

# Brett Kavanaugh Threatens Racial Justice & Voting Rights

Judge Brett Kavanaugh's disturbing record on racial issues would put the Voting Rights Act in further jeopardy if he were to be confirmed to the Supreme Court, argues Marjorie Cohn.

By **Marjorie Cohn**



Judge Brett Kavanaugh's record on racial issues and his answers to members of the Senate Judiciary Committee during his confirmation hearings have raised red flags about how he would rule on voting rights if confirmed to the U.S. Supreme Court.

During his hearing, Kavanaugh bragged about hiring people of color as law clerks and said he decried the use of the "n" word. But when Sen. Kamala Harris (D-CA) asked him whether he agreed with President Donald Trump that there was blame on both sides during the Charlottesville neo-Nazi rally, Kavanaugh refused to say "no."

Sen. Mazie Hirono (D-HI) queried Kavanaugh about an amicus brief he co-authored with Robert Bork in a [1999 case](#) in which they argued it was unconstitutional to prevent non-Native Hawaiians from voting for trustees of the Office of Hawaiian Affairs, a public agency set up in 1978 to defend the rights of Native Hawaiians..

Hirono said Kavanaugh's views on Native Hawaiians are "factually wrong" and incredibly offensive. Hirono [told the nominee](#): "I think you have a problem here. Your view is that Hawaiians don't deserve protections as Indigenous people under the Constitution and your argument raises a serious question on how you would vote on the constitutionality of programs benefiting Alaska natives. I think that my colleagues from Alaska should be deeply troubled by your views."

[In a Wall Street Journal op-ed](#), Kavanaugh called the program "Hawaii's naked racial spoils system." Harris asked Kavanaugh whether he knew that "racial spoils system" is commonly used by white supremacists. Kavanaugh said he didn't.

Sen. Cory Booker (D-NJ) confronted Kavanaugh about another racist expression he had used, this time while working in the George W. Bush administration. Booker queried the nominee about his characterization of an affirmative action program as "a naked racial set-aside." Kavanaugh had used the phrase in an email criticizing an affirmative action program under consideration by the Supreme Court. Like Hirono, Booker risked censure, discipline or removal by releasing

this email, which had been marked “committee confidential.”

## **Voting Rights Act in Jeopardy**

Kavanaugh has only decided one voting rights case. In 2012, he wrote the opinion for a three-judge panel in [South Carolina v. United States](#), which upheld a voter ID law. The Obama Department of Justice had opposed the law, finding it violated the Voting Rights Act because it could disenfranchise tens of thousands of non-white voters who were less likely than whites to have identification.

The Justice Department presented evidence demonstrating that the South Carolina law disproportionately and materially burdened non-white voters. Expert testimony showed that Black voters were more than twice as likely as white voters not to have the required identification.

But Kavanaugh assigned more weight to elected officials. He bought into the argument that the law would prevent voter fraud, even though the state introduced no evidence to support that claim.

The landmark [1965 Voting Rights Act](#) prohibits any voting practice or procedure that “results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color.”

A person who claims that a county, municipal or state law violates the Voting Rights Act need not prove the law was enacted with racist intent. He or she need only prove the law would have the effect of making it more difficult for a person of color to vote.

NAACP President Cornell Brooks called the Voting Rights Act “the crown jewel of civil rights” at Jeff Sessions’s confirmation hearing for attorney general.

In the 2013 case of [Shelby County v. Holder](#), the Supreme Court struck down Section 5 of the Act, which established a formula for pre-clearance of jurisdictions with a history of racial discrimination.

“We’ve seen nothing less than a Machiavellian frenzy of voter disenfranchisement from one end of the country to the other” since Shelby was decided, Brooks said.

In the South Carolina voter ID case, Kavanaugh had declined to join a separate concurrence signed by the other two judges on the panel, reaffirming the “vital function that Section 5 of the Voting Rights Act has played here.”

Voter fraud is used as a pretext to suppress voting rights. A [2014 study reported by The Washington Post](#) found only 31 incidents of voter fraud out of more than 1 billion ballots cast from 2000 to 2014.

“From Ohio to Wisconsin to Georgia, the vestiges of Jim Crow have resurfaced under a new cloak, unchecked and unabated,” said Rep. Cedric Richmond (D-Louisiana), chairman of the Congressional Black Caucus, in a statement to the senators at Kavanaugh’s confirmation hearing.

Indeed, since 2010, 23 states have enacted more restrictive voting laws, according to the Brennan Center.

Sen. Sheldon Whitehouse (D-Rhode Island) cited two examples – North Carolina and Texas – while questioning Kavanaugh.

In 2016, the U.S. Court of Appeals for the Fourth Circuit in NAACP v. North Carolina struck down North Carolina’s 2013 voting law that established a photo ID requirement and eliminated same-day registration, out-of-precinct voting and preregistration of high school students. After requesting data on voting patterns of different races, North Carolina legislators had written a law that would “target African-Americans with almost surgical precision,” the court said.

