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The U.S. Supreme Court: Now a Roman Catholic Institution?

Conservative Supreme Court Justices are making unaccountable and undemocratic decisions, much like the Vatican Congregation of the Doctrine of the Faith.

By [Terri Langston](#), September 14, 2021



Takeaways

- The U.S. Supreme Court has allowed Texas to remove the constitutional rights of women in the state – without explanation, argument or accountability.
- The state that wants to enable its people to exercise the “freedom” to reject Covid vaccinations, also wants to deny women the freedom to make their personal choices.
- The U.S. Supreme Court now features a total of six Catholics on the bench, accounting for two-thirds of its total number of justices.
- It is no coincidence that a strong leaning toward originalism and textualism is espoused by the most conservative Catholic Supreme Court Justices.
- The contemporary Republican Party resembles the male-dominated and elite-driven structure of the Roman Catholic Church.
- The reason Republicans don't want to rely on justices of protestant faith lies in the structure of Protestantism. In contrast to Roman Catholicism, it has far more democratically governing bodies.
- The majority five in the recent Texas abortion law decision, in wielding their “shadow docket,” resemble the secretive Vatican Congregation of the Doctrine of the Faith.
- Secular legal thought, free of specific doctrines that divide a modern nation, is well-suited to unite a diverse nation, where individuals may freely choose their religion.
- Martin Luther King said, “Justice is love in calculation.” Thus viewed, justice is not based on Christian, Judaic, Islamic or Buddhist love – it is human love, “in calculation.”
- The rule of law – free from established religion -- should prevail in a nation whose government at every level should take responsibility for its actions. Silent assent is insidious – and cowardly. In civilized societies, the rule of law ensures that cogent rules, based in law, apply equally to every member of society.

The rule of law protects us from each other, too; that is, from the worst behaviors toward fellow human beings that humans can be given to.

As Aristotle wrote: “It is more proper that law should govern than any one of the citizens.”

The unprecedented structure of the new Texas law

A majority of the Supreme Court of the United States (SCOTUS) demonstrated “**in the dead of night**” on September 1, that it does not stand by that basic principle of the rule of law.

The prevailing political culture in Texas has not understood that principle for some time. Ironically, the state that wants to enable all of its people to exercise a weird sense of “freedom” in rejecting public health and refusing Covid vaccinations, also wants to deny women the freedom of their most personal choices.

Both Antonin Scalia and Donald Trump remain influential

Texas has managed to do so through a bill devised by a former law clerk of the late Justice Antonin Scalia of the United States Supreme Court. That is noteworthy.

The Texas law circumvents normal judicial review at the federal level by employing a strange twist. Its provisions would not be enforced by the state, but rather by individual citizens.

That encourages vigilantes, putting people of differing opinions at each other's throats. It thus stokes the fire of culture wars in the United States.

Taking responsibility for laws

Chief Justice John Roberts called the law “not only unusual, but unprecedented” and joined the Court’s three liberals in recommending that the law be stayed, until “the courts may consider whether a state can avoid responsibility for its laws in such a manner.”

Increasing use of SCOTUS’s “shadow docket”

The Texas case came through what SCOTUS watchers call its “shadow docket,” that is, the Court’s practice of ruling on issues without full briefings, legal analyses or oral arguments.

SCOTUS has allowed Texas to remove the constitutional rights of women in the state – without explanation, argument or accountability.

What can be the reason for five justices blindly stoking the already flammable culture wars? What can possibly be the reason for defying the established system of judicial review?

One reason stands out: The five are conservative Roman Catholics. The most recently appointed one, Amy Coney Barrett, was, like the author of the Texas law, **Jonathan Franklin Mitchell**, a clerk for and remains a great admirer of Justice Antonin Scalia, also a Roman Catholic.

I emphasize conservative Roman Catholic, for two of the dissenters are Roman Catholics (Sonia Sotomayor and John Roberts).

WASPs no more

The earlier times when Americans were gravely worried about falling under the spell of Roman Catholic rule through the Vatican have been long gone.

The fear at that time was at least somewhat surprising in a country which, by tradition and especially as expressed in its economic and political power structure, has always been predominantly Protestant.

Viewed in that light, it is all the more surprising that the U.S. Supreme Court now features a total of six Catholics on the bench, accounting for two-thirds of its total number of justices.

There are seven with Neil Gorsuch, whose affiliation is listed as Anglican/Catholic.

Meanwhile, even after decades of strong inward migration from largely Catholic Latin America, Catholics only account for 20% of the total U.S. population.

That is less than the number of those who declare themselves “unaffiliated” (26%). Meanwhile, 43% are Protestant and 2% Jewish.

