

# Noam Chomsky: The Supreme Court Is Wielding Illegitimate Authority In The US



*Noam Chomsky*

Former president Jimmy Carter deemed the U.S. as having become “[an oligarchy with unlimited political bribery](#)” in the aftermath of the Supreme Court’s 2014 decision to strike down limits on campaign contributions, and the wielding of illegitimate authority within our political system has only grown more extreme in the eight years that have passed since then.

“Illegitimate authority” is often construed to be a trait of non-democratic societies and failed or collapsed states. In reality, however, illegitimate authority can be quite widespread in so-called democratic polities such as that of the United States.

The U.S. Supreme Court, for example, has the authority to issue judicial writs that go against the public interest and even violate human rights. Public policy is overwhelmingly affected by economic elites and powerful interest groups, with the general public having little or no independent influence as [scholarly research has shown](#). The legitimacy of political authority in the U.S. is indeed very dubious when we consider the dynamics of decision-making and the rules at play.

In the interview that follows, Noam Chomsky — a public intellectual regarded by millions of people as a national and international treasure — gives us a real tour de force *exposé* of largely unknown facts in U.S. legal history while boldly revealing how many of our governing institutions and leaders wield illegitimate and undemocratic authority over much of the country’s contemporary political

and economic landscape. Let's keep in mind that we should assume that all authority is illegitimate, unless it can justify itself. Indeed, the burden of proof is on advocates of authority, not on those question it, as Chomsky often points out whenever he discusses the topic of authority.

In this interview, Chomsky shares his insights about activism and the urgency of undertaking a transition toward a sustainable future. Chomsky is institute professor and professor of linguistics emeritus at MIT and currently laureate professor at the University of Arizona, and has published some 150 books in linguistics, political and social thought, political economy, media studies, U.S. foreign policy and international affairs.

*C.J. Polychroniou: Noam, over the past couple of decades, we've been witnessing a surge of illegitimate authority. And I am not thinking so much about the increasing influence of transnational corporations on democratic processes as about decisions made by a handful of appointed or elected individuals that affect the lives of millions of people. For example, a few people sitting at the Supreme Court were appointed for life by presidents that lost the popular vote, and they often enough issue decisions that go against the majority of voters' preferences. Another example is members of the U.S. Congress who block bills aimed at the improvement of the economic well-being of citizens and the protection of the environment, choosing instead to introduce legislation catered to the interests of powerful lobby groups. Can you comment about this most despairing state of affairs in the U.S. political landscape?*

*Noam Chomsky:* The Supreme Court has traditionally been a reactionary institution. There is some deviation, but it's rare. The Warren Court's major decisions greatly enhanced freedom and basic rights, but not in isolation: There were popular movements, primarily African American but joined by others to a degree, which made it possible for the Warren Court's rulings to be implemented. Today's reactionary Roberts Court is reverting to the norm with its dedicated efforts to reverse this deviation. And it can do so thanks in large measure to the conniving and deceit of the leading anti-democratic figure in the Republican organization — no longer an authentic political party: Mitch McConnell.

All of this is, or should be, well known. I'll return to a few comments about it.

Less well known is how far back this goes. Some of the story is familiar, but not

all. It's familiar that the enormous power of the Supreme Court traces back to Justice John Marshall's decision in *Marbury v. Madison* to make the judiciary the arbiter of the meaning of the law, powers going well beyond what is granted in the Constitution. His appointment by John Adams, and his own immediate appointments and decisions, were designed to undercut the newly elected Jefferson administration.

Shades of McConnell.

Marshall's opinions had a major impact in shaping the constitutional order as it in fact is interpreted. His imprint on the court is unmatched.

All of that is again well known.

Much less well known are the assumptions that lie behind Marshall's major decisions. In fact, these have only recently been revealed in legal scholarship by the important work of Paul Finkelman, who did the first systematic study of Marshall's rulings on a central element of American history: slavery, which is likely to be expunged from history curricula if Republicans regain power and can implement their totalitarian initiatives to [determine what cannot be taught in schools](#).

Finkelman explores "Chief Justice John Marshall's personal and political commitment to slavery, as a lifelong buyer and seller of human beings, and his deep hostility to the presence of free blacks in America." He then proceeds to show that in his judicial rulings, Marshall "always supported slaveowners when blacks claimed to be free. Similarly, he consistently failed to enforce the federal prohibitions on American participation in the African slave trade or, after 1808, the absolute prohibition on bringing new slaves into the United States." As Finkelman points out, Marshall's harsh and brutal rulings were "[consistent with his lifelong personal and political support for slavery](#)."

