The legal implications of the US Supreme Court's draft anti-abortion decision

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Supreme Court justice Samuel Alito's draft ruling in *Dobbs v. Jackson Women's Health Organization*, leaked and published on May 2 in Politico, would abolish the federal right to abortion for 175 million women in all states and US territories, overturning the landmark *Roe v. Wade* decision in 1973 that recognized abortion as a constitutional right.

The proposed ruling by Alito, who was appointed to the Supreme Court by President George W. Bush in 2005, purports to represent the decision of a majority of the nine justices. Chief Justice John Roberts has confirmed the authenticity of the draft, calling for an investigation to determine who leaked it.

Asserting that the prerogative to prohibit or regulate abortion is being "returned" to the state governments, Alito's draft decision opens the floodgates not just for state and local laws banning abortion, but for laws prohibiting women from traveling to obtain abortions and laws that would jail doctors, nurses, friends, and family members who "aid or abet" an abortion. At least 13 states have already passed so-called "trigger laws," designed to go into effect after the Supreme Court hands down its final decision.

Notwithstanding Alito's invocation of states' rights, the abolition of the federal constitutional right to abortion would remove the only legal obstacle to Congress passing a federal law banning abortion in all 50 states—not just criminalizing abortions in Florida and Texas, but in California and New York as well. Republican Senate minority leader Mitch McConnell already indicated that such a law is "possible."

If the far-right majority on the Supreme Court were to stop there—at abolishing the federal constitutional right to abortion—that would already constitute the most reactionary decision since the Supreme Court's 1944 *Korematsu v. US* decision upholding internment camps for Japanese-Americans during the Second World War.

But Alito's draft opinion goes much further. Echoing the phony "originalist" arguments of the late arch-reactionary Supreme Court justice Antonin Scalia—according to which the interpretation must be made according to its supposedly "original," 18th century meaning—Alito's draft decision goes on to deny the validity of "rights that are not mentioned in the Constitution."

Virtually all modern civil rights are not "mentioned in the Constitution," for the simple reason that modern society did not exist when the Bill of Rights was ratified in 1791. However limited and belated, the expansion of constitutional rights in the US—from the aftermath of the American Revolution and Civil War to the period of the Civil Rights movement—took the form of recognizing in the essential principles of the founding documents new implications for democratic rights in modern society.

Alito's formulas provide a framework not just for dismantling the right to abortion, but for putting all modern civil rights on the chopping block.

1. Alito's concept of "rights not mentioned in the Constitution"

To appreciate the reactionary implications of the draft decision, it is necessary first and foremost to address its fundamentally fraudulent claim to "heed" some kind of original historical understanding of the Constitution. For all of Alito's reverent invocations of "our founding document" and "this Nation's history and tradition," the draft decision turns the historical conceptions of democratic rights advanced in the American Revolution and Civil War upside-down.

"The Constitution makes no reference to abortion," Alito writes. "The Court has long been reluctant to recognize rights not mentioned in the Constitution." The premise is that rights only exist that are expressly referenced in the Constitution, or which are later (reluctantly) recognized by the Supreme Court. If the Constitution does not expressly mention a right such as abortion, according to Alito, then by default the right does not exist.

This is, in fact, precisely the opposite of the essential and "original" conception of the Constitution, which the American revolutionaries designed to confer only those specifically enumerated *powers* on the government that are listed in the Constitution, reserving all *rights* by default to the people.

American revolutionary James Madison, who drafted the Bill of Rights, was initially opposed to the idea on the grounds that any list of rights would be inherently limiting, and that it would be better to proceed with the conception that all rights are retained by the people except to the extent powers were specifically and necessarily granted to the government.

The Ninth Amendment addressed this concern by providing: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

Standing Alito's logic on its feet, one could just as well argue that abortion is a right that is retained by the people because the Constitution does not expressly grant the government the power to ban it.

At the time of the American Revolution, as a matter of fact, voluntary abortion was generally not penalized before the "quickening," or the time at which the fetus could be felt to move, after which killing the fetus fell into a vague and indeterminate category of criminal offense located somewhere between a misdemeanor and a murder. (Frederick Engels, in *Socialism: Utopian and Scientific*, remarked that jurists "cudgeled their brains in vain to discover a rational limit beyond which the killing of the child in its mother's womb is murder.")

