Twitter Thread by J.B. White



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Today I will not be sharing what are primarily my thoughts on the United States Supreme Court's dereliction of duty to the American people.

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Instead, I'll be sharing the words of Myron Magnet.

In a June 19, 2019 essay published in City Journal and linked in my next tweet, he did a magnificent job of walking the reader through an incredible years-long effort underway by Justice Thomas.

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Tomorrow I will show how all of this imperial judiciary nonsense fits into the Section 230 fiasco that has allowed wrongdoers to brazenly impair out constitutional rights.

For now, here is the link to Myron Magnet's brilliant article:

https://t.co/BKwIZ0pOb0

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But what was, what is, that years-long effort by Justice Thomas?

Anyone who has been following the trajectory of Justice Thomas surely knows already: to return the foundational focus of our Supreme Court to the Constitution . . . as written.

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Let me now begin my series of quotes and paraphrases mixed in with my minimal comments. Magnet's article was written in the wake of Gamble v. United States, a case that involved the question of double jeopardy.

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Justice Thomas wrote a 17-page concurring opinion in which he emphasized that in the United States of America here is the real deal, period:

The “Constitution, federal statutes, and treaties *are* the law.”

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Magnet: “One of the most striking aspects of Monday’s Supreme Court decision in Gamble v. United States was Clarence Thomas’s eloquent summary of the core precept of his judicial philosophy:”

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“that stare decisis—the venerable doctrine that courts should respect precedent—deserves but a minor place in Supreme Court jurisprudence.”

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That’s why justices and other governmental officers take an oath to “preserve, protect, and defend the Constitution of the United States”—not to safeguard judicial precedents.

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“That the Constitution outranks other sources of law is inherent in its nature,” [Thomas] writes. The job of a Supreme Court justice, therefore, “is modest: We interpret and apply written law to the facts of particular cases.”

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Hmmmmmmm . . . let me repeat that.

That the Constitution outranks other sources of law is inherent in its nature. The job of a Supreme Court justice, therefore, “is modest: We interpret and apply written law to the facts of particular cases.”

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What the law schools teach as “constitutional law” is merely a collection of opinions valid only insofar as they correctly construe the written texts of the Constitution and statutes.

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Even English common law judges, who saw their job as identifying & applying objective principles of law—discerned from natural reason, custom & other external sources—to particular cases,” recognized the possibility of error & were free to correct wrong decisions.

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In support of this, Thomas quotes James Kent as approving the ability to "'examin[e] without fear, and revis[e] without reluctance,' any 'hasty and crude decisions,' rather than leaving 'the character and harmony of the system destroyed by the perpetuity of error.'"

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English jurist William Blackstone had put it even more strongly in his standard Founding-era law text.

"When a 'former decision is manifestly absurd or unjust' or fails to conform to reason," Blackstone pronounced, "it is not simply 'bad law,' but 'not law' at all."

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So, this poses quite a dilemma for the judges in this country who have fallen prey to the imperial authoritarian impulse cloaked by utilization of precedent and a range of other discretionary tools.

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[I]f even English judges, working in a precedent-based common-law system, see themselves as duty-bound to overturn earlier decisions that they consider erroneous, why . . .

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. . . why would American Supreme Court justices, for whom precedent is only a guide, not a command, be any less ready to do the same?

(I love his point here -- only a damn guide!)

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So, in other words, Justices:

Breyer
Roberts
Sotomayor
Kagan
Gorsuch
Kavanaugh
Barrett

How about y'all shut up with the embarrassingly disrespectful yang about cognizable this, that or the other?

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After all, Magnet wrote, “they don’t hesitate, when they deem unconstitutional a law passed by the people’s elected representatives and signed by the president, to overturn it.”

You’re 100% correct, Myron.

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Thomas: “[I]f the Court encounters a decision that is demonstrably erroneous—i.e., one that is not a permissible interpretation of the text—the Court should correct the error. . . .”

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Thomas: “When faced with a demonstrably erroneous precedent, my rule is simple: We should not follow it.”

This, ladies and gentlemen, is why America loves Justice Thomas.

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Magnet: Current Court doctrine, however, holds that the justices should balance other factors before deciding to overturn a precedent.

* * *

Myron makes a great point here. Check out this crazy shiznit currently empowering the imperial judiciary.

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[1] antiquity of the precedent,

[2] the reliance interests at stake, & of course

[3] whether the decision was well reasoned,” in Thomas’s words—even, as Justice Stephen Breyer once put it,

[4] “whether a precedent ‘has become well embedded in national culture.’”

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Who the hell authorized any of *that* shiznit !?!?!

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Such guides supposedly promote “the evenhanded, predictable, and consistent development of legal principles.”

That's beside the point. “In our constitutional structure, our role of upholding the law’s original meaning is reason enough to correct course,” Thomas says.

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Magnet amplifies Thomas as he takes dead aim at the imperial judiciary, writing:

The oft-made “reliance interest” part of this argument—that overruling precedent breeds uncertainty in those who have relied on this or that illegitimate ruling—is particularly specious.