Apart from the immediate impact on the lives of those treated as less than human in his day and throughout American history, Marshall was no ordinary justice. It is an understatement to say that he is "[perhaps the Supreme Court's most influential chief justice](#)."

This is not the place to review the long and often sordid history of the court. It's enough to remember that it hardly accords with the patriotic slogans we are

enjoined to chant by the new totalitarians in Washington.

As for Congress, the story is mixed. One constant feature is service to the rich and powerful, relying on means of the kind you mention. Popular activism has sometimes proved to be an effective counterforce, with major effects on civilizing the country. The New Deal period from the '30s through the '60s is the most recent case. Though the business classes worked hard to whittle New Deal measures away, they retained strong political support, including from the last authentic conservative president, Dwight Eisenhower. In [his view](#), "Should any political party attempt to abolish social security, unemployment insurance, and eliminate labor laws and farm programs, you would not hear of that party again in our political history. There is a tiny splinter group, of course, that believes you can do these things. . . . [But] their number is negligible and they are stupid."

Eisenhower's attitudes illustrate how far his party has declined in recent years, meanwhile defaming the term "conservatism."

One current illustration of the drift of the party to the far right is its love affair with the racist "illiberal democracy" of Viktor Orbán's Hungary. It is not confined to Tucker Carlson and the like but goes far beyond. As one illustration, the American Conservative Union "convenes in Budapest next month [June] to celebrate a European leader accused of undermining democracy and individual rights." Justly accused, but Orbán regards it as praise, not accusation, and today's "conservatives" appear to agree.

Eisenhower's prognosis was wrong. The "splinter group" — which unfortunately was far from that — was not merely waiting in the wings. It was gnawing away at measures to benefit the public, often effectively. By the late Carter years, its influence was strongly felt. The Democrats had by then pretty much abandoned any authentic concern with working people, becoming increasingly a party of affluent professionals.

Reagan opened the doors wide to those whom Eisenhower had bitterly condemned, launching the powerful neoliberal assault on the general population of the past 40 years, which is still vigorously underway. This is not the place to review its impact once again. It is encapsulated in the Rand Corporation study that we have discussed, which found that these programs have "transferred" close to \$50 trillion from the middle and working classes to the ultrarich in 40

years, a pretty impressive feat of highway robbery.

Today's Republican organization can barely control its enthusiasm at the prospect of carrying the assault further, concealed with cynical populist slogans.

All of this is transpiring before our eyes, quite openly. The congressional GOP virtually goose-steps in obedience to McConnell's explicit and public orders, reprised from the Obama years. There is one and only one legislative priority: regain power. That means ensuring that the country is ungovernable, and that any legislation that might benefit the general population must be blocked. Then failure to achieve anything can be blamed on Democrats — a few of whom participate in the sham.

The most striking current example is the Build Back Better program, a quite respectable initiative that would have greatly helped the population when it left Bernie Sanders's desk. Whittled away step-by-step under the McConnell principle, now not even shreds remain.

Meanwhile the GOP leadership established their red lines: (1) defund the IRS, so that it cannot interfere with the massive tax cheating by the prime GOP constituency, the very rich; (2) don't touch the one legislative achievement of the Trump years, what Joseph Stiglitz called "the donor relief bill of 2017," a massive giveaway to the very rich and corporate sector, stabbing everyone else in the back. This giveaway to the rich also hurt the right's own voters, whom the GOP has labored to keep in line since Nixon by diverting attention from its actual programs to "cultural issues" that appeal to Christian nationalists, white supremacists, Evangelicals, avid gun lovers, and segments of the working class devastated by neoliberal programs and long abandoned by the Democrats.

The court has played its role in reviving the ugliest elements of the history we are instructed to suppress. Probably the most egregious decision of the Roberts Court was to dismantle the Voting Rights Act on ridiculous grounds (*Shelby*), offering the South the means to restore Jim Crow. *Citizens United* extended the Buckley doctrine that money is speech — very convenient for the very rich particularly — to giving virtually free rein to those sectors in a position to buy elections.

Next on the chopping block is *Roe v. Wade*. The effects will be extreme. A right regarded by most women, and others, as solidly established is to be wiped out. That's almost unprecedented. Undermining of the right of Black people to vote by

the *Shelby* decision is a partial precedent.

