a society and nation, or presumes to enumerate, define, or limit them for future generations.<sup>16</sup> It is a Conservative myth that such public endeavors exceed its intended scope - so the "big government" smear is deployed to attack lawmakers who propose such public authorities, and judges who uphold them.

Meanwhile, the same `purist jurists` line up like ducks for expanded militarism, police powers, sovereign immunities, security secrecy, privacy intrusions, and public debt encumbering our progeny... *that stuff IS Big Government in the extreme, by definition.* Unbothered by the contradictions, Republicans seize and enlarge the instruments of government to advance their agendas, and sabotage the historic public work of such agencies when it serves their purposes. So then government corruption, bungling and failure become self-fulfilling prophecies - most convenient.

To be clear on the substantive political stakes, Trump's GOP bears no resemblance to the libertarian 'Old Right', and public policy is no longer a rational construct of pluralist civic views: It is a wholly ideological creature made up of rote memes & proverbs - on patriarchal authority, corporate impunity, class privilege, resource extraction, market extortion, patriotic zealotry & social control - uncomplicated by facts, easy to memorize and repeat. Why so many voters across the country embrace these ideas against their interests – this is a great riddle & muddle of American myth & politics in our era.

So seeing the sweep and thrust of GOP agendas, they are defined by the joinder of corporate oligarchy and state power, known to history as Fascism - and they follow much the same playbook as Mussolini and Hitler, using democratic means to destroy democracy. Then their long game of packing the courts is more vivid in its perils, and the huge paradox is obvious: They are the ones pushing "judicial activism", putting hacks on the federal bench to rewrite public laws with lifelong impunity.

## GOD AS JUDGE

The vehemance and conspicuous evangelical support for these views are ominous signs, posing an imminent threat of religion in the law. A real "strict constructionist" would stand firm that there can be no such thing, heeding the genius of the First Amendment 'Establishment Clause' strictly separating church and state.<sup>17</sup> This is at once the most crucial protection against feudal tyranny of power and belief, and the truest assurance of personal freedom of faith. Now Amy Coney Barrett is pushed forward with high-profile piety and paraded like a Madonna who will put the fear of God on the High Court... *be very afraid*.

Most Christians are taught generously to Love Thy Neighbor... Evangelicals are differently motivated in a pathological desire to tell their Neighbors what to believe, how to think and act, and a zealous certainty that deviance shall and must be punished. Their unholy tryst with the NeoCons is not merely a blithe alliance of traditional values... it moves on a political will to power, to make America the destined Christian nation, using devices of government to enforce conformity with ordained orthodoxies under color and compulsions of law. Barrett's nomination is a grab for that power now decisively within reach in the Supreme Court:

It's no longer about nativity scenes next to the Town Hall, or vaguely blurred precepts of Church & State - the intent is to shatter that boundary, with sanctimonious forethought to future precedents infused with religious bias that will systematically subvert the Establishment Clause.

*Roe v. Wade* poses a crucial test soon... the moral issues have been twisted, and the legal issues miscast: The anti-abortion movement abides in divine judgment of sin, of illicit sex and infanticide to be reviled and criminalized... defenders then have to argue for a '*right to abortion*' that the Constitution does not expressly protect as civil conduct. The debate devolves into circular rages on the primacy of concurrent rights (Life vs. Choice), and the tilt of compelling interests for government intervention.

In fact it's about deeply personal & family decisions on childbearing, and private medical means of serving them responsibly, all within the meaning & intent of Ninth Amendment rights "*retained by the people*".<sup>18</sup> So the defining legal question is not what the government must *do* either way, but where it cannot *go* beyond constitutional authorities in any way: It is an improper extension of state power to interfere with these decisions or prohibit related care, or to impose state-mandated pregnancies to full term.

The historic 'Roe' decision found old abortion restrictions to be illegal and finally protected women and doctors... new restrictions are not made lawful by judicial fiat in the name of God: Once found to be invasive, discriminatory, demeaning and cruel, they are unconstitutional forever... there is no going back to treating women as feudal chattel, and doctors as vassals under lordly decree. This is the natural evolution of law in democracy, in reckonings with iniquities and discovery of liberties to uphold.

This is not to say that abortion is to be taken lightly or done casually... it does not trivialize the serious personal considerations, quell civic debate, or force breach of conscience on anyone. It simply affirms that the Government has no place in the private family, health, and spiritual concerns of early pregnancy.

It is Barrett's avowed intent to restore such censorial powers, clearly compelled by devout belief... this is legally unfounded, siezing and expanding public law to impose religious canon, and ethically unsound in any judge who swears an oath to the Constitution.

Moreover it is a harbinger of future repressions, contrived upon crusades for moral conformity to restrict rights of diversity & dissent, or deny necessary protections - or upon pretenses of divine authority to impugn and criminalize political opposition. Years ago we saw such motives in Cointelpro and the War on Drugs... they are now escalated in the callow sanctimonies of voter suppression, attacks on the press, redbaiting civic protest, provocateur tactics on peaceable assembly & mass arrests of free speech.

Conservative crony judges like Barrett seem to have no problem with that stuff, regardless of the founders' intent. For those scholars, the history of inquisitorial governments was all too recent to forget, the abuses too fresh to ignore - so the exclusion of religion from public law was the first priority of the First Amendment.

The Supreme Court is now hand-picked and poised to resurrect such antiquated powers antithetical to pluralist democracy, and the next generations of Americans face ongoing fights for their rights.

---

*scottie addison*  
*St. Louis, Missouri*

❑ **Prior essays on politicized time-warp law:::**

[Gonzales, Ex Post Facto ~](#)  
[The Rise of Partisan Law](#)

(Feb. 2005)

[OPPOSING ALITO – the illogic of the jurisprududes](#)

(Jan. 2006)

[Brat Kavanaugh's Pall on Yale](#)

*~ rueful reportage on spectacles in DC and values in New Haven ~*

(March 2019)

**NOTES**

---

1. Sen. Mitt Romney (R-Utah), media comment on 9/22/2020.
2. United States v Ballard , 322 U.S. 78 (1944); Wisconsin v. Yoder, 406 U.S. 205 (1972); Burwell v. Hobby Lobby Stores, Inc., 573 U. S. 682; etc.
3. Heidi Schlumpf, Executive Editor, National Catholic Reporter -- analysis & commentary on [Democracy Now, 9/23/20](#).
4. Observations of Sen. Diane Feinstein, questioning Barrett in the 2017 confirmation hearings.
5. Preamble to the U.S. Constitution.
6. James Madison's 9th Amendment logic is the nexus, bringing Rights (and Powers) not explicitly 'enumerated' within the Constitution's protective scope. Note also: the 1st Amendment right of Petition does not limit what "Grievances" may be presented to the government, or the means of "Redress" it may deploy.
7. AMENDMENT I: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
8. AMENDMENT IX: The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.