The American revolutionaries did not alter this legal framework, which they inherited from English common law. It goes without saying that at the time, women did not enjoy anything resembling modern liberty. In addition to the roughly quarter-million women who were enslaved, together with those indentured and bound to labor for landlords and aristocrats, all but the wealthiest women lived under a form of domestic servitude, expected to perform household labor for their entire lives, shut indoors and excluded from public life.

While the revolution radically democratized American society and culture and laid the foundations for great advances in social progress, it would be more than a century before women could vote, and two centuries

before the last vestiges of women's inferior legal status were finally swept out of the legal system.

The authors of the Constitution and Bill of Rights obviously did not have the benefit of the tremendous advances in scientific and medical knowledge that would be made over the intervening centuries, not to mention all the subsequent advances in social practices and human culture in general. Modern medical procedures, and the religious fundamentalist movement to ban them, likewise did not exist.

All this underscores the tendentious, arbitrary, and illegitimate character of Alito's method, which involves searching the writings of people living in the 18th and 19th centuries for the meaning of "liberty" for women in 21st century American society.

In 1876, for example, eight years after the ratification of the Fourteenth Amendment, Chief Justice Morrison Waite denied a woman's application to appear before the Supreme Court, stating that "none but men are permitted to practice before it as attorneys and counselors." He continued: "This is in accordance with immemorial usage in England, and the law and practice in all the States." Applying Alito's method, this historical episode could be cited as definitive proof that the constitutional guarantee of "liberty" was never "intended" to abolish the inferior legal status of women.

Refuting Alito's phony brand of "originalism" requires only a citation from American revolutionary Thomas Jefferson. In a letter in 1816, Jefferson remarked: "Some men look at Constitutions with sanctimonious reverence, and deem them, like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human ..."

Laws and institutions, Jefferson continued, "must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace ... we might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain ever under the regimen of their barbarous ancestors."

Alito's "originalism," while it reverently invokes the "founders," in fact tramples on the memory of the American revolutionaries, whom he conscripts into the roles of "barbarous ancestors," whose dead hands would block all progress and enlightenment for centuries to come.

2. The legal significance of the Fourteenth Amendment's guarantee of "liberty"

Alito's method lacks roots in the Supreme Court's own traditions of constitutional interpretation.

The police in their modern form, for example, did not exist at the time the Constitution was ratified, and so the word "police" does not appear anywhere in the text of the Constitution or the 1791 Bill of Rights. No powers are expressly conferred on police officers, and no rights are recognized against police officers, for the simple reason that the modern institution of the police—SWAT teams, batons, and tasers—did not exist at the end of the eighteenth century. For the same obvious reason, the Constitution does not mention wiretapping and electronic surveillance.

The police appeared on stage later in American history, in response to the emergence of a powerful labor movement in the late 19th and early 20th centuries. The Supreme Court belatedly ("reluctantly," to use Alito's word) recognized rights against the police in the period following their appearance on the historical stage. This process culminated in the right to the famous *Miranda* warning ("you have a right to remain silent, you have a right to an attorney") in 1966, together with cases establishing rights against "excessive force," false arrests, and frame-ups by police in a series of decisions from the 1960s to the 1980s.

None of these rights are expressly and specifically "enumerated" in the Constitution, but notwithstanding this fact, the Supreme Courts of earlier decades recognized them as implicit in the fundamental democratic guarantees contained in the Bill of Rights and Civil War amendments.

At their best, this category of Supreme Court decisions recognizes the founding documents as containing essential democratic principles that each generation must put into effect under new and unforeseen circumstances, following advances in scientific knowledge and in light of historical experience.

The high-water mark of these conceptions was the period of civil rights reforms lasting from roughly the 1940s to the 1970s, including the period during which Earl Warren, appointed by president Dwight Eisenhower, served as chief justice from 1953 to 1969, known as the Warren Court era.

This was a period of the post-war boom, a relative and temporary capitalist stabilization in the US in the wake of the devastation of the Second World War. The period was marked by mass civil rights struggles demanding legal equality for women and minorities, a powerful social movement against the war in Vietnam, and the strike wave of the late 1960s and early 1970s. During this period, the Russian Revolution remained a powerful and fresh living memory, which inspired masses of people and gave pause to the reactionaries.

While it has served for the most part as an essentially reactionary institution throughout its history, the Supreme Court during this limited historical window produced a body of democratic jurisprudence that has been a source of bitter disgruntlement for "originalists" and reactionaries ever since.

