

The Supreme Court is Rotting

May 28, 2024

By Kavishka Bartlett, Undergraduate Student at Duke University

Can we trust the court?

58% of Americans do not trust the Supreme Court. A further 31% trust it a 'moderate' amount and only 11% trust the court a great deal, representing historic lows. And yet the court has never been more important.

As a former president faces criminal charges for the first time in history, Americans expect judicial impartiality and reliability. At a time when partisan views must be thrust to the side, the Supreme Court faces allegations of blatant bias - justices have been secretly receiving millions of dollars in lavish gifts for decades, even from parties directly related to the cases in front of the court. Our justices have never been more corrupt; they have also never been more essential to our democracy. We have deluded ourselves into believing that regular human beings we call justices can somehow remain objective when most people can't. We hoped the honor of serving our country at the highest judicial level would trump any partisan views justices may have had, and that they would certainly not sacrifice the health of our democracy for personal gain. They have proved us wrong. We cannot allow justices to monitor themselves and act ethically based on integrity; we need enforceable guidelines.

Importance of the Court

Without a strong and independent court, an integral part of our democratic state, we undermine accountability. Who will hold politicians liable? If a president is accused of spreading false information, trying to undermine our electoral process, and staging a riot, who can Americans trust to expose the truth? The implications are dire – just look at Nazi Germany. Following the Reichstag Fire in 1933, Hitler proposed the Reichstag Fire Decree, effectively pausing individual freedoms. And later that same year, Hitler and the German parliament passed the Enabling act, granting Hitler full power to enact laws without parliamentary approval. At this point, in a healthy democracy, the courts would step in. These laws blatantly violate constitutional protections, yet the incompetent court allowed them to pass unhindered. Even though both the legislative and executive branches agreed on the passage, the acts were indisputably

unconstitutional and detrimental to the country. We cannot rely on legislative and executive branches alone.

Current Issues with the Court

As mentioned earlier, several key justices have faced incriminating accusations of political bias and corruption. Lacking any enforceable ethical guidelines, the court essential has zero accountability. While this was an intentional move by the Founding Fathers, modern times have demonstrated the fallacies of these century old policies. We will look at a few of the justices guilty of corruption to fully understand why our current judicial system is unsustainable.

Justice Clarence Thomas

For the past few decades, Justice Clarence Thomas received millions of dollars in personal gifts, luxury vacations, financial support, exclusive access to private events, and lavish accommodations. None of these were disclosed, a direct violation of the Ethics in Government Act of 1978. And, even worse, much of these payments came from billionaires who had personal interest in cases before the Supreme Court. Harlan Crow, the billionaire chair of Crow Holding and a holder of Nazi memorabilia, including Hitler paintings and a signed *Mein Kampf*, provided Thomas with millions of dollars while having several cases in front of the court. The Trammell Crow Residential, Eviction Moratorium, Moore v. United States, and CFPB were a few of the cases personally impacting Crow's business interests; Thomas recused himself from none of them. Not only was Thomas keeping company with questionable characters, but he was directly profiting from them. And, his wife, who Thomas declares is his "best friend" and someone he is extraordinarily close to, actively attempted to overturn the 2020 presidential election results. So, when court cases dealt with election 'fraud', surely Thomas recused himself? No. Not once. He even went against the majority in several cases, such as one dealing with Pennsylvania's mail-in voting procedures. Despite no evidence of fraud, Thomas expressed doubts about utilizing mail-in ballots and the associated potential for fraud and subjectiveness.

Justice Samuel Alito

Similar to Thomas, albeit on a lesser scale, Justice Samuel Alito has taken payments and vacations from mega donors who have direct stakes in cases before the Supreme Court. In 2008, Alito went on a luxury fishing trip to Alaska that was fully funded by Paul Singer, who coincidentally had several cases before the Supreme Court involving his company, Elliot Management. And yes; Alito did not recuse himself or disclose the trip.

He refused to recuse himself even when companies, whose stocks Alito owns, had cases before the court and he has given political speeches at conservative conventions, despite Canon 5 in the Code of Conduct for United States Judges directly prohibiting political activities. Still not convinced? It was also revealed Alito leaked information about Supreme Court decisions to conservative donors, details that were not meant for the public.

