



Written by [Thomas Sowell](#) on July 1, 2015

Supreme Court Disasters

Many people are looking at the recent Supreme Court decisions about ObamaCare and same-sex marriage in terms of whether they think these are good or bad policies. That is certainly a legitimate concern, for both those who favor those policies and those who oppose them.

But there is a deeper and more long-lasting impact of these decisions that raise the question whether we are still living in America, where “we the people” are supposed to decide what kind of society we want, not have our betters impose their notions on us.



The Constitution of the United States says that the federal government has only those powers specifically granted to it by the Constitution — and that all other powers belong either to the states or to the people themselves.

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That is the foundation of our freedom, and that is what is being dismantled by both this year’s ObamaCare decision and last year’s ObamaCare decision, as well as by the Supreme Court’s decision imposing a redefinition of marriage.

Last year’s Supreme Court decision declaring ObamaCare constitutional says that the federal government can order individual citizens to buy the kind of insurance the government wants them to buy, regardless of what the citizens themselves prefer.

The Constitution gave the federal government no such power, but the Supreme Court did. It did so by citing the government’s power to tax, even though the ObamaCare law did not claim to be taxing.

This year’s ObamaCare decision likewise ignored the actual words of the law, and decided that the decisions of 34 states not to participate in ObamaCare Exchanges, even to get federal subsidies, would not prevent those federal subsidies to be paid anyway, to Exchanges set up by the federal government itself.

When any branch of government can exercise powers not authorized by either statutes or the Constitution, “we the people” are no longer free citizens but subjects, and our “public servants” are really our public masters. And America is no longer America. The freedom for which whole generations of Americans have fought and died is gradually but increasingly being taken away from us with smooth and slippery words.

This decision makes next year’s choice of the next President of the United States more crucial than ever, because with that office goes the power to nominate justices of the Supreme Court. Democrats have consistently nominated people who shared their social vision and imposed their policy preferences, too often in disregard of the Constitution.



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Republicans have complained about it but, when the power of judicial appointment was in the hands of Republican presidents, they have too often appointed justices who participated in the dismantling of the Constitution — and usually for the kinds of social policies preferred by Democrats.

Chief Justices appointed by Republican presidents have made landmark decisions for which there was neither Constitutional authority nor either evidence or logic. The first was Earl Warren.

When Chief Justice Warren said that “separate educational facilities are inherently unequal,” he was within walking distance of an all-black public high school that sent a higher percentage of its graduates on to college than any white public high school in Washington. As far back as 1899, that school’s students scored higher on tests than two of the city’s three white academic public high schools.

Nevertheless, Chief Justice Warren’s unsubstantiated assumption led to years of school busing across the country that was as racially divisive as it was educationally futile.

Chief Justice Warren Burger, also appointed by a Republican president, gave us the “disparate impact” notion that statistical disparities imply discrimination. That notion has created a whole statistical shakedown racket, practiced by government itself and by private race hustlers alike.

And now Chief Justice John Roberts, appointed by George W. Bush, gives the federal government the power to order us to buy whatever insurance they want us to buy. With that entering wedge, is there anything they cannot force us to do, regardless of the Constitution?

Can the Republicans — or the country — afford to put another mushy moderate in the White House, who can appoint more mushy moderates to the Supreme Court?

Thomas Sowell is a senior fellow at the Hoover Institution, Stanford University, Stanford, CA 94305. His website is www.tsowell.com. To find out more about Thomas Sowell and read features by other Creators Syndicate columnists and cartoonists, visit the Creators Syndicate Web page at www.creators.com.

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