http://www.counterpunch.org/2013/07/16/the-supreme-court-zimmerman-and-american-apartheid/

The Supreme Court, Zimmerman and American Apartheid

The Pathetic Court and the Fate of the Voting Rights Acts

By TERRENCE E. PAUPP

July 16, 2013

The pedigree of Supreme Court decisions is often more complicated than is commuonly supposed. A large part of the reason is that while the language of the Constitution may not change, politics of the nation and the court do change. History and politics has a way of changing the law. This includes the nation's constitutional landscape. The Kennedy-Johnson years allowed for the appointment of more liberal justices to the court. In this critical respect, it is unlikely that a liberal constitutionalism would have emerged without the presidential and congressional impetus of the democrats of the 1960s to create a reliable majority on the Supreme Court. That is why for a generation afterward the liberal legacy persisted until Nixon began to shift the ideological balance of the Supreme Court in a rightward direction with the appointment of William Rehnquist as Chief Justice. The trend has largely continued in a unbroken fashion from Nixon to Reagan, from Bush (I) to Bush (II). The Supreme Court was reconstituted with the appointments of ideologically pure conservatives such as Antonin Scalia, Clarence Thomas, Chief Justice John Roberts, and Samuel Alito.

By the close of February 2013, the conservative assault on the 1965 Voting Rights Act was reengaged. Scalia led the charge when he suggested that the continuation of Section 5 of the

Voting Rights Act represented the "perpetuation of racial entitlement." He further alleged that lawmakers in Congress had only voted to renew the act in 2006 because there wasn't anything to be gained politically by voting against it. After condemning liberal "judicial activism" in the past, Scalia now has no difficulty in declaring the Court can take on the legislative function of the Congress in dismantling those parts of the civil rights legislative history and protections with which he has an ideological disagreement. Hence, Scalia concluded, it was now up to the Supreme Court to save the nation from a greater inclusion of all citizens in the voting process. This is because he views the protections afforded by Sections 4 and 5 of the Voting Rights Act as no longer required to protect the rights of minorities in the old Confederate states. Despite the fact that voter suppression laws have been on the rise in the last four presidential elections, despite the history of racism which has plagued America since its founding, and despite the continuing challenges to civil rights by social forces seeking to undo the mandates of the 14th Amendment's equal protection clause, Scalia and his conservative allies now seek to torpedo the civil rights of millions of Americans still excluded from the halls of power and decision-making that affect their very lives, as well as those of their children and fellow citizens.

The irony, as well as the hypocrisy, of Scalia's commentary is compounded by the Citizens United decision. In Citizens United, the Scalia wing of the Court had no problem in declaring corporations were persons. As persons, these wealthy corporations and private donors to political campaigns, it was argued, should be entitled to a host of rights in contributing to their favorite candidate, regardless of the negative effects of great sums of money spent by the super-wealthy to direct elections in their favor—as well as legislative favors to expand their pocketbooks. Democracy was not seen at risk in that situation. In fact, the court declared that "money is speech." Therefore, the reasoning presented was that the Court should not even dare tamper with protecting the principle of one-person/one-vote when such monied interests demanded a greater say in the electoral process, Yet, without adequate rationale or a principled explanation, Scalia and his conservative allies have sought to deny the citizenship rights and the equal protection of the laws that have been historically afforded previously disenfranchised and excluded persons and classes.

Further, this denial is predicated upon the basis of an old 1860s Civil War argument about "racial entitlement," just as segregation, nullification, and a host of Jim Crow laws which continued the practice of slavery—but by another name. This attempt to somehow bifurcate concerns with racial disparities from the democratic rights of citizenship is more than troubling—for it represents an attack on the foundations of democratic citizenship itself.