Instrumental in the concrete development of civil rights law during this period was the text of the 1868 Fourteenth Amendment, passed in the aftermath of the Civil War along with the Thirteenth Amendment, abolishing slavery, and the Fifteenth Amendment, extending the right to vote to former slaves. Together, these amendments effectively overturned the Supreme Court's notorious *Dred Scott* decision, which had helped galvanize mass opposition to slavery in the period immediately before the Civil War.

The most important clause of the Fourteenth Amendment provides that state governments may not "deprive any person of life, liberty, or property, without due process of law." This protection of "liberty" was the key legal mechanism for the entire edifice of civil rights law established by the Supreme Court in the 20th century.

The Supreme Court, interpreting this clause, indicated that it did not just guarantee the right to formally correct legal procedures ("procedural due process"), but that the term "liberty" necessarily included all fundamental rights that are "so rooted in the traditions and conscience of our people as to be ranked as fundamental." This meaning of the "due process clause" was described as "substantive due process."

In the 20th century, the Supreme Court decided that the Fourteenth Amendment had "incorporated" many essential rights and conceptions from the Bill of Rights, such that they could be applied against state governments, including the rights to freedom of speech (1925), freedom of the press (1931), freedom of assembly (1937), free exercise of religion (1940), freedom of expressive association (1958), freedom from unreasonable searches and seizures (1961), freedom from "cruel and unusual punishments" (1962), the right against self-incrimination (1964-66), and the right to a speedy trial (1967), among others.

It was because of this guarantee of "liberty" that the Supreme Court decision in *Griswold v. Connecticut* (1965) included a right to privacy that prevented a state government from outlawing contraception. In 1973, in *Roe v. Wade*, as part of this line of cases, the Supreme Court decided that "liberty" included the right to abortion. As recently as 2015, in *Obergefell v. Hodges*, the Supreme Court determined that it included the right of same-sex couples to marry.

Given this context, Alito's attack on "unenumerated rights" triggers alarm bells for all of the rights that the Supreme Court recognized under the Fourteenth Amendment's guarantee of liberty.

3. The *Roe v. Wade* decision

The language Alito uses to denounce the *Roe v. Wade* decision is remarkable for a Supreme Court justice nominally adhering to the doctrine of *stare decisis*, which requires deference to prior decisions. "*Roe* was egregiously wrong from the start," Alito fumes. "Its reasoning was exceptionally weak, and the decision has had damaging consequences."

The landmark *Roe v. Wade* case was brought on behalf of women led by Norma McCorvey, an unmarried pregnant woman who challenged Texas laws prohibiting doctors from performing abortions except where the woman's life was in danger. To protect her privacy (and the stigma against "unwed mothers"), McCorvey filed the lawsuit under the fictitious name of "Jane Roe," a variant on "John Doe." Henry Wade was the district attorney of the county of Dallas, Texas.

In upholding the constitutional right of "Jane Roe" right to abortion, and by extension the right of all women to obtain one, the Supreme Court in *Roe v. Wade* considered what Alito does not: modern conditions facing women, including a "distressful life and future" for the woman denied an abortion, together with "psychological harm" and the "distress, for all concerned, associated with the unwanted child."

The Supreme Court reasoned in *Roe v. Wade* that privacy is a "personal right that can be deemed fundamental or implicit in the concept of ordered liberty." The decision whether to terminate a pregnancy, the Supreme Court concluded, is under modern conditions a private one—between a woman and her doctor—such that it falls within a woman's right to privacy and outside the government's ability to ban it outright.

The Supreme Court concluded: "This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."

This is the decision and reasoning that Alito arrogantly attacks as "egregiously wrong" and "exceptionally weak."

4. Alito's attack on the "workability" of *Roe v. Wade*

A major theme of Alito's draft decision is that *Roe v. Wade* has not proved "workable" in practice.

Alito attacks the *Roe v. Wade* decision where it is weakest. The 1973 decision did not, contrary to popular misconceptions, uphold the right to abortion as unconditional and absolute.

Writing for the majority in *Roe v. Wade*, Blackmun actually took up arguments that "the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses." Writing for the Supreme Court majority, Blackmun responded: "With this we do not agree."

Meeting the reactionary advocates of "states' rights" halfway, Blackmun acknowledged that "some state regulation in areas protected by that right is appropriate" where it is based on "safeguarding health, in maintaining medical standards, and in protecting potential life."

"The privacy right involved, therefore, cannot be said to be absolute," Blackmun wrote, rejecting the assertion that "one has an unlimited right to do with one's body as one pleases." He continued, "The Court has refused to recognize an unlimited right of this kind in the past."

