

Overturing Roe v. Wade

by Bill Herbst

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Before posting my June 26th Commentary ("*Uranus Pluto: Still Potent*"), I thought I'd write the following week about the brouhaha concerning "civility" that arose following U.S. Representative Maxine Water's (Democrat-California) call at a rally on Saturday for citizens to confront Trump administration officials who are complicit in the separation of refugee children from their parents, as well as incidents at restaurants, one involving White House Press Secretary Sarah Sanders being asked to leave by the restaurant's owner, and the other the heckling by protestors aimed at Director of Homeland Security Kirsten Nielsen. Given the astonishing incivility of abusive rhetoric by the Cretin-in-Chief, who doesn't hesitate to engage in name-calling and threats toward anyone who opposes him and even exhorts his hard-core base to acts of violence, I figured that the topic would be a no-brainer for a Commentary.

My plans changed, however, after the announcement on Wednesday, June 27th, that 81-year-old Justice Anthony Kennedy will retire from the U.S. Supreme Court as of July 31st. On July 9th, Trump chose from a list of 25 "pre-vetted" judicial candidates provided by The Federalist Society, a conservative legal association, and nominated D.C. Circuit Court Judge Brett Kavanaugh to replace Kennedy as Associate Justice. The Democrats in Congress can huff and puff all they want, but their chances of stopping Kavanaugh's Senate confirmation are slim and none.

Kennedy was a conservative Justice who was called the "swing vote," since he *sometimes* sided with the liberal minority on the Court. I italicize *sometimes* because Kennedy cast the deciding pro-corporate vote in the *Citizens United v. Federal Election Commission* landmark case in 2010 that opened the floodgates to unimpeded Big Money influence in political campaigns and elections. In short, Kennedy was no hero of the working class...

The Supreme Court will soon be a right-wing rubber stamp, which is nothing new. The Court has a long history of stunningly reactionary decisions, just a few of which are:

- finding that African Americans, whether slaves or free men, could not be considered citizens
(Dred Scott v. Sanford, 1857)

- giving corporations the same rights as living persons
(*Santa Clara County v. Southern Pacific Railroad Company, 1886*)
- accepting “separate but equal” white-black segregation
(*Plessy v. Ferguson, 1896*)
- endorsing forced sterilization of the disabled
(*Buck v. Bell, 1927*)
- upholding the “internment” — actually, imprisonment — of Japanese-Americans in World War II
(*Korematsu v. U.S., 1944*)
- allowing genetically-modified organisms to be patented
(*Diamond v. Chakrabarty, 1980*)

More recently, the Court has shown its conservative colors plainly:

- when it voted along straight partisan lines to give George W. Bush the Presidency
(*Bush v. Gore, 2000*)
- when it said okee-dokee to dumping toxic waste in a fragile ecosystem
(*Coeur Alaska Inc. v. SE Alaska Conservation Council, 2002*)
- when it allowed wealthy individuals and corporations to “buy” elections
(*in the aforementioned case of Citizens United, 2010*)

Just this past month, the Supremes voted against public-sector unions, declined to rule on Republican gerrymandering in Maryland and Wisconsin, and upheld Trump’s travel ban against Muslims.

The real attention-grabber that erupted instantly following announcement of Justice Kennedy’s retirement, however, and the subject of this Commentary, is the likelihood that *Roe v. Wade* will be overturned. Although worries about the “new” Supreme Court include numerous substantive concerns — gay rights, voting rights, the endless pandering to wealth and power, and even the possibility of litigation concerning President Trump — the criminalizing of abortion is the Really Big Deal politically.

The 1973 landmark Supreme Court decision in the case *Roe v. Wade* made previability abortion legal in America. In a 7-2 vote, the Court ruled that abortion is and should be an individual matter, effectively affirming the separation of Church and State mandated by the Constitution. America is not a theocracy (not yet, anyway).

Within hours of the announcement that Kennedy will retire, tens of millions of women in this country, especially younger women, went bonkers (with good reason). Having grown up with relative certainty about reproductive choice, these women now face not just the possibility but the likelihood of losing that

control over their own bodies. Now that Brett Kavanaugh has been nominated, those women have good reason to be worried.

Like racism, abortion is an unresolved and ongoing war in America. The arguments for and against legalized abortion are at right angles, effectively in separate universes, and with little contact between the two sides, each of which feels righteous about its ethical and pragmatic positions. The question of whose health and well being to protect — women or the unborn — is profoundly difficult.

The problem is made all the more vexing by the fact that legal prohibitions will not end abortion. Throughout history, a certain percentage of pregnant women have sought and undergone abortions, whether legal or illegal. When abortion is illegal, however, women who choose to terminate pregnancies are much more at risk, not merely because they have to go outside the law, but because of the significantly increased possibilities for botched abortions and damaged health.

Abstinence is not a viable solution to end unwanted pregnancies. Humans are far too compulsive about sex for that to work. Studies have demonstrated that the most effective way to reduce the number of abortions is not by outlawing and criminalizing the procedure, but instead by active promotion of sex education and contraception. Many in the anti-abortion camp oppose these measures as well, based on religious or moral objections. As with so much of the abortion debate, we can't seem to agree on anything.

