Judicial Supremacy:
A Doctrine of, by, and for Tyrants

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A. OBEISANCE TO JUDGES IS NOT REQUIRED

We read in 1 Samuel 8 about the judges in that day. It is noted that "[i]n his old age Samuel appointed his sons as judges over Israel. But his sons did not follow his ways. Instead, they made money dishonestly, accepted bribes, and perverted justice." (New English Translation).

What does it mean to pervert justice? It means to pervert the law. The law is the foundation of Justice. Perverting the law means that the law is used lawlessly. A judge uses law lawlessly by rejecting the laws meaning, by replacing the law's meaning with a lawless meaning, and by deceiving the people about what he has done.

At some point, the lawlessness of judges becomes open and obvious. In Samuel's time the people finally realized that their judges were using the courts and law for their own corrupt purposes—bribes, dishonest gain, perverting justice. The judges weren't acting like judges at all. They converted the courts into a den of thieves. They looked like judges, but they acted like criminals. They stood in the place of judgment, but they did not judge according to the law. There came the day when the people resisted those corrupt judges.

The Supreme Court of the United States has nine Judges. We call them "Justices." Are they the embodiment of Justice, or the perversion of Justice? The Justices look like judges, but do they act like criminals? They sit in the place of judgment, but do they judge according to the law? They write opinions, but are they full of legal and constitutional deceit?

B. THE POWER TO REVIEW CASES IS NOT THE POWER TO ESTABLISH LAW

Perhaps the high watermark of the Supreme Court deceit came in *Cooper v. Aaron*, 358 U.S. 1 (1958). This was a famous desegregation case that dealt with a plan of gradual desegregation of the races in the public schools of Little Rock, Arkansas.

In its opinion, the court remarked that Article VI of the Constitution makes the Constitution the "supreme Law of the Land." So far, so good. In 1803, Chief Justice Marshall, speaking for a unanimous Court, referring to the Constitution as "the fundamental and paramount law of the nation," declared in the case of *Marbury v. Madison*, 1 Cranch 137 (1803) that "It is emphatically the province and duty of the judicial department to say what the law is." This is the legitimate power of judicial review which is found in Article III, Section 2.

From this legitimate recognition of the power of judicial review, the Cooper v. Aaron Court took a step further.

The Court first deceitfully expanded its own opinion in *Marbury* asserting that *Marbury* actually "declared the basic principle that the federal judiciary is *supreme* in the exposition of the law of the Constitution." 358 U.S. at 18 (emphasis added). Recall that Chief Justice Marshall said the judiciary has a duty to say what the law is. He said nothing, however, about the Court's opinions as *supreme*. *Cooper* added the "supreme" element.

The Constitution, however, grants no "supreme" expository power to the Court. Read Articles III and VI and you will not find it. What will be found in Article VI is the truth–that the Constitution, laws and treaties "shall be the supreme law of the land." Nothing is said about Supreme Court opinions being supreme law, let alone being law at all. Nothing–not one iota. The Constitution extends no power to the Court to claim that even its legitimate constitutionally based opinions, are the sole and exclusive meaning of the Constitution itself.

Moreover, the judicial power to review cases arising under the constitution, laws and treaties is clearly stated in Article III, section 2, but that power is not the power to rewrite the Constitution itself. It is not the power to authorize the court to sit as a perpetual constitutional convention. It is certainly not the power for the court to write into the Constitution whatever it wants, or the power to strike from the Constitution whatever it does not want. Constitutional insertions and deletions are a power retained by the People. If judges exercises such power, they do so by usurpation and not by law. If they attempt to enforce those usurpations, they are little more than tyrants.

C. THE POWER TO REVIEW AND DECIDE CASES IS NOT THE POWER TO BIND OTHER BRANCHES OF THE GOVERNMENT TO THE COURT'S ANNOUNCED MEANING OF THE CONSTITUTION

While Alexander Hamilton thought the judiciary the least dangerous branch, the judiciary has often exhibited a penchant to usurp.

1. Jefferson and the Limited Precedent of Supreme Court Opinions.

In September of 1804, Thomas Jefferson wrote a letter to Mrs. John Adams to express his objections to the Alien and Sedition Acts. These acts were actually four bills signed into law by President John Adams in 1798. One such act, the Alien Friends Act, allowed the President to imprison or deport aliens considered "dangerous to the peace and safety of the United States." The Alien Enemies Act authorized the President to imprison or deport any male citizen of a hostile nation during times of war. The Sedition Act restricted private and public speech which was critical of the federal government. Jefferson wrote:

> You seem to think it devolved on the judges to decide on the validity of the Sedition law.

> But nothing in the Constitution has given them a right to decide for the Executive, more than the Executive to decide for them. Both magistrates are equally independent in the sphere of action assigned to them. The judges, believing the law constitutional, had a right to pass a sentence of fine and imprisonment; because the power was placed in their hands by the Constitution. But the Executive, believing the law to be unconstitutional, were bound to remit the execution of it; because that power has been confided to them by the Constitution. That instrument meant that its coordinate branches should be checks on each other. But the opinion which gives to the judges the right to decide what laws are constitutional, and what not, not only for themselves in their own sphere of action, but for the Legislature and Executive also, in their spheres, would make the judiciary a despotic branch. [Letter XVIII.—To Mrs. Adams, September 11, 1804.

