



Opinions

The Supreme Court's 30 years war is finally over

By [Hugh Hewitt](#)

The confirmation of Justice Brett M. Kavanaugh brings to the Supreme Court a fifth conservative, and the reconfigured court is about to raise the curtain on a new age. The “30 years war” for the court, begun with the rejection of Robert H. Bork’s nomination, has been won.

Chief Justice John G. Roberts Jr. and Justices Clarence Thomas, Samuel A. Alito Jr., Neil M. Gorsuch and Kavanaugh compose a natural, stable and hopefully predictable coalition. Yet liberals should not fear an age of “activism,” but rather look forward to the end of the madcap judicial imperialism that began with the arrival of Chief Justice Earl Warren and on which the curtain has hopefully come down with the retirement of Justice Anthony M. Kennedy.

For six decades the court has been assigning to itself an ever larger and more powerful role in the nation’s life. It has gone from being the [umpire of disputes](#) — the metaphor popularized by Roberts in his confirmation hearing — to a role more closely resembling that of a commissioner of a major sports league. Commissioners such as the National Football League’s Roger Goodell and the National Basketball Association’s Adam Silver are less arbitrators of disputes than czars of their domains. And that is what the court has morphed into: the commissioner of the United States Politics League. This must end.

To be sure, the court did need to act as “commissioner” when the promise of the 14th Amendment had been systemically ignored by Jim Crow. The court itself had blessed the monstrosity of segregation and needed to reverse its terrible error. The ruling in *Brown v. Board of Education*, though itself a magnificent decision, unfortunately triggered a sort of intoxication among the then-serving and subsequently confirmed justices. Collectively, they began to fashion for themselves a role far greater than that imagined in the Founding Era. The court wanted and took for itself power.

Once the court became the commissioner of our national life, with final say over any issue or dispute it maneuvered before it, it was bound to become a battlefield. The battle for the court has been fierce, and scarring.

The framers intended political disputes to be settled in and by Congress and the president — elected officials who could be replaced. Now, perhaps — hopefully — a new era of judicial modesty is opening. The court should retreat from absurdly insisting on creating a perfect society with measured and judicially mandated outcomes, “scientific” precision, balancing tests and invented doctrines, all

administered by federal judges. The justices should stop “judicializing” politics and insist that if the political branches do not resolve a controversy, that controversy will not be resolved.

The court should neither “hurry up” nor obstruct social change. It should not try to redirect or dam the mighty river “Culture,” and it should cease trying to vacuum away the delicate compromises local, state and national legislators make between the deeply felt religious beliefs of a vast and diverse people. Rather, it should read closely the laws that Congress passes, hold them up to the Constitution’s guarantees and refuse the efforts of elected officials to punt power to bureaucracies.

The Constitution was debated and agreed to largely by farmers (brilliant farmers, of course, but men of the land and its unavoidable rules of growth and harvesting, birth and death, work and return on work), then sent to conventions in the states largely made up of more farmers. It was widely debated before it was adopted. It is not a secret society’s hidden sacred text. It’s a great design, a rule book, and it can be read and understood by young adults of average intelligence.

We live in a complex world, full of incredibly difficult problems and rapidly emerging threats. Everything is accelerating. It is thus tempting to pine for a Commissioner of Everything, a King Solomon for every situation.

But that isn’t freedom. It isn’t the Constitution’s design. It isn’t a republic of liberty.

The unlikeliest of people to work a revolution of modesty is President Trump, but that is what he has done. The battle to contain the court has been won. And a court modest about everything but the protection of individual liberties is and will remain Trump’s greatest achievement.

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