Few Americans could be called "pro-abortion," but a majority of people in the country believes in a woman's right to choose whether or not to carry a pregnancy to term. That's the central tenet of the Pro-Choice position. The Pro-Life faction, however, is passionate and uber-committed in its moral condemnation of abortion, believing it to be not merely a religious sin, but murder.

Whichever side "wins" — and each faction has at different times in American history — the issue remains unresolved and contentious. No solution is satisfactory to one side or the other, so all victories are temporary and vulnerable to reversal.

Since legalized abortion became the law of the land, the Pro-Life Movement hasn't been able to repeal *Roe v. Wade* in entirety, but it has waged an unrelenting campaign through state legislatures and lower court legal challenges, with considerable success, to erode access to abortion by making it more difficult for women to obtain the procedure. In many states, access to legal abortion has already been effectively restricted, reducing *Roe v. Wade* to a law in name only.

Justice Kennedy's retirement and Kavanaugh's almost certain confirmation by the Senate means that *Roe v. Wade* is now even more at risk. We can reasonably

assume that the 1973 ruling *will* be substantively neutralized (at the very least) or perhaps even overturned, and probably sooner than later.

Questions I ask myself on a regular basis include: *How bad will things have to get in America before the majority of the public becomes sufficiently alarmed to take action? And what could happen short of terrible catastrophes and mass suffering that might galvanize that political activism?*

My answer to the first question (*"How bad will things have to get...?"*) is bad. *Really* bad. We're long past the point of choosing to rise above our worst impulses simply because it's sensible, important, and correct to do so. At this point, and from here on out, dramatic shocks will be necessary.

As to the second question (*"Short of terrible catastrophes, what could happen that might galvanize majority activism?"*), I think that the overturning of *Roe v. Wade* might just be a good candidate.

If I'm even partially right about this, it's definitely in the "ill wind that blows no good" category. Nonetheless, that's a helluva lot better as a motivation to collective action than any of the possible doomsday shocks that we're facing, such as nuclear war or environmental catastrophe. As bad as the repeal of *Roe v. Wade* shapes up to be, it doesn't cause mass suffering or cripple civilization. What it does is force us to think about who we want to be as a people and provoke outrage about what America is becoming in ways that might get tens of millions of Americans off their asses and involved in civic activism.

While I'm still committed to the path of compassion by increasing the numbers of people we think of as Us and decreasing the numbers we consider Them, I also acknowledge that we are in a war. Over the past 40 years, Republicans and far-Right neoconservatives and paleoconservatives have made it crystal-clear that their vaunted principles (such as individual liberty and reducing the national debt) are disposable. What they care about is WINNING, and they're completely dedicated to that goal.

Over the same four decades, Democrats and the Left have completely dropped the ball. Once the party of working Americans, the Dems have become as craven as the Repugs in succumbing to the lure of Big Money and obeisance to corporate power. They have stumbled weakly to the right on the political spectrum, running away from one kind of socialism — that which benefits regular Americans — while embracing another kind — socialism through welfare for Big Business and the wealthy. Despite the terror among Americans that the word socialism inspires, that's what we have in fact: socialism for the rich. Those who have the most are rewarded with even more, while those who have less are offered little and end up paying for everything.

Without the majority insisting on the intervention of social redistribution through government, predatory capitalism will destroy us. Endless war, bloated military spending, the nonsense of an infinite-growth and resource-extractive economy, and ever-more-dramatic wealth inequality will end any hope for America and, by extension, for civilization itself. The massive expansion of national debt that accompanied passage of the Republicans' Tax Bill will be used next as justification for their continuing to dismantle the federal government and impose austerity measures on the population by cutting social programs and privatizing everything for profit. Think Medicare and Social Security are safe? Think again.

The Republicans have been brilliant in engineering a coup d'état that kidnapped America and resulted in their minority control of politics and government. We have to take back our politics and our government from them. That effort is a war that cannot be won by waiting for charismatic leaders, but only by the majority of Americans standing up and getting involved, from moderates in the center to those on the Left. The Right has lost its mind and must be stopped. The only way to stop them — the only way for America to win — is to mobilize from the ground up and fight like hell.

Of all the nasty crap that has come down the pike in the decade of the 2010s — from damned foolishness to outright horror — the likely overturning of *Roe v. Wade* is, in my opinion, just about the strongest motivator I've seen to give us a renewed chance at winning the war for America's soul and humanity's future.

I don't know if anything will be enough to prevent America and civilization from destroying ourselves. We're already far down the road toward collective insanity and seem to be in the grip of a suicidal death wish, but those of us who are not yet consumed by rage and madness can't just give up. We have to try to save ourselves from the worst qualities of human nature. If this means actively opposing some of our more disturbed brothers and sisters, then so be it.

I'm not asking us to lie, cheat, or give up our principles in this struggle. I'm not lobbying for heartlessness, hatred, or cruelty in fighting our battles. I am, however, saying that we must not give another inch without a fight.

First we have to win. After that we can deal with binding our wounds, forgiving each other, and then working toward creating the single inclusive family that humanity has never been but must become if our species is to continue living on this extraordinary garden planet.