

What Hath Roberts Wrought?

By Lester Jackson

In protecting deceit of the people, the Chief justice has committed a frontal assault on the democratic process, smashing to smithereens his grandiloquent bromide disavowing Court vigilance regarding their alleged political choices.

Collateral damage has resulted from Chief Justice Roberts' validation of ObamaCare's assault on individual freedom, the economy, and the country. The comity and unity of the law's opponents have been shattered, as they have been bitterly divided between his critics and defenders.

For example, apologist Matthew J. Franck attacked Committee for Justice President Curt Levey for criticizing Roberts: "[No One Ever Turns On You Quite Like Your Friends](#)." This suggests that Levey turned on Roberts rather than Roberts turning on *his* own friends, those who enthusiastically and actively supported his nomination -- figuratively [stabbing them in the back](#) and literally leaving them in [shock](#).

Levey's [comment](#) on the ObamaCare decision stated, in part: "Obama and company's attempt to cow the Supreme Court succeeded ... the pressure apparently got to Roberts," who, many have argued, changed his vote as a result of the pressure. Franck labels this the "nadir for commentary on Roberts." Franck prefers to take seriously what he calls the "bravo" possibility that Roberts acted out of principle.

Using blunt language, Franck makes clear two "possibilities": Roberts is a dishonest and corrupt coward who sold his soul "for love from the people who have attacked him for the last seven years," or he courageously and sincerely acted on principle. To accept the latter, this brilliant lawyer had to actually believe:

1. Congress constitutionally enacted what was unconstitutional. It had no power to impose the individual mandate *per se*, but it constitutionally exercised its tax power as a bludgeon to compel indirectly acceptance of what it had no power to compel straightforwardly -- and despite its repeated and explicit denial that it was imposing a tax and would raise no revenue if everyone complied.
2. The Act was simultaneously not a tax and a tax -- as stated by the dissent, "the very same textual indications that show this is not a tax under the Anti-Injunction Act show that it is a tax under the Constitution. That carries verbal wizardry too far[.]"
3. It is not the Court's "job to protect the people from the consequences of their political choices," except of course when it is the Court's job, which is to not "abdicat[e] in matters of law."

Contrary to the wishful thinking of Roberts' defenders, these points reveal clearly and precisely his penchant for the have-it-both-ways sloganeering characteristic of politicians responding to political pressures.

"Not Our Job"?

The "not our job" point is especially disingenuous and grating. Can Roberts have forgotten by Thursday that, on Monday, the court (1) [invalidated the sentencing policy choices of 29 jurisdictions](#) for the benefit of convicted murderers, while [simultaneously sentencing](#) innocent, law-abiding citizens to death; and (2), as characterized by Justice Scalia's dissent, substantially [invalidated](#) Arizona's attempt to protect its "citizens under siege," by holding that the state "contradicts federal law by enforcing" federal law? Was Roberts unaware that, on the very morning he pontificated about it being "not our job to protect the people from the consequences of their political choices," he joined a holding doing just that: [declaring](#) that Congress, which established the Congressional Medal of Honor, had no constitutional power to protect the integrity of that award allegedly because there is a constitutional right for anyone to falsely claim he has received military decorations? And it is safe to say that the Stolen Valor Act far more likely reflected popular choice than a law enacted over strong widespread opposition.

Perhaps Roberts felt he was being consistent -- in the defense of lying. After all, the import of the non-tax tax was that the proper way for proponents of unpopular legislation to obtain its enactment was to lie about what it was. Thus, although the president and all advocates of ObamaCare insisted that they were not enacting a tax, Roberts would rescue them by saying they were lying about what they were doing, which is perfectly okay with him. Similarly, if someone wants to lie about receiving the highest military honors, that's okay, too.