Justice Brett Kavanaugh and Amy Coney Barrett

Not nearly as corrupt as Alito and Thomas, Brett Kavanaugh and Amy Barrett still warrant suspicion. In fact, Kavanaugh and Barrett's actions would have warranted public outrage and calls for removal in any other time period where Thomas and Alito's corruption does not exist as a distraction. In 2016, Kavanaugh disclosed significant credit card debt, yet by 2017, it had been dramatically reduced. Kavanaugh's lack of consistent and clear explanations of how he paid off the bills have resulted in speculation of undisclosed donors. While these accusations have not been proved and will probably never be, his political biases cannot be refuted. His heavily partisan confirmation speech, association with prominent conservative figures, and attendance of Conservative Political Action Coalition events paint a biased subjective picture and have called his ability to be impartial into question. Similarly, Amy Barrett has strong ties to the Federalist Society, a conservative legal entity. Even more damaging, her husband happened to receive a lawyer position at a newly opened law firm office in Washington, D.C. While not inherently suspicious, the absolute and unusual secrecy of the firm and their clients raise concerns about the clients potentially having business before the Supreme Court. While the potential corruption facing Kavanaugh and Barrett lacks the scale and egregiousness of Thomas's and Alito's, it is still damaging.

Justice Sonia Sotomayor, Elena Kagan, and Ketanji Brown Jackson

Similar to the other justices, Sonia has received criticism for not recusing herself from cases involving her publisher Penguin Random House, who have paid her \$3.2 million in royalties. Despite having compromised interests, Sotomayor followed the example of the other justices and refused to recuse herself. Kagan, who was a Solicitor General prior to her position in the court, has received moderate backlash for not recusing herself from certain cases where she possibly had previous involvement. It is worth pointing out that she has recused herself on several occasions, but her inconsistency has given the public pause. In terms of Jackson, she represents the only judge lacking significant or notable instances of bias or corruption.

Chief Justice Roberts

While Roberts has been accused of conflict of interest, due to his wife's work as a legal recruiter and role in placing government lawyers into private firms who often have cases before the Supreme Court, there has not been significant cause for concern. Unlike the other Conservative justices, Roberts at least attempts to distance himself from appearing partisan, even if he was listed in the Federalist Society's leadership directory at one point. The main point of contention with Roberts, however, is his refusal to fix the ethical issues with the court. Ethical guidelines adopted in 2023 were heavily critiqued for being unenforceable and inexplicably vague for certain provisions. As the Chief Justice, it is Robert's responsibility to create an environment of accountability and ethical correctness, something he has clearly failed to achieve.

Why do we care?

While powerful, the Supreme Court has a major problem; there is no enforcement agency. When the court rules, they rely solely on precedent and instructional respect. With public opinion of the court reaching record lows, they face a potential crisis; no one follows their rulings. If their blatant disregard for ethics and basic morality continues, why would the public trust them? And if they don't trust them, why would they listen to them? The Supreme Court is fundamentally fragile and it is not up to the court to ensure public approval, but public trust.

How to fix the court

Fixing the court is relatively simple. Courts across the country face the same issues of corruption and bias, and their varying strategies can and should be applied to the court. Rather than the Supreme Court receiving special treatment and complete freedom, it should have the strictest scrutiny to ensure ethical considerations are met at the highest level. With great power comes great responsibility. To implement this, we can impose an enforceable code of conduct and require full transparency and disclosure of financial benefits from third party entities. While these already exist, the key is to make them enforceable. We have trusted this up to the justices' discretion and while this has worked in the past, it does not work now. We can create an independent group to monitor recusals and investigate ethical violations, ensuring the rules and guidelines are being adequately followed. Lastly, we can add term limits and retirement policies. Allowing justices to serve for life was meant to ensure impartiality, yet Justice Thomas has been on the court for 32 years and remains biased. It does not work. By implementing term limits we allow new perspectives into the court, ensuring it remains modern and relevant to society. Some of these recommendations are more radical than others but we are in a desperate situation. Something needs to be done and it needs to

happen now. The actual solutions can be discussed and compromised on; the important aspect is recognizing the deplorable state of the Supreme Court and its imperative nature to the country. We cannot let the court rot.

Regards,

Kavishka Bartlett