Goodbye to proportionality

The new imbalance favoring Catholics serving on the Supreme Court is more surprising, as it has been a feature of U.S. society to see that ethnic and religious proportions are observed when making appointments to representative bodies.

And if there were an imbalance, then the presumption has been that the tilt would be in favor of the dominant culture, not toward a minor one.

The religious composition of the court

This is evident in the fact that, after its inception in 1789, justices on the court were almost uniformly Protestant.

And of the 114 justices who have been appointed to the court, 91 have been from various Protestant denominations, 13 have been Catholics and eight have been Jewish.

In view of the new personnel structure of the U.S. Supreme Court, it is important to note that, until the beginning of the 20th century, only three Catholics had been appointed to serve on the court.

The first very prominent – and proudly – Catholic Justice was Antonin Scalia, appointed in 1986.

Following the death of Justice Ruth Bader Ginsburg, there are now two Jewish Justices serving on the court, Stephen Breyer and Elena Kagan, both appointed by Democratic Presidents.

But far more shocking against the backdrop of the strongly Protestant traditions of the court, not a single Protestant is now serving on the Supreme Court (although one, Neil Gorsuch, raised as a Catholic, now attends Episcopalian church services).

Progress from the Kennedy times?

On the surface, one could be tempted to argue that all of this represents major progress in the evolution of American society. After all, why should religious affiliation matter at all?

That, notably, was very much a core issue in the 1960 U.S. presidential election when John F. Kennedy, an Irish Catholic from Boston, ran against Richard Nixon, the Republican and until then Vice President of the United States (under Eisenhower).

A U.S. governed from the Vatican?

As very seriously argued at the time, if Kennedy were to be elected, that would be akin to the United States being governed from the Vatican (Those opposing Kennedy on religious grounds asserted that “In the Pope, We Hope” would replace “In God We Trust.”). Such was the degree of religion-fused dismay about the rise of the Irish Catholics.

John F. Kennedy himself offered assurances that, as President, his views and actions would not be governed by the Vatican.

Whatever the concerns about Coney Barrett or others on the court, nobody is seriously arguing that they are steered directly by the Vatican in Rome.

The two chief problems with the majority of conservative Catholics on the Court are, however, the influence of conservative Catholic ideology and their proximity to the arch-conservative Republican party.

Why Republicans choose conservative Catholics

Except for Justice Sotomayor, who was a strong dissenter in the Texas decision, all six Catholic Justices were nominated by Republican Presidents.

Which gives rise to the question: What are the characteristics that Catholic Justices provide which makes them so appealing to Republicans – and to the de facto Republican Party organizations, such as the Federalist Society, which groom and pre-select judicial nominees?

Doctrinaire thinkers

Any person's personal faith is ideally unassailable, and in and of itself should not be a factor in their being chosen or not chosen for public service.

However, the structures of religious bodies can, indeed, have an effect on a believer's way of regarding governance in their country and, in the case of judges and justices, on their judicial – and political – reasoning.

To begin with, the structure of Roman Catholicism is widely known to be hierarchal as well as patriarchal.

While the general teachings of the Church often are admirably Christian in essence, the Catholic Church certainly does not shy away from offering firm positions on temporal, earthly matters of governance and behavior as well.

To an astonishing degree, considering that this is the 21st century and that the Reformation happened over 500 years ago, the structure still prevailing inside the Church teaches Catholics to be obedient to a hierarchy of men.

These, often elderly, men, from the local priest to the Pope, have major influence on people's lives and life choices.

Doctrinal statements on many subjects are issued, in a top-down fashion, by the Vatican. There, it is largely formulated by the Congregation of the Doctrine of the Faith, one of the most important – and conservative – parts of the Roman Curia.

Despite ever stronger murmurs at the grass roots, there is no effective form of democratic input, nor is there a real opportunity for appeal of its decisions.

Why Catholic Supreme Court Justices are so comfortable with constitutional originalism

It is no coincidence that a **strong leaning toward originalism** and textualism is espoused by the most conservative Catholic Supreme Court Justices. To date, this applies especially to Clarence Thomas and Samuel Alito, following in the footsteps of Judge Barrett's "mentor," Anthony Scalia.

In this way, they achieve a curious result: Catholic Supreme Court justices treat the U.S. Constitution – a temporal document composed by human beings in all their wisdom as well as in all their human faults – as if it were some mystical holy scripture, divinely inspired.

If nothing else, going the next step and vesting the "correct" reading of the U.S. Constitution in a strict originalist frame, at best betrays an overwrought adherence to authority.

As with all religions, Roman Catholicism's ecumenical and fundamentalist branches intensify belief in the Church's current structures.

