

# Tucker Carlson and the Cult of the Court

“The Supreme Court,” said Tucker Carlson on the October 12 edition of his Fox talk show, “exists only to determine whether the laws that our politicians write are consistent with the Constitution of the United States. That’s why we have a Supreme Court. It’s the only reason we have it.”

Perhaps Tucker should keep a copy of the Constitution, maybe even a history book or two, on his desk (or on the table in his show’s writers’ room) to help him avoid saying stupid things like that in public.

“Judicial review” of laws for the purpose of determining their constitutionality or unconstitutionality is far from the “only” reason for the Court’s existence. In fact, the practice isn’t even mentioned in the Constitution itself, and wasn’t firmly established until 1803 when Chief Justice John Marshall asserted (in *Marbury v. Madison*) that “a law repugnant to the Constitution is void, and that courts, as well as other departments, are bound by that instrument.”

Per Article III of the Constitution, the Supreme Court’s power extends to “all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority,” as well as to cases involving ambassadors and diplomats, maritime cases, cases to which the US is a party, suits between states, suits between citizens of different states, suits involving foreign states, etc.

The Court has a pretty big bailiwick, covering various kinds of litigation that turns on applications of statute or treaty, as well as appeals of supposed judicial error in lower courts, rather than on questions of constitutionality *per se*.

But where constitutionality IS concerned, it’s far from obvious that the Court has a very good record *vis a vis* “judicial review.”

Between 1857 and 1954, for example, the Court went from black people having “no rights which the white man was bound to respect” (*Dred Scott v. Sandford*) to “separate but equal” (*Plessy v. Ferguson*) to “separate educational facilities are inherently unequal” (*Brown v. Board of Education*). While the 14th Amendment did come into play between the first two of those three cases, it’s pretty clear that each turned more on the popular sentiments of the times than on the text or meaning of the Constitution.

Trusting the Supreme Court to defend our rights via “judicial review” is a fool’s game. We need look no further for evidence of that than the grandstanding and political wheedling that accompanies every vacancy on the Court. Republicans and Democrats both demand

justices who will find a way, some way, any way, to shoehorn their policy goals INTO the Constitution, not justices who will apply the law without passion or prejudice.

The Cult of the Court is a shiny thing, but in the end the Court is just a court, and its members are just politicians in black dresses. The best we can hope for from them is that they'll give due attention to their real jobs and resist the political temptations of "judicial review."