And in Veasey v. Perry, a U.S. District Court held that Texas’s voter ID law created an unconstitutional burden on the right to vote, had an impermissibly discriminatory effect on Latinos and African Americans, and was imposed with an unconstitutional discriminatory purpose. The court also found the provision in question constituted an unconstitutional poll tax.

After reciting Texas’s dismal history of denying access to the polls, the court noted, “This history describes not only a penchant for discrimination in Texas with respect to voting, but it exhibits a recalcitrance that has persisted over generations despite the repeated intervention of the federal government and its courts on behalf of minority citizens.”

Early last year, Attorney General Sessions reversed the Obama Justice Department’s policy of challenging voter ID laws. Now the Justice Department intervenes in favor of states that enact measures to restrict equal ballot access.

In light of the proliferation of laws that pose obstacles to voting, the Supreme Court will have the opportunity to further eviscerate the Voting Rights Act.

Conservative organizations continue to cry “voter fraud” as a foil to enact laws that suppress voting rights for people of color. Kavanaugh’s entry onto the nine-member Court would make five solidly right-wing justices. The fate of the Voting Rights Act hangs in the balance.

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## Consortium News Unveils New Logo

Consortium News on Thursday unveils a new logo, the first redesign of the publication's nameplate in seven years.

The new design changes the name of the publication in the logo from Consortiumnews.com to its more commonly used name, Consortium News. The site's url is moved to the bottom left in white against black, joining the tribute to Consortium's founder Robert Parry on the right.

The updated design retains the essential aspects that harken back to an earlier age in American journalism, namely the 1970s, when reporters still banged away on typewriters and when Bob Parry began his career. Hence the font is still American Typewriter and the red and black typewriter ribbon remains, though in a sleeker form.

Journalism in the 1970s in the U.S. followed anti-Establishment mass movements against the war in Vietnam, for women's equality and civil rights for African Americans that led to an era of critical U.S. reporting that took an adversarial position towards power and held the powerful to account. It was a time of reporting on the abuses of the U.S. intelligence agencies that sparked the Church Committee hearings; of raw reporting from the ground in Vietnam that helped turn the country against the senseless slaughter and of reporting that ultimately forced a corrupt president to resign because of real crimes committed.

Today the vastly consolidating corporate media since those days largely promotes the agenda of a corporate-controlled government, particularly abroad. Rather than using the very different power of the press to hold the powerful up to scrutiny, too many journalists instead live vicariously through the powerful people they cover.

Consortium News's mission is to revive and maintain that earlier era of non-partisan journalism that represented the public's interest against those in power who would abuse it.

The previous logo was created by Bob Parry and his son, Sam Parry. The new one unveiled today is by Dino Zonic.

We hope you like the new look.

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## Why the U.S. Seeks to Hem in Russia, China and Iran

America's three principal adversaries signify the shape of the world to come: a post-Western world of coexistence. But neoliberal and neocon ideology is unable to accept global pluralism and multipolarity, argues Patrick Lawrence.

**By Patrick Lawrence**

*Special to Consortium News*



The Trump administration has brought U.S. foreign policy to the brink of crisis, if it has not already tipped into one. There is little room to argue otherwise. In Asia, Europe, and the Middle East, and in Washington's ever-fraught relations with Russia, U.S. strategy, as reviewed in [my previous column](#), amounts to little more than spoiling the efforts of others to negotiate peaceful solutions to war and dangerous standoffs in the interests of an orderly world.

The bitter reality is that U.S. foreign policy has no definable objective other than blocking the initiatives of others because they stand in the way of the further expansion of U.S. global interests. This impoverished strategy reflects Washington's refusal to accept the passing of its relatively brief post-Cold War moment of unipolar power.

There is an error all too common in American public opinion. Personalizing Washington's regression into the role of spoiler by assigning all blame to one man, now Donald Trump, deprives one of deeper understanding. This mistake was made during the steady attack on civil liberties after the Sept. 11 tragedies and then during the 2003 invasion of Iraq: namely that it was all George W. Bush's fault. It was not so simple then and is not now. The crisis of U.S. foreign policy—a series of radical missteps—are systemic. Having little to do with personalities, they pass from one administration to the next with little variance other than at the margins.

Let us bring some history to this question of America as spoiler. What is the origin of this undignified and isolating approach to global affairs?

It began with that hubristic triumphalism so evident in the decade after the Cold War's end. What ensued had various names.

There was the "end of history" thesis. American liberalism was humanity's highest achievement, and nothing would supersede it.

There was also the "Washington consensus." The world was in agreement that free-market capitalism and unfettered financial markets would see the entire planet to prosperity. The consensus never extended far beyond the Potomac, but this sort of detail mattered little at the time.

The neoliberal economic crusade accompanied by neoconservative politics had its intellectual ballast, and off went its true-believing warriors around the world.