Justice Alito's leaked draft is based primarily on the principle that court decisions should give primacy to what is "deeply rooted in this Nation's history and tradition." And he is quite right that women's rights do not satisfy this condition. The founders adopted British common law, which held that a woman is property, owned by her father, ownership transferred to her husband. One early argument for denying the vote to women was that it would be unfair to unmarried men, since a married man would have two votes, his own and his "property's." (The infamous three-fifths human provision granted that right to slaveowners.) It wasn't until 1975 that the Supreme Court granted full personhood to women, granting them the right to serve on federal juries as "peers."

This ultra-reactionary judicial doctrine is, like others, quite flexible. One illustration is Antonin Scalia's *Heller* decision, which reversed a century of precedent and established personal gun ownership as Holy Writ. In his very learned opinion, Scalia succeeded in ignoring all of the rich "history and tradition" that lies behind the decree that "A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

The history and tradition are hardly a secret, from the founders through the 19th century, though of course they have no relevance to American history since: (1) the Brits are coming; (2) militias are needed to attack, expel and exterminate the Indigenous nations once the British constraint on expansion was removed, arguably the primary reason for the revolution — though later they were displaced by a more efficient killing machine, the U.S. Cavalry; (3) slaves had to be controlled by force, a threat that was becoming severe with slave revolts in the Caribbean and the South; (4) before the constitutional system was firmly established, there was concern that the British model might be imposed (as Alexander Hamilton had suggested) and might lead to a tyranny that would have to be resisted by popular forces.

None of this "history and tradition" had any relevance by the 20th century, at least in semi-rational circles. But it was surely there in history and tradition, not just *there* but a central part of the history that is scheduled for cancellation as the GOP marches downwards. All of this proceeds with the help of the reactionary judiciary that has been constructed carefully by McConnell and allies, with the

goal of imposing a barrier to anything like the deviation of Eisenhower for a long time.

Michael Waldman, president of the Brennan Center for Justice and a specialist on the Second Amendment, observes that since Scalia reversed long-standing precedent by ignoring history and tradition, the court has had little to say about the gun issue, much to the discomfiture of the extreme right on the court. But that, Waldman suggests, may be about to change. The court is considering a case that might overturn a 1913 New York law that restricts carrying a concealed weapon in public places. From Alito's comments in oral argument, and Thomas's well-known positions, Waldman suspects that the 1913 ruling may be overturned. We'll then enjoy [a world in which concealed weapons are everywhere](#).

It's worth remembering that today's frenzied gun culture is largely the creation of the public relations industry, in fact one of its first great triumphs, a revealing history explored in depth by Pamela Haag in [The Gunning of America: Business and the Making of American Gun Culture](#).

Guns were indeed used for definite purposes, those just described. And individual farmers could use an old musket to scare away critters attacking cattle. For them a gun was a tool, like a shovel. Arms manufacturers were meanwhile developing advanced weapons, but for armies, not the public, which had little interest in them.

By the late 19th century, a problem was arising. After the Civil War, the domestic market largely collapsed for advanced armaments. Peace in Europe undermined another market. The U.S. army was not engaged in major wars. The nascent PR industry was enlisted to the cause. It concocted an exciting image of a Wild West that never existed, with brave cowboys and sheriffs fast on the draw, and the rest of the familiar fantasies, later exploited by Hollywood and TV. The subtext was that your son is dying to have a Winchester rifle so that he can be a real man, and his sister must have a little pink pistol. It worked, brilliantly, as many of us can attest from childhood memories, if not beyond.

The mythology was later expanded as part of the awesome GOP propaganda campaign to divert attention away from their actual policies and commitments. Scalia's radical departure from "history and tradition" then turned the Second Amendment into the only part of the Constitution that is worshipped fervently,

that is even known by much of the population.

*What are the boundaries of political authority? Why is there a surge of illegitimate authority in today's "democracies"? And how should concerned citizens disobey illegitimate decisions made by politicians and the Supreme Court?*

Class war never ceases. One participant, the business classes — the “masters of mankind” in Adam Smith’s phrase — is constantly engaged in the conflict, with no little passion in a country like the U.S. that has an unusually high level of business class consciousness. As Smith pointed out 250 years ago, they strive to control state policy and employ it for their own interests, commonly succeeding, though with occasional partial setbacks. If their victims are beaten down or retire from the struggle, they win enormous victories for themselves. We have just experienced that during the neoliberal regression, which undermined democracy along with the huge robbery. That’s a basic factor in the surge of “illegitimate authority” in today’s declining democracies, and in the pervasive anger, resentment and distrust of authority.