Jefferson believed that just because the Supreme Court declares a statute constitutional or unconstitutional, does not *ipso facto* bind either the executive branch or the legislative branch. Nor are such opinions binding as a matter of supreme constitutional law, upon the States or State officials. The Supreme Court can bind its own branch of government-the judicial branch-but it can do no more as a matter of constitutional principle.

2. Jackson and his Oath to Support the Constitution "as he understands it."

The Supreme Court once decided a national bank to be constitutional. See *McCulloch v. Maryland*, 17 U.S. 316 (1819). But President Andrew Jackson disregarded that decision and vetoed a bill for a re-charter of the bank partly because he believed it unconstitutional. His veto message stated:

> If the opinion of the Supreme Court covered the whole ground of this act, it ought not to control the co-ordinate authorities of this Government. The Congress, the executive and the court, must each for itself be guided by its own opinion of the Constitution. Each public officer, who takes an oath to support the Constitution, swears that he will support it as he understands it, and not as it is understood by others. [President Jackson's Veto Message Regarding the Bank of the United States; July 10, 1832.]

There was no uniform view of the constitutionality of a federally chartered bank, and the States were divided over the question. How much more so is there no uniform view regarding same-sex marriage? The States are divided over this issue. President Jackson provides additional wisdom for us and how to think about and respond to legitimately controverted constitutional questions. How many elected officials will be able to muster the personal moral courage to say as did Jackson: "To this conclusion I cannot assent."

3. Lincoln and Dred Scott as a Non-Precedential decision.

Regarding the Supreme Court's holding in *Dred Scott v. Sandford*, 60 US 393 (1857), in which the Court held that African Americans could not be citizens of the United States, Lincoln asserted that:

> If this important decision had been made by the unanimous concurrence of the judges, and without any apparent partisan bias, and in accordance with legal public expectation, and with the steady practice of the departments throughout our history, and had been in no part, based on assumed historical facts which are not really true; or, if wanting in some of these, it had been before the court more than once, and had there been affirmed and re-affirmed through a course of years, it then might be, perhaps would be, factious, nay, even revolutionary, to not acquiesce in it as a precedent.
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> But when, as it is true we find it wanting in all these claims to the public confidence, it is not resistance, it is not factious, it is not even disrespectful, to treat it as not having yet quite established a settled doctrine for the country. [Abraham Lincoln, Speech at Springfield, Illinois, June 26, 1857.]

D. THE POWER TO REVIEW CASES IS NOT THE POWER TO SUBJUGATE THE STATES

If state officials are not inclined to receive the wisdom of Jefferson, Jackson, and Lincoln, here is what type of treatment can you expect from the Supreme Court and from lower federal court district judges. We again return to the *Cooper v. Aaron* Court. That court took pains to lecture State officials that: "No State legislator or executive or judicial officer can war against the Constitution without violating his [oath] undertaking to support it." It is saying that if you don't go along with what we tell you in our opinions, that you are warring against the Constitution itself. The Court is saying: "You better be careful. Our opinions are not merely opinions, but they are the Constitution itself. We are the Supreme Law of the Land. A majority of five Justices are the living embodiment of the Constitution. Why? Because we said so. So don't you forget it."

The court will threaten. It will bully. Perhaps your State has an anti-bullying policy which is intended to teach little children not to bully other students at school? Well, you are about to be bullied. You better prepare.

E. WHAT CAN BE DONE AND BY WHOM?

What did the People do when faced with the lawless use of law and perversion of justice at the hands of corrupt judges who were Samuel's sons? Did they say: "Well I do not like it, but we must

obey?" Did they salute and proclaim: "Honor to those whom honor is due?" Did they prefigure Romans 13 and say: "We must obey Caesar?" When the Halls of Justice became a Temple of Perversion, did they people piously intone: "Let us pray for those in authority over us" while at the same time strictly adhering to all that the Temple of Perversion commanded them? No. The people did no such thing.

On June 26, 2015, the Supreme Court rendered its scalawag opinion in three case consolidated with *Obergefell v. Hodges*. Plaintiffs sued for recognition by four different States of their same-sex marriage. The Court agreed, recklessly hypothesizing that a State's refusal to recognize same-sex marriages from other jurisdictions or a State's refusal to license same-sex marriages, or both was "unconstitutional." Few are rationally persuaded on such specious grounds. If you are an official with the State governments of Ohio, Michigan, Kentucky or Tennessee, or, indeed, any other state, your day of reckoning has come. What you do after the decision will travel with you the rest of your days. Let us offer no public bromides that the "decision is now the law of the land," that "I must uphold my oath to support the Constitution *as the Court sees it*," or that "the cultural war is over." Your oath as an attorney, public official or judge requires you to uphold the Constitution as written, not the lawless meaning of the Constitution commanded by five Justices. Your oath is to the rule of law, not the rule of man. Building the Resistance offers specific help and direction.

Do not to let go of your duty. Do not pervert your oath. Do not let others dictate to you what it shall mean when it runs against what the Constitution actually says. Recognize that when it comes to same-sex marriage, the federal courts have no jurisdiction whatsoever. Recognize also that nothing in the Supremacy Clause or the Fourteenth Amendment conceivably mandates such a perverse Constitutional result. Stop pretending it does. God will give you the courage to defend your oath to the Constitution, but not against your will. God not will protect you from your commitment to the idolatry of judicial supremacy for the sake of your own political aspirations.

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