

Shapiro: The Worst Ruling Since Dred Scott

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Ben Shapiro

Last week Chief Justice John Roberts blatantly ignored the Constitution and the law and purposefully rewrote Obamacare in order to rule it legal. He called Obamacare a "tax" instead of an individual mandate; he then proceeded to blithely expand the government's power to tax to encompass a tax on breathing, which is what Obamacare is.

Now I had warned conservatives years ago that Roberts was a rotten pick for the Supreme Court. "Roberts is not an originalist," I wrote in 2005. "There is nothing in his very short jurisprudential record to indicate that his judicial philosophy involves strict fidelity to the original meaning of the Constitution."

Nonetheless, Roberts' decision was stunning.

It was stunning because the Obamacare decision represented the greatest single judicial limitation on American liberty since *Dred Scott v. Sandford* (1857), in which the Supreme Court ruled that under the Constitution, blacks were not human beings. *Dred Scott* is the judicial benchmark for evil decisions, and far surpasses the Obamacare decision in its legal flaws and moral emptiness. And there are many other evil and disgusting Supreme Court decisions that threatened American liberty: *Plessy v. Ferguson* (1896), allowing states to segregate by race; *Buck v. Bell* (1927), allowing states to forcibly sterilize the mentally retarded; *Korematsu v. United States* (1944), allowing the federal government to order Japanese Americans into internment camps based on the need to prevent espionage.

All of these decisions were wrong, both legally and morally. But Obamacare surpasses all but *Dred Scott* in its violation of profound foundational American principles.

Essentially, the Obamacare decision said that the federal government can force you to do anything. They don't have to tax behavior. They can tax nonbehavior. They can tell you to do virtually anything they want; they can tax you unless you buy the right foods, listen to the right music and/or engage in the right type of work. If you refuse to pay the tax, they can jail you. The Obamacare decision destroys the basic concept of American liberty: freedom to live as you choose without interference by the federal government, so long as you don't affect the lives of others. Now the government can penalize you in the privacy of your own home for failing to do as they say.

Like other nasty Supreme Court decisions of the past, this one was made based not on the Constitution, but on the political predilections of the judges. Most obviously, in Dred Scott, Chief Justice Roger Taney thought that by ruling that slavery could not be prohibited in federal territories, he would be preventing Civil War; instead, he precipitated it.

Taney's machinations -- his political considerations in his decision making -- were clearly above and beyond the duties of the court. But he undertook them anyway. The result was the greatest moral blot on the history of the Supreme Court.

There is no doubt that the same sort of logic went into Chief Justice Roberts' thinking. He apparently switched his vote on Obamacare after feeling pressure from the Obama administration and the media; he decided that he'd simply toss the issue to voters rather than doing his constitutional job. His goal was the preservation of the Supreme Court's "legitimacy" -- a goal undermined by his own illegitimate decision making. Politics mattered more to Roberts than duty.

And so, Americans pay with their rights.

In the end, all of the mistakes of the Supreme Court were overturned -- after far too long -- by the will of the American people. Dred Scott was overturned by the Civil War; Plessy was overturned not truly by Brown v. Board, but by the Civil Rights Act of 1964. The people themselves will overturn Obamacare. But the damage done to the Supreme Court cannot be undone.

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