There is of course a lot to say about why and how this stunning victory was achieved, but that goes beyond the bounds of this discussion. We should, however, be aware of the fraudulence of standard shibboleths like “letting the market reign” and other phrases that barely count as caricatures.

The “boundaries” of this triumph of illegitimate authority can only be set by an engaged public, just as happened in the ‘30s and at other periods of history when the “masters” were somewhat tamed. There are no general answers to questions about appropriate measures. There are general guidelines and aspirations, but tactical decisions depend on circumstances. And they are not to be disparaged as “merely tactical.” Those are the decisions on which people’s lives depend — in the present era, even survival.

*Surveys reveal that an overwhelming majority of Americans want to see major changes to the country's political system. How can we fix the U.S. political system? What rules, for instance, need to be changed?*

I don’t feel confident about what the majority want. Furthermore, what people want is shaped by the range of options they perceive. These, in turn, are largely structured by the reigning institutions, which are in substantial measure in the hands of the “masters of mankind.”



For example, today the options are “get a job or starve,” so getting a job is perceived to be one of the highest goals in life. In the early days of the industrial revolution, Americans regarded “getting a job” as an intolerable attack on human rights and dignity. They understood that it meant subordinating yourself to a master for most of your waking hours. And they had alternatives in mind. The slogan of the Knights of Labor, the first great labor organization, was that “those who work in the mills should own them.” Anything less than that was intolerable.

Meanwhile farmers in what was then mostly an agrarian country sought to create a “cooperative commonwealth” in which farmers would work together, free from the northern bankers and market managers. That’s the authentic populist movement, which began to establish contacts with the Knights. Their efforts were crushed by state and private violence, another defeat of radical democracy. And “what people want” then changed, as the options they could envision reduced.

The task of organizers and activists is first of all to break the fetters of ideological control and to help people understand that there are ways of looking at the world that are different from those constructed by the masters and their ideological institutions. That will enable changes in what people want. Then come the crucial questions of what should be changed, and how.

*The climate crisis is intensifying. To take just a few random examples, heat waves are shattering records across major sections of the United States and a recent report on France’s drought shows that climate change is “spiraling out of control.” Unsurprisingly, climate protests worldwide have become more common and more aggressive. Do disruptive climate protests help or hinder the acceleration of a sustainable transition?*

Here we face difficult questions of tactics, which as always are of critical importance. What kinds of tactics will bring more people to become actively engaged in fending off the Sixth Extinction, and saving human society from the imminent disaster to which the masters are driving it? And what tactical choices will undermine this essential goal by alienating people? There’s no algorithm, no general answer. It has to be thought through carefully. There will be different answers in different places and times.

We cannot stress often enough, or intensely enough, how critical this matter is. We are hurtling to disaster at a terrifying rate, sharply accelerated by recent

events. The Russian invasion of Ukraine had an enormously consequential effect on fossil fuel production, which will soon destroy us if not curbed. The war reversed the limited steps to avert the catastrophe. If that is permitted to continue, we are doomed.

*Is there a reason to suspect that the next stage of economic development, based perhaps on a green revolution, will actually have greater legitimacy and be more democratic than the present socio-economic order?*

A prior question is whether there will be a next stage of economic development. Or, in fact, a next stage of human history at all aside from *saute qui peut*: Grab what you can for yourself and maybe escape the destruction and chaos by hitching a ride on Elon Musk's last spaceship to Mars.

The next stage will be either that, or it will be a green revolution, a real one: no greenwashing, none of the fakery in which the fossil fuel and financial industries are highly skilled. We know what has to be done and can be done, feasibly. The means are available. What is in question is the will and commitment.

If we can make it that far, there are lots of reasons to expect that an authentic green revolution can lead to a much more humane social order, and a much better life.

Our choice, and not much time to delay.

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books are *Optimism Over Despair: Noam Chomsky On Capitalism, Empire, and Social Change* (2017); *Climate Crisis and the Global Green New Deal: The Political Economy of Saving the Planet* (with Noam Chomsky and Robert Pollin as primary authors, 2020); *The Precipice: Neoliberalism, the Pandemic, and the Urgent Need for Radical Change* (an anthology of interviews with Noam Chomsky, 2021); and *Economics and the Left: Interviews with Progressive Economists* (2021).