Now, fast-forward to June 2013. The US Supreme Court struck down the constitutionally-based and historically evolved protections under Sections 4 and 5 of the Voting Rights Act in the old confederate states. What history and social practice had demonstrated before, during and after Sections 4 and 5 of the Voting Rights Act was discarded in 2013, is that racism is persistent and it takes many different forms. Therefore, I would argue that the protections and rights to be afforded to the victims of racism must take many different forms as well. Yet, a small right-wing majority of the court has succeeded in erasing constitutional protections for the victims of slavery and racism. In their fidelity to the new right-wing's efforts to steal the ballot box and equal protection rights on behalf of an ideological cause, the triumph of "state's rights" and the so-called "War of Northern aggression" against the confederate states, the current court has

turned back the clock on human and civil rights in the United States. In June 2013, by striking down Sections 4 and 5 of the Voting Rights Act, we find that the old ghost of Jim Crow was revived from its vampire-like state—after having had the stake removed by this supremely pathetic court. The removal and death of Sections 4 and 5 of the Voting Rights Act has renewed the life of a legal regime that derives its very life from the heart of social injustice and anti-democratic terrorism. Instead of the white robes worn by the KKK, we see the black-robes of a majority of justices endorse the quiet racism of today's unreformed agents of hate, exclusion, and privilege. The unreformed, unmitigated and unapologetic reason stated by the court was that American society had somehow evolved beyond the needs for such protections.

Fast forward again—just one more month. On July 13th, a Sanford, Florida jury found George Zimmerman—a neighborhood watch captain who killed an unarmed black teenager—not guilty of murder. The long 16-months leading up to the trial of Trayvon Martin's killer was dominated by an on-going debate about Florida's "stand-your-ground" law. It has been and remains a debate about the limits and scope of gun violence, largely dominated by the NRA and Second-Amendment zealots who continue to equate the right to bear arms with the right to purchase an AK-47. The "stand your ground" law was, after all, promulgated in the name of self-defense. Yet, what defense do the victims of gun violence have when the last word is issued from the barrel of a gun?

Again, just as with the Supreme Court's decision with respect to Sections 4 and 5 of the Voting Rights Act, we now see, witness and discover—in a Sanford, Florida courtroom—the resurrection of state's rights thinking and language in an updated guise. It is a form of artificial legality that has now so seriously corrupted people's understanding and vision of the purpose and evolution of American law that courts—from the highest to the lowest—have now become a rubber-stamp for making the ideology of white supremacy the law of the land.

There has never been an articulation of the moral mandate of apology for slavery in America. Calls for reparations for slavery have been ignored for African-Americans, but easily offered for Japanese, Jews, and other groups. Instead, we find in 2013 that segregation continues in the way in which decisions are made to close down predominantly black schools in the city of Chicago. The job market remains segregated in many states that display their "right to work" work ideology as a banner of fairness—even as they attack unions and people of color in the name of economic necessity, budget deficits, and the new anthem of "austerity." Now, with legacy of Robert Kennedy and Martin Luther King assassinated again, we find that what this supremely pathetic legal system cares more about is the color of one's skin—much more than the content of one's character.

After the verdict in the Zimmerman-case, everyone from President Obama to news commentators parroted the line about respecting the law, respecting the legal process, and respecting the decision of the jury. Yet, where is the respect for our legal history that has slowly advanced human and civil rights? Where is the respect for the worth of a human's life—regardless of skin color? What can we say about a legal system that has created a "prison-industrial complex" that puts more African-American Americans behind bars than any other group? Where is the respect for the principle of equal protection when Jim Crow laws are now a

part of the criminal justice system under the guise of three-strikes laws and mandatory minimums in sentencing?

Before we remove both our individual and collective critical thinking skills with the invocation of such slogans and statements, it would serve us well to be reminded that the same mantra was used for decades in South Africa when it was an apartheid state. South Africa's apartheid state did not pretend that it stood for the principle of "liberty and justice for all." Rather, South Africa's apartheid state arrogantly took pride in the practice of denying equal rights to its black citizens and blindly accepting the murders and disenfranchisement of thousands of people within its borders for the simple reason that they had been born black. Welcome to the newest version of American-Apartheid. In the aftermath of 2013, unless there is a social movement for change which refocuses our collective vision on human rights and social justice, there will never be "liberty and justice for all."