Failures ensued. Iraq post-2003 is among the more obvious. Nobody ever planted democracy or built free markets in Baghdad. Then came the "color revolutions," which resulted in the destabilization of large swathes of the former Soviet Union's borderlands. The 2008 financial crash followed.

I was in Hong Kong at the time and recall thinking, "This is not just Lehman Brothers. An economic model is headed into Chapter 11." One would have thought a fundamental rethink in Washington might have followed these events. There has never been one.

The orthodoxy today remains what it was when it formed in the 1990s: The neoliberal crusade must proceed. Our market-driven, "rules-based" order is still advanced as the only way out of our planet's impasses.

## **A Strategic and Military Turn**

Midway through the first Obama administration, a crucial turn began. What had been an assertion of financial and economic power, albeit coercive in many instances, particularly with the invasions of Iraq and Afghanistan, took on further strategic and military dimensions. The NATO bombing campaign in Libya, ostensibly a humanitarian mission, became a regime-change operation—despite Washington's promises otherwise. Obama's "pivot to Asia" turned out to be a neo-containment policy toward China. The "reset" with Russia, declared after Obama appointed Hillary Clinton secretary of state, flopped and turned into the virulent animosity we now live with daily. The U.S.-cultivated coup in Kiev in 2014 was a major declaration of drastic turn in policy towards Moscow. So was the decision, taken in 2012 at the latest, to back the radical jihadists who were turning civil unrest in Syria into a campaign to topple the Assad government in favor of another Islamist regime.

Spoilage as a poor excuse for a foreign policy had made its first appearances.

I count 2013 to 2015 as key years. At the start of this period, China began developing what it now calls its Belt and Road Initiative—its hugely ambitious plan to stitch together the Eurasian landmass, Shanghai to Lisbon. Moscow favored this undertaking, not least because of the key role Russia had to play and because it fit well with President Vladimir Putin's Eurasian Economic Union (EAEU), launched in 2014.

In 2015, the last of the three years I just noted, Russia intervened militarily and diplomatically in the Syria conflict, in part to protect its southwest from Islamist extremism and in part to pull the Middle East back from the near-anarchy then threatening it as well as Russia and the West.

Meanwhile, Washington had cast China as an adversary and committed itself—as it apparently remains—to regime change in Syria. Three months prior to the treaty that established the EAEU, the Americans helped turn another case of civil unrest into a regime change—this time backing not jihadists in Syria but the crypto-Nazi militias in Ukraine on which the government now in power still depends.

That is how we got the U.S.-as-spoiler foreign policy we now have.

If there is a president to blame—and again, I see little point in this line of argument—it would have to be Barack Obama. To a certain extent, Obama was a creature of those around him, as he acknowledged in his interview with Jeffrey Goldberg in *The Atlantic* toward the end of his second term. From that "Anonymous" opinion piece published in *The New York Times* on Sept. 5, we know Trump is too, to a greater extent than Obama may have feared in his worst moments.

The crucial question is why. Why do U.S. policy cliques find themselves bereft of imaginative thinking in the face of an evolving world order? Why has there been not a single original policy initiative since the years I single out, with the exception of the now-abandoned 2015 accord governing Iran's nuclear programs? "Right now, our job is to create quagmires until we get what we want," an administration official told *The Washington Post's* David Ignatius in August.

Can you think of a blunter confession of intellectual bankruptcy? I can't.

### **Global 'Equals' Like Us?**

There is a longstanding explanation for this paralysis. Seven decades of global hegemony, the Cold War notwithstanding, left the State Department with little to think about other than the simplicities of East-West tension. Those planning and executing American diplomacy lost all facility for imaginative thinking because there was no need of it. This holds true, in my view, but there is more to our

specific moment than mere sclerosis within the policy cliques.

As I have argued numerous times elsewhere, parity between East and West is a 21st century imperative. From Woodrow Wilson to the post-World War II settlement, an equality among all nations was in theory what the U.S. considered essential to global order.

Now that this is upon us, however, Washington cannot accept it. It did not count on non-Western nations achieving a measure of prosperity and influence until they were “just like us,” as the once famous phrase had it. And it has not turned out that way.

Think of Russia, China, and Iran, the three nations now designated America’s principal adversaries. Each one is fated to become (if it is not already) a world or regional power and a key to stability—Russia and China on a global scale, Iran in the Middle East. But each stands resolutely—and this is not to say with hostile intent—outside the Western-led order. They have different histories, traditions, cultures, and political cultures. And they are determined to preserve them.

They signify the shape of the world to come—a post-Western world in which the Atlantic alliance must coexist with rising powers outside its orbit. Together, then, they signify precisely what the U.S. cannot countenance. And if there is one attribute of neoliberal and neoconservative ideology that stands out among all others, it is its complete inability to accept difference or deviation if it threatens its interests.

This is the logic of spoilage as a substitute for foreign