

# A Marxist view of the U.S. Supreme Court

written by Sam Marcy

July 14, 2019



Reproductive rights protest outside the U.S. Supreme Court.

*In late June, the U.S. Supreme Court released a wave of decisions, as it does every year at the end of its session. Among them was a ruling giving the responsibility for decisions on partisan gerrymandering to state governments — a big attack on voting rights for Black and other oppressed peoples and all workers.*

*With the court now having a far-right majority that includes Trump-appointed anti-woman bigot and serial abuser Brett Kavanaugh, many workers fear what future Supreme Court sessions may bring on reproductive rights, LGBTQ2S equality, police abuse and a host of other issues.*

*Following are excerpts from a talk given in July 1989 by Sam Marcy, a leading Marxist thinker and fighter, on the history of the Supreme Court and its role in the U.S. capitalist system.*

### **By Sam Marcy**

Comrades and friends, we all know that the U.S. Supreme Court last Monday dealt a very heavy blow to the women's movement in the United States, and by implication, to all of the oppressed and the working class. [The court's decision in the 1989 case [Webster v. Reproductive Health Services](#) upheld a Missouri law prohibiting the use of public facilities, employees or funds to provide abortion counseling or services. The law also placed restrictions on physicians who provided abortions.] Its aim was to set back the women's movement, the civil rights movement and the liberation struggle everywhere.

I believe my task in connection with this vicious Supreme Court decision is to put it in the historical and political context, show its connection with the previous historical movement of the workers and oppressed in this country, and how it came to be that a group of appointed, not elected, people, can invalidate the rights of the

overwhelming majority of the people in this country.

It is very important for us to know the processes by which this happens so that we are not misled to believe that it is just the Reagan appointees, just Bush, just the negligence of Congress.

For weeks and months the capitalist press played up how the Constitution, adopted 200 years ago in 1789, was one of the most revolutionary documents, that it affirmed a form of government never seen before in the history of humanity, that it was the very paragon of democracy and accorded equal rights to all.

But it is this Constitution, this structure of government and of the state, that explains how these and other decisions have been made and carried out that are so contrary to the opinion of the majority of the people.

Our job is not only to condemn the Supreme Court's decision but to know why and how this came about and how this decision of the judicial branch of the government relates to the Congress and to the presidency. We must see it in relation to the three branches of the capitalist government and know to what extent the masses of the people, the workers, all of the oppressed, can express themselves within the framework of that government.

When they sat down to frame the Constitution in 1789, they discussed what the powers of Congress, the presidency and the Supreme Court should be. We've been told again and again that the purpose of having the government divided into three branches is to see that one doesn't carry out aggression against the other, that they complement and balance each other so that equal rights are afforded to the majority.

Now mind you, they did not mean the Native people. Nor were the slaves considered. We all know that.

In framing the Constitution they argued for weeks on how to divide the power and what the president should have, because they were not sure whether they wanted a monarchy or a republic. At that time they were not afraid of the Supreme Court. The issue was whether Congress or the president was to have the ultimate authority.

### **Long history of anti-people decisions**

But in 1803 an important decision came up in what seemed a minor dispute. The issue was, did the Supreme Court have the right to nullify a law of Congress? And this decision affirmed that the last word was not with the Congress, not with the elected branch of the government. The last word was with an appointed group of people.

So how did that happen? Was it just a mistake that could be corrected by the next president and Congress? But there came new Congresses, new presidents, new secretaries of state and new judges. That decision was never revoked and hasn't been to this day.

The abortion decision confirms that whenever the bourgeoisie is in a crisis, they will let nine people, unelected, appointed for life, decide the most critical issues concerning life in the United States.

With something that happened in 1803, so long ago, you could say it was an isolated decision. But in 1853, 50 years later, the court affirmed slavery with the Dred Scott decision. If there was any doubt as to where the real power was, it was right there in affirming the rights of the slave owners as against a majority of the people opposed to slavery.

I want to give you one more example. During the Depression the Roosevelt administration was forced to institute the National Recovery Act in order to save capitalism. It granted the workers the right to organize and established some forms

of social insurance, all under the pressure of the working class.

As soon as it became clear that the capitalist recession was slowly ending, in one day the Supreme Court nullified this whole mass of legislation in the infamous Schechter case and began to roll back the progressive legislation. And to this day the Supreme Court has upheld the anti-labor strike-breaking policies of the National Association of Manufacturers, of the multinational corporations and of the banks. The plight of labor today, at least from the point of view of legality, can be shown to come from this — that in the last resort the ruling class resorts to an instrumentality that is as undemocratic as it is reactionary.

Every day we see new and more glittering inventions that hold so much optimism for the future; they disclose what is happening in outer space, under water. The processes of the physical universe are being disclosed every day. But what about the social processes, the relations between people, between the classes, between the workers and the bosses, the oppressed and the oppressors? At a time when technology uncovers the variety and multiplicity of processes in the physical universe, the real relations in human society are covered up.

It is a contradiction that we as a revolutionary Marxist party must continually unravel. You see, from the time of the Constitutional Convention of 1787 to the present day there has been a gradual democratization of the political process. The franchise used to be denied to the Native people, to Black people, to women, to the youth. But over years of struggle the franchise has been won.

However, alongside this bourgeois democratization of the political process, there has been a simultaneous social and economic process which is superior in strength. That is the process of the concentration of power in undemocratic bodies. It comes from the concentration of the means of production in the hands of a ruling class which holds the power and distributes it in areas most conducive to them. So it's not an accident that power should ultimately be exercised by the Supreme Court. That's

most reliable to them, most conservative, responsive only to those who have appointed them.

### **Concentration of wealth and power**

So much talk goes on about democracy, about the rights of the people to vote and to elect, but when it gets down to the really critical issues, political power is concentrated in undemocratic bodies that are removed from the control of the masses.

The Congress has power to declare war or to stop war, but it hasn't done that in a long time. Not in the Vietnam war, the war in Lebanon, the merciless war carried on by the Israeli stooges of U.S. imperialism, or in South Africa, or elsewhere. The Congress does not exercise the power.

We ourselves are in the forefront of fighting to retain, widen and make more effective democratic political rights, not giving up any of them. But we must recognize that alongside this political process of democratizing the organs of the capitalist state, there is the process of concentration of wealth which leads to the concentration of power in the most undemocratic and reactionary elements of the capitalist government.

If we need an example of how the capitalist government deals with democracy, just the other day the Congress unanimously passed an anti-China sanctions bill. First, the capitalist media carried out a monstrous media blitz and cowered all the congress people, and in a couple of hours they passed this law, some of them not even reading it.

While they were doing all this, the Boeing Corporation was meeting with the White House and telling them: You're forgetting Boeing has a big contract with China for jetliners worth some \$400 million. So you'd better not cut that off. So the

congressmen got up the next morning and saw that it got stricken from the bill.

And who do you think objected? The competitors of Boeing. Not anybody else. It shows the farcical character of the democratic process.

We don't wish to convey the impression that we're against participation in the congressional campaigns, or in any way want to undermine the enthusiasm or militancy of workers, and particularly the oppressed, to try in every way to utilize the capitalist electoral process for progressive purposes. But it's very necessary to know what we are doing. It's necessary to know that the politicians do not control the vast machinery of the capitalist state but are controlled by it, and that the state machinery is controlled by the industrialists and above all by the biggest banks.