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“As I see it,” Thomas writes, “we would eliminate a significant amount of uncertainty and provide the very stability sought if we replaced our malleable balancing test with a clear, principled rule grounded in the meaning of the text.”

That's a yep, yep!

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The point? The ills of the Court’s use of stare decisis far outweigh any supposed benefits.

Stare decisis is Latin for “to stand by things decided.” Courts cite to stare decisis when an issue has been previously brought to the court and a ruling already issued.

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Magnet + Thomas

A demonstrably false precedent yields precisely the opposite effect from what the Court is supposed to produce: instead of interpreting law, it in effect makes law—and judges are not legislators.

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Preserving such an erroneous precedent compounds the harm. It “both

[1] disregards the supremacy of the Constitution and

[2] perpetuates a usurpation of the legislative power.”

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Boom BooYahKahShah Boom Boom . . . BOOM !!!

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Magnet:

Of course, it’s just this usurpation that judicial proponents of stare decisis generally are trying to protect.

(Hmmmmmmmmmmm . . . .)

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Usually invoked when it is “least defensible,” the doctrine “has had a ‘ratchet-like effect,’ cementing certain grievous departures from the law into the Court’s jurisprudence.”

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At the top of Thomas’s list of deplorables is the doctrine of “substantive due process”—the assertion that the due-process clause of the Fourteenth Amendment makes some individual rights so fundamental that no state government can invade them.

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As Thomas had previously objected, “this fiction is a particularly dangerous one” because it “lack[s] a guiding principle to distinguish ‘fundamental’ rights that warrant protection from nonfundamental rights that do not . . . .”

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Can you see the wrongdoing wiggle room the imperial judiciary created for itself?

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Of course you can.

The end result of such so-called reasoning is the standard set forth in a case like Planned Parenthood v. Casey, which “is the product of its authors’ own philosophical views about abortion,” with “no origins in or relationship to the Constitution.”

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Worse, the Court cooked up the idea of “substantive due process” as a workaround, after two monstrous and bizarre 1870s Supreme Court decisions nullified the Fourteenth Amendment’s “privileges-or-immunities” clause.

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This abomination to the Fourteenth Amendment’s “privileges-or-immunities” clause—the protection of all the rights contained in the Bill of Rights with which the amendment aimed to cloak freed slaves against depredations by state governments.

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The Supreme Court thus illegitimately paved the way for 90 years of Jim Crow black serfdom in the South and perhaps more importantly, cloaked the practice of racial discrimination outside the South with silent legitimacy for generations.

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“I have a personal interest in this,” Thomas said.

How different would our history have been had the USSC allowed the 14th Amendment, as its framers and ratifiers intended, “to perfect a blemish on this country’s history,” Thomas once said.

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Thomas: “That is the blemish of slavery.”

Personally, I would say the blemish of racial superiority.

In my experience, Northern white people are just as prejudiced as Southern white people, who, in turn, are just as welcoming as Northern whites.

People are people.

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Equal before God Almighty, and quite unequal on the margins.

Unequal in talents and interests and attitudes and a whole host of factors that make us individuals with agency to make our own way in this world, as *we* choose.

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This applies to USSC as well. Quite impermissibly "interested" where disinterest is a must.

Thomas: “the Court refuses to reexamine its jurisprudence about the Privileges or Immunities Clause, thereby relegating a ‘clause in the constitution’ ‘to be without effect.’ “

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Has the Supreme Court, as an institution, forgotten that people are people?

Yes, there clearly seems to be a supremacist / superiority strain in their thinking, especially when it comes to their masters: we the people.

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Thomas: “No subjective balancing test can justify such a wholesale disregard of the People’s individual rights protected by the Fourteenth Amendment.”

Ponder that, ladies and gentlemen.

Ponder it long and hard.

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There is a certain symmetry, is there not, with the wrongdoing in this instance arising out of the butchery they did to the 14th Amendment Privileges and Immunities clause way back in the day – correct ???

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Some legal commentators have seen no other way for restoring the Constitution we framed in 1787, improved by the Bill of Rights, perfected by the Reconstruction Amendments & the 19th Amendment giving women the vote than to call for a new Constitutional convention.

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Clarence Thomas has proposed another, more incremental way to achieve that end.

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In his nearly 30 years on the Court, he has marked out an array of erroneous precedents that he thinks the Court should overturn in order to get back to the Framers' Constitution.

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Like many of us, Magnet was optimistic about the new Justices.

"With some new originalist jurists now joining Thomas on the high bench, the Court might just follow the trail back to liberty that he has blazed—and marked out with especially vivid clarity in Gamble."

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Unfortunately for America, Justices Gorsuch and Kavanaugh and Barrett were egregious failures in their Texas v. Pennsylvania test.

Do these three knowingly or unknowingly wear the mask of the Deep State?

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I think not.

But if so, with the nations eyes fixed squarely upon them, I pray they will see the error of their ways and pay heed to Justices Thomas and Alito.

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As Justice Thomas has persuasively argued (and forgive me Justice Alito and admirers of him if it appears I am slighting him here the way so many did and do regarding Scalia & Thomas; that is not my intent):

The Constitution, not precedent, is the law of the land.

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