In protecting deceit, Roberts smashes to smithereens his grandiloquent bromide disavowing Court vigilance regarding supposed political choices of the people. How can the people be held responsible if they have no idea what they are choosing because the Supreme Court holds that it is constitutional for politicians to get elected and then enact legislation by lying -- first, about what they are going to do; second, about what they are doing in office; and third, about what they have done? If the likes of John Roberts are not going to hold elected legislators accountable for their actual words, the people should not be lectured about "consequences of their political choices." Consumer protection laws enable people to know the truth about privately made products they buy. Now Roberts says it doesn't matter how flagrantly the public legislation manufacturer lies about *its* product; he will tell us what it really is afterward, and if we are too dumb to understand the misrepresentation in advance, that's too bad.

Roberts not only has failed in his duty to protect individual liberty against a power-hungry government, but he has undermined the very ability of the people to make political choices and thereby further corrupted the democratic process. What's the point of voting if there is no way of knowing what the choices are? Referring to "the problem of having political parties promise the voters sunshine before the elections, [but] delivering moonshine afterward," the late Jude Wanniski [warned](#): "Democracy cannot work if politicians do not keep most of their promises." If moonshine can be [deadly](#), what Roberts saved was doubly deadly...for freedom *and* for democracy.

Can the highly educated, trained, experienced, and sophisticated chief justice believe, for one second, that the voters are responsible for making an informed political choice to purchase ObamaCare moonshine? Can Roberts be unaware that this moonshine was rammed down their throats over strong and consistent public opposition, with the aid of a 60th Senate cloture vote obtained by [probable voter fraud](#), fast and loose abuse of

legislative rules, and intimidation and bribery of both legislators and major interest groups, including the AMA, as well as large drug and insurance companies?

In addition to corrupting the democratic process by giving the Court's imprimatur to lying to the voters, in shifting blame for ObamaCare to "the people," Roberts has virtually slandered them. They were not responsible at all for this law.

Also, does Roberts believe that there was a referendum approving the law or that the November election will be a referendum on ObamaCare? Does he fail to realize that elections are determined by multiple issues and events? In lecturing the people about the choices they make, is he possibly unaware that not even the legislators who voted for the law knew what they were approving? Referring to another Act of Congress, Justice Stevens [objected](#) to assuming "that a substantial number of legislators were sufficiently familiar with [the Act] to realize that somewhere in that vast piece of hurriedly enacted legislation there was a provision that changed the ... Program." Finally, if Congress leaves ObamaCare standing, does Roberts really think that the people will be to blame? There is no space here to repeat it, but Roberts should consult Justice [Scalia's political science primer](#) cautioning against drawing conclusions from congressional inaction.

This, then, is Franck's idea of a man of principle?!

In truth, when it comes to the Court's "job," Roberts knows as well as anyone that the Court, with far less justification than in the ObamaCare case and often with no justification at all other than the "[raw judicial power](#)" of five votes, has invalidated close to 200 federal laws and hundreds of state laws, without waiting for the people to undo the consequences of their alleged political choices.

One final and conclusive point. For decades, when unable to dig up dirt on political opponents who have done nothing improper, double-standard leftist partisans have abusively brandished the weapon of "appearance of impropriety." However, in the case of judges, the appearance standard is [codified](#) by statute. Although there is not -- yet -- 100% proof that Roberts acted improperly, the evidence [is substantial](#).

Based on both its non-credible internal contradictions amounting to double-talk and strong indications that Roberts' creation resulted from political pressure, there can be little doubt, especially given its historic impact, that this will be regarded as a classic illustration of how [judicial interpretation has been turned into a scam](#). At a minimum, abundant evidence [already indicates](#) that the statute's appearance of impropriety standard applies to Roberts, whose "impartiality might reasonably be questioned."

There is no longer any basis to have any confidence in the impartiality or probity of the chief justice of the United States.

Lester Jackson, Ph.D., a former college political science teacher, views mainstream media [suppression of the truth as essential to harmful judicial activism. His recent articles are collected \[here\]\(#\).](#)