The apparently fervent participation of Judge Barrett in such a group as "People of Praise" is indeed relevant to her service as a justice.

In addition, recent scandals associated with that group's schools, on which Justice Barrett served as a board member after the abuse was well documented, show how ideology can overshadow reason.

U.S. Republicans' and Catholics' very similar structures

The contemporary Republican Party resembles the male-dominated and elite-driven structure of the Roman Catholic Church.

The party eschews participatory democracy and does not trust participation by common people in any significant manner.

It excels in luring them with mellifluous promises as well as ideologies of security (particularly against change), but it does not encourage their independent thought.

Unsurprisingly then, what the Republican Party expects from their nominees to the U.S. Supreme Court is basically to follow authority and party dictates.

Just follow the party dictates

More directly put, this translates into voting for the outcomes the Republicans need politically from their nominees to the court.

For instance, in recent months, SCOTUS has used the shadow docket on cases about Covid restrictions on religious groups, the Trump Administration's "remain in Mexico" policy and the emergency ban on evictions.

Other more mainstream issues are indeed litmus tests for Republican appointed justices, including campaign finance, the Second Amendment and the right to bear arms, and – quite salient these days – voting rights.

The practices of Protestantism

The basic reason why Republicans evidently don't want to rely any longer on justices of protestant faith lies in the structure of Protestantism.

In contrast to Roman Catholicism, it has far more democratically governing bodies. From the earliest days of the Reformation onward, they are at least conceptually based on a bottom-up approach.

Indeed, the Protestant denominational structures had at least an indirect influence on the structure of the U.S.'s political governing bodies themselves.

Though Protestant denominations were for centuries also male-dominated, they admitted women both to the clergy and to governing bodies many decades ago.

Further, Protestant religious practice rests on the idea of the "priesthood of all believers," that is, each person must exercise their independent conscience and make their own decisions.

This is, in many ways, a heavier burden than having one's opinions and decisions handed down from above. In the context of the U.S. Supreme Court, that burden is more likely to guarantee a more independent judicial thought process.

Why one's personal religion and service as a justice are deeply intertwined

For all these reasons, questions about how a nominee thinks judicially do indeed relate to their religious preferences and practices.

For that same reason, their past decisions at lower courts should be read for evidence of religious thinking and what they might mean to a democratic society.

Effectively undercutting the separation of church and state

The separation of church and state has been a governing concept in the United States since its founding. **The Establishment Clause** is the first provision in the Bill of Rights, assuring that Congress "shall make no law respecting an establishment of religion." Even having a two-thirds Catholic majority on the U.S. Supreme Court does not by itself constitute Congress establishing a religion.

However, the influence that such a majority can attain serving on the Supreme Court – an overly powerful body in the U.S. system of governance – can be exercised in a subtle, at least somewhat veiled but nevertheless very effective manner.

Railing against judicial "activism": A code word

That is precisely what we are seeing now with the Court's majority supporting a trick state law instead of the constitutional rule of law.

The Republicans have railed against “activist” judges, meaning those appointed by Democrats, whereas the Republican appointed justices are demonstrating activism pure and simple.

The “shadow five” in the recent Texas abortion law decision have acted against all Enlightenment principles of the rule of law.

Wielding their “shadow docket,” they bear a striking resemblance to the secretive Vatican Congregation of the Doctrine of the Faith. The people of the United States, whose self-rule is seriously jeopardized, are the potential losers.

U.S.: An increasingly secular society

Finally, U.S. society is increasingly a secular society. That should extend to the rule of law. A secular society based on laws will protect all religions better than one based on any one set of doctrines.

Secular thought, too, is free of the constraints of specific doctrines that divide a modern nation.

It is thus well-suited to unite a diverse nation, in which individuals may choose whatever religion they wish to practice, but they may not impose any element of that religion on others.

Conclusion

Rendering justice ultimately calls for a secular view of the judicial branch in modern democracies.

On September 7, the Supreme Court of Mexico, a largely Catholic country, ruled that criminalizing abortion is unconstitutional.

As Ana Margarita Rios Farjat, one of three female justices on the court, wrote, “I’m against stigmatizing those who make this decision, which I believe is difficult to begin with, due to moral and social burdens. It shouldn’t be burdened as well by the law.”

Martin Luther King said, “Justice is love in calculation.” Viewed in that frame, justice is not based on Christian, Judaic, Islamic or Buddhist love – it is human love, “in calculation”.

And that calculation is the process of judicial thinking that must, as the U.S. founders intended, remain free of any “established religion.”

Within that freedom, the rule of law should prevail in a secular society whose government at every level, unlike that of Texas, takes responsibility for its actions.