SUPREME COURT? OH WOE IS US

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by Professor Roosevelt Fitzgerald

I guess by now we're all ready for a lesson in history and, believe it or not, we've just been presented with a situation which is ideally suited for such a lesson.

By now, I'm sure, everybody, even the NCAA, has heard about the retirement of Justice Brennan from the United States Supreme Court. I cannot write, in this publication, what my first reaction/response to that news item was. Actually, only two words composed it. The first word was "Oh." You'll have to figure out what the second was.

After hearing the announcement, I sat there and thought of the present makeup of the Court and even as I did so, I wished I hadn't. Then, to make matters worse, I recalled that "Read My Lips" Bush would be submitting the name for the replacement. Even with the current composition of the Court we have witnessed major erosions of civil rights gains of the 1950s and '60s. Recent appointments have moved the Court further to the right than it has been since our nation came of age during the civil rights movement.

To even begin to appreciate and understand the importance of Justices to the Supreme Court, especially in terms of how such appointments affect black people, we should at least be vaguely familiar with two Supreme Court decisions: Marbury vs Madison (1803) and Dred Scott vs Sanford (1857) and one piece of congressional legislation: the Missouri Compromise (1820). More specifically, we should brush the dust off our memories of Plessy vs Ferguson (1896) and Brown ve Board of Education (1954).

Almost two hundred years of history comes into play in the matter of selection/appointment. In analyzing the composition of the U.S. Constitution as originally drafted and accepted, in order to be an active citizen in the new nation one needed to be (1) free, (2) male, (3) white, (4) 21 or older and (5) a property owner. In many ways the domestic history of the United States since then has been a chronicle of the efforts of those excluded working to become included. The Supreme Court has played a vital role in those efforts.

I suppose as good a place as any to start would be the closing weeks of John Adams' term as President of the United States. He was the second President and the first to be elected. George Washington had been appointed by the delegates to the Philadelphia Convention. Among Adams' final official acts as President was his appointment, on January 20, 1801, of John Marshall as Chief Justice of the Supreme Court. Just over a month later, following the passage of the Judiciary Act, which reduced the number of Supreme Court Justices back to five, a series of events were set into motion which would have an on-going effect on our judicial system. President Adams exploited the Act for political purposes. In what has become known as the "midnight appointments," the President created a circumstance which would cause his successor, Thomas Jefferson, to respond in such a way as to initiate a case which would have far-reaching results.

Right up until 9 p.m. on March 3, 1801, the night before Thomas Jefferson was inaugurated third President of the United States, Adams appointed judges and other court officials. Obviously, Jefferson did not appreciate the tactic of Adams. Inshort, Jefferson's first years in office were plagued with problems with the Judiciary branch of goernment. One on-going problem reached back to the "midnight appointments" of Adams and finally began to come to a head on February 24, 1803--almost two years after his inaugural when Jefferson ordered Secretary of State Madison to withhold from William Marbury the signed commission of his appointment as justice of the peace of the District of Columbia. The commission had been made by Adams on March 2, 1801 under the Judiciary Act of 1801 and part of his "midnight appointments" of Federalists to judiciary offices.

Once Marbury discovered what Jefferson had done, he attempted to have it overturned by suing for a writ of mandamus which would compel the delivery of his commission to the appointed judgeship. Chief Justice Marshall, who had also been appointed by Adams, dismissed Marbury's suit on the ground that the court lacked jurisdiction. It was a calculated strategy with the hope of avoiding an open struggle with the executive branch which would have been responsible for enforcing the writ. Clearly, the President would have been put in a kind of "catch 22" position by being the party which caused the commission to be withheld and by becoming the party with the responsibility of enforcing a writ which would have demanded that the commission be made.

The case of Marbury vs. Madison, however, is remembered for another more important reason. It was the first time, in the short history of the country, that the Supreme Court ruled that an act of Congress was unconstitutional. Justice Marshall declared that Section 13 of the Judiciary Act of 1789, empowering the court to issue such a writ as the aforementioned, was contrary to the Constitution and therefore invalid.

Our government has three branches: the legislative, the judicial and the executive. The first makes the laws, the second interprets and the third enforces. By virtue of the Marbury case, the second branch established that it had the authority to invalidate a law enacted by the first.

In 1820, as the question of slavery became more central in the domestic affairs of the nation, the Missouri Compromise was passed by Congress. In 1819 when the applications of Missouri and Maine for admission to statehood went before Congress, there were 22 states in the Union and there were an equal number of slave and free. National politics was dominated by the question of slavery with northern states generally opposing it and its spread and southern states the opposite. From the turn of the century efforts had been made to maintain a balance between slave and free states and even though that had been accomplished, the north had gained the upper hand in the House of Representatives due to more rapidly increasing population. The south and slavery was hampered by the Three Fifths Compromise (Article I, Section 2, Paragraph 3) which counted only three-fifths of the black population of those states in determining representation to the Congress.

To gain admission to the Union for Maine and Missouri would involve a no-holds battle. Both sides hoped to gain the ascendancy and set the tone for future admissions. Each represented its case in the form of Admendments. First, there was the Tallmadge Amendment which was only partially acceptable but was voted down in the Senate. Second, there was the Taylor Amendment but it also was defeated. Finally, the Thomas Amendment was introduced and approved by both Houses of Congress. It provided for the admission of Missouri as a slave state and for the prohibition of slavery in the territory of the Louisiana Purchase north of the line 36°30'. Maine would be admitted as a free state.

The Missouri Compromise, ratified by Congress, restricted the spread of slavery and slaveholding interests did not like it. They had to live with it and did so for the next thirty seven years and the repudiation of it would bring the nation a step closer to the Civil War.

We'll find out about that the next time.