While it was rooted in important democratic legal conceptions, these compromises gave the partial victory in *Roe v. Wade* a bitter aftertaste. While it upheld a qualified right to privacy that includes the right to abortion, the Supreme Court declined to strike down all anti-abortion laws in principle. Nor did the Supreme Court strike down anti-abortion laws on the legitimate ground that they constitute an illegal state attempt to impose religious beliefs on the population, which is prohibited by the First Amendment.

This recognition in *Roe v. Wade* of legitimate "state interests" in the regulation of abortion subsequently prompted decades of trench warfare in American courts, with well-funded reactionary lawyers claiming endlessly and disingenuously that their state's anti-abortion laws were grounded in the state's supposedly legitimate concern for "the health of the mother."

The Supreme Court's decision in *Planned Parenthood v. Casey* (1992), which was intended to be a final compromise settlement of this relentless and obnoxious litigation, only made matters worse. The Supreme Court upheld *Roe v. Wade*, but abandoned privacy as a justification for the ruling, indicating that going forward laws would only be struck down that create an "undue burden" on a woman seeking an abortion of a "nonviable fetus."

In his draft decision, Alito ridicules these tortured compromises, arguing that as a practical matter these formulations proved arbitrary and inconsistent in practice. What "burdens" were "undue" was a standard that was impossible for different judges to apply with any uniform objectivity, and efforts to define those terms only prompted further litigation as to the meaning of those definitions. Alito cites former chief justice William Rehnquist, who once wrote in a dissent that these terms seem "calculated to perpetuate give-it-a-try litigation."

Alito attacks five decades of liberal compromises from the right, but the accusation that these frameworks proved "unworkable" is essentially true. These compromises, which may have been intended by the liberal justices to partially secure a democratic right by achieving a stable "settlement" with the reactionaries, only proved in time to be the mechanism for the reactionaries' efforts to abolish the entire right at issue.

The "unworkability" of these compromises, contrary to the reactionary conclusion drawn by Alito, underscores why abortion is a right that must be upheld—and can only be upheld—as unconditional, unqualified, and absolute.

5. The right to abortion

The first government in the world to fully recognize the right to abortion was the workers' government established after the October Revolution in Russia.

The Decree on Abortion, published on November 18, 1920 decriminalized abortion to the fullest extent in any country. It was part of a series of revolutionary decrees freely allowing divorce and decriminalizing homosexuality, which were combined with aggressive efforts to alleviate the burden of household labor on women. Soviet society opened public laundries, kitchens, and nurseries with the aim of freeing women to participate in public life, permitting women to obtain educations, develop professional careers, and participate equally in all aspects of politics and culture.

Trotsky, writing in 1936, characterized these early efforts:

> The October revolution honestly fulfilled its obligations in relation to woman. The young government not only gave her all political and legal rights in equality with man, but, what is more important, did all that it could, and in any case incomparably more than any other government ever did, actually to secure her access to all forms of economic and cultural work. …
>
> The revolution made a heroic effort to destroy the so-called "family hearth"—that archaic, stuffy and stagnant institution in which the woman of the toiling classes performs galley labor from childhood to death. The place of the family as a shut-in petty enterprise was to be occupied, according to the plans, by a finished system of social care and accommodation: maternity houses, nurseries, kindergartens, schools, social dining rooms, social laundries, first-aid stations, hospitals, sanatoria, athletic organizations, moving-picture theaters, etc.

Trotsky and the Left Opposition opposed the subsequent efforts by the Stalinists, after they usurped power, to undermine the right to abortion. In

The Revolution Betrayed, Trotsky denounced one Stalinist jurist on the highest Soviet court, who stupidly opined that a woman has no right to decline "the joys of motherhood."

Defending the right to abortion that had been unequivocally recognized in the early period following the October Revolution, Trotsky wrote, "revolutionary power gave women the right to abortion, which in conditions of want and family distress … is one of her most important civil, political and cultural rights."

This conception of the absolute right to abortion in modern society is linked to the principle of equality, and of a woman's right to participate equally in civil, political, and cultural life, which in light of human biology as a practical matter in modern society requires free and unrestricted access to reproductive health care.

6. The end of the USSR and collapse of democratic rights in the US

In the postwar period, the Supreme Court, as Alito writes, "reluctantly" recognized an important series of modern civil rights, belatedly taking aim in particular at racial apartheid and the unequal status of women, which persisted well into the second half of the 20th century in America.

