

A New Supreme Court Era Has Begun

A main goal of a legal system is to provide stability. It provides a common set of guiding rules for everyone under the system's jurisdiction. While there is much to be written, said and argued about the ways in which the legal system does not apply equally to everyone, that is a different issue than the phase the American legal system seems to be entering. And make no mistake, the issue of Supreme Court appointments is high on voter's minds. According to The Pew Research Center it was the third most important issue for voters in the 2020 presidential election (the economy and health care were the top 2, while climate change and abortion were in the bottom of the top 12)

Even with the addition of Justice Jackson replacing Justice Breyer, if this court does what it appears ready to do, on at least some key fronts, the country could be headed toward a period of great instability in what the law even means. The future of the law — particularly whether existing legal precedents can be depended upon — is very uncertain. Religious liberty claims, criminal law cases, racial discrimination and sex discrimination cases, LGBTQ rights, voting rights — aspects of these areas of the law and others will be affected. That means Americans' lives are not stable. At home, in the workplace and everywhere else, at least some of the rules that Americans have been living under will be changing. People's decisions about how and when to form a family, the times and ways in which their freedoms can be taken from them, and their ability to choose their civic leaders are among the basic parts of life that could be under scrutiny from this court.

Instability is not new. But an era of dramatic changes to the fundamental legal principles under which the United States has been operating is a different kind of instability. And it is already here.

Review of Key Concepts: First- What the Constitution Actually Does and Is

The Constitution (and the laws of the U.S. made in pursuance thereof) proclaims itself “**The Supreme Law of the Land**” Art. VI

The Constitution, through one narrow single source, the text of the Constitution and its amendments, defines and frames the structure and function of the **government** and the relationship between **government** and individual citizens. It defines and limits the relative powers of the **national government** and the states. It specifies the **liberty’s** that people possess upon which **government** may not infringe.

And then there is the vast unwritten or **invisible** Constitution (what is not within the **text** we simply read, for example, the complex mix of rules, doctrines (for ex. “the right of privacy”), standards, legal tests, judicial cases and precedents, historical analysis, legislative and executive practices and cultural/social traditions) which has a lot to say about our behavior as well as government power and its limits. And of course, much of the answers to those questions **depend on some degree on who is answering them including who is sitting on the Supreme Court** at the time we ask.

What do we mean by “**The Rule of Law**?”

The Post 1969 Supreme Court Has:

Stopped the line of cases expanding the rights of the poor in welfare cases and decided the poor would not be a suspect class.

Weakened and scaled back the rights of unions driving down wages and weakened the rights of workers to sue their employers

Diminished the political rights of poor and minority voters... striking down a key part of the Voting Rights Act. Has upheld strict voter ID laws and voter roll purges

Failed to equalize funding between rich and poor school districts

Reduced rights of criminal defendants, with poor and racial minorities bearing the brunt of the changes contributing to the U.S. incarceration rate being the highest in the world.

Given the wealthy the ability to use their money in unlimited amounts to support candidates for office by equating money with speech and enabled corporations to spend unlimited amounts in federal and state elections.

Enabled and upheld favorable tax policies slanted to the rich and large corporations

Protected corporations from certain class action lawsuits and imposed limitations on punitive damages which can be awarded by jury's when their faulty products harm people

Strengthened "religious liberty" of individuals as well as corporations with upholding so-called religious grants, exemptions, discriminations, and objections to neutral and generally applicable rules of law causing a clash between the First and Fourteenth amendments