While these cases were being argued, American civil rights advocates frequently pointed to the embarrassment that these unequal and discriminatory practices caused to the United States internationally, under conditions where citizens of the Soviet Union had long enjoyed equal legal status regardless of race or sex.

During this period, the Supreme Court ruled segregation unconstitutional in *Brown v. Board of Education* (1954), going on to strike down Jim Crow laws such as Virginia's prohibition on interracial marriage in *Loving v. Virginia* in 1967 (about which an interesting film was recently made).

In addition to *Roe v. Wade*, in *Kirchberg v. Feenstra* (decided in the shockingly late year of 1981), the Supreme Court struck down Louisiana's so-called "head and master" law, which gave the husband unequal control over marital property.

How would Alito's "originalist" method operate in those cases? "The Constitution does not specifically mention a right to interracial marriage," Alito would write. "Nor does it say anything about a woman's right to marital property or the right to attend a desegregated school. Therefore, we must examine eighteenth and nineteenth century attitudes to determine the meaning of the Constitution on these questions."

The "originalist" school of thought espoused by Alito has its roots in resistance to desegregation. A chief proponent of "originalism" was Ronald Reagan's rejected Supreme Court nominee Robert Bork, an open opponent of the entire framework of reforms erected in the civil rights period.

The liquidation of the USSR in 1989-1991 removed an important brake on the abrogation of democratic rights in the US. In the 1990s, Supreme Court justice Antonin Scalia, a Reagan appointee who revealed himself to be an "originalist" of the same type as Bork, became a rallying point for the efforts to roll back the civil rights reforms.

Scalia, it should be remembered, was confirmed by a unanimous 98-0 vote in the Senate, including current president Joe Biden, who commemorated Scalia as "one of our most influential justices," to be remembered as "a mentor, dear friend, and a man devoted to his faith and his family."

Scalia went on to participate in the Supreme Court's infamous decision in *Bush v. Gore*, which was instrumental to the theft of the 2000 elections. Applying the same "originalist" method that Alito now employs, the *Bush v. Gore* decision included the extraordinary formula that an "individual citizen has no federal constitutional right to vote for electors for the President of the United States" independent of the voting procedure the state government imposes, because no such right is specifically enumerated in the Constitution. The Supreme Court halted the counting of votes in Florida, effectively handing the presidency to George W. Bush, who had lost the popular vote.

The period following the stolen election of 2000 was marked by the explosion of US militarism, the establishment of a police-state apparatus under the new Department of Homeland Security, as well as an assault on democratic rights across the board under the framework of the "war on terror," which was announced in the aftermath of the September 11, 2001 attacks.

Memos circulated in the White House regarding torture practices to be authorized, the American president signed secret death warrants for "terrorists," and American assassins and kidnappers scoured the globe for victims to abduct, torture and murder. American spies eavesdropped on the private conversations, messages, and internet browsing of millions, and military tribunals were established for the prosecution of so-called "illegal enemy combatants." These practices escalated under the Bush administration and under the subsequent Democratic administration of Barack Obama.

The Supreme Court, which would have been in any healthy democratic society a key institutional bulwark against the flood of these tyrannical and authoritarian practices, completely failed in its institutional purpose. Its legitimacy shattered by the corrupt 2000 decision installing Bush as president, and increasingly stacked with ultra-right judges, the Supreme Court—including both Democratic and Republican nominees—fully endorsed the "war on terror" that was, in reality, a war on democratic rights.

An unrelenting two decades of assaults on democratic rights paved the way, in the midst of the global coronavirus pandemic, for Donald Trump's violent coup attempt on January 6, 2021—in which Trump envisioned the Supreme Court reprising its role from 2000, halting the counting of votes and stealing the election in his favor. Announcing his victory on November 4, 2020, Trump told a rally of his supporters. "We'll be going to the US Supreme Court! We want all voting to stop!"

The six justices that evidently constitute the majority behind Alito's draft include three Trump appointees: Amy Coney Barrett, Brett Kavanaugh, and Neil Gorsuch. Two more—Chief Justice John Roberts and Alito—are appointees of George W. Bush, the same president that the Supreme Court installed in a stolen election in 2000. Finally, there is Clarence Thomas, whose wife Virginia "Ginny" Thomas served as a key adviser to Trump and a conduit for the recruitment of far-right extremists into the Trump administration. Clarence Thomas recently voted against allowing the congressional committee investigating the coup attempt to access his wife's correspondence, in a flagrant breach of judicial ethics.

With this far-right bloc at the helm, the Supreme Court is a massively discredited institution. Over the last 20 months, according to a poll published Friday in the *New York Post*, respondents expressing "some" or "a lot" of confidence in the Supreme Court plummeted from 70 percent to 51 percent. Those expressing "a lot" of confidence dropped from 20 percent to just 14 percent—or less than one in six Americans.

The Warren Court period, during which the Supreme Court "reluctantly" acknowledged basic democratic rights under specific historical conditions, is an exception to the generally reactionary history of this institution, which, after all, upheld slavery and segregation, resisted the New Deal, signed off on internment camps for Japanese-Americans, stole the 2000 elections, and endorsed the Guantanamo Bay military tribunals. Its members are not elected, but are appointed for life through the US Senate, the very existence of which was an anti-democratic concession, and in which today a rural state like Wyoming (population 580,000) is still allocated the same number of votes as California (population 40 million).

This "originalist" school championed by Alito is not a principled or coherent jurisprudential framework. Alito has no problem discovering new constitutional rights for corporations, such as the right to bribe politicians, recognized in the 2010 case of *Citizens United* v. *FEC*. It did

not trouble Alito and his colleagues that corporations, much less their right to buy off politicians, were not "enumerated" in the Constitution.

Their reverence for the "original" meaning of the Constitution also has not stopped the "originalists" from constantly expanding the reactionary and authoritarian doctrine of "qualified immunity" for police, which provides legal cover for the cops who gun down or asphyxiate over one thousand people on America's streets every year. Like constitutional rights for corporations, there is no mention of the phrase "qualified immunity" anywhere in the Constitution or Bill of Rights.

For its part, the Democratic Party and its satellites, notwithstanding their feeble protests to the publication of Alito's draft, offers no perspective for the defense of democratic rights against the far-right assault. The Democratic Party had a half-century within which to codify the right to abortion in federal law, refusing repeatedly to do so, while at the same time failing to block nominations that have stacked the Supreme Court with right-wing extremists. Biden, invoking his Catholic background, voted in 1981 for a failed constitutional amendment that would have overturned *Roe v. Wade*.

Moreover, with their embrace of the 1619 Project, which falsifies and denigrates the genuine democratic legacies of the American Revolution and Civil War, the Democrats have effectively ceded the Constitution to the "originalists," opening the door for far-right hooligans like Alito to posture as defenders of its "true" and "historical" meaning.

Alito's declaration of open warfare on civil rights takes place in a specific historical context. This decade opened with the outbreak of the coronavirus pandemic, to which the political establishment in the US responded with callous indifference, preferring to speculate and profiteer on Wall Street rather than prevent hundreds of thousands of deaths.

The largest protests in American history erupted that same year in the wake of the killing of George Floyd. The Trump administration orchestrated a brutal crackdown, mobilizing far-right militias against the protesters that he would go on to use the following year in an attempt to storm the Capitol. The eruption of the US-NATO war with Russia in 2022, together with spiraling inflation, coincide with growing numbers of strikes, demonstrations, and other symptoms of insubordinate moods in the working class internationally which the American ruling class hates and fears.

The Supreme Court is now poised to tear up democratic rights like a collection of corrupt corporate executives who, in a final act of wild desperation, feed all of their files into the office shredder at midnight—getting rid of anything that might be used against them.

But the far-right bloc on the Supreme Court is playing with fire. In 1857, the Supreme Court's arrogant determination that people of African descent like Dred Scott were "not included, and were not intended to be included" as citizens under the Constitution radicalized anti-slavery sentiment throughout the North, including the views of future president Abraham Lincoln, and helped precipitate the Second American Revolution. That Supreme Court decision was effectively overruled on the battlefields of Gettysburg and Antietam.

The decision to reinstate what amounts to *de jure* discrimination against 175 million women, a half-century after such discrimination was ruled unconstitutional, will have a similarly radicalizing effect on American society. The reactionary judges on the Supreme Court will find that they cannot so easily, with the stroke of a pen, eliminate rights that have been won in struggle and firmly established in mass consciousness for multiple generations.

For millions of women as well as men in the US, a woman's right to bodily autonomy is a settled question, and any attempt to turn back the clock will be regarded as outrageous and obscene.

The defense of democratic rights in general, and abortion in particular, falls now to the revolutionary working class. Mobilized on a socialist program and fighting for genuine social equality, the working class secured the right to abortion for the first time in the last century—and on this basis it will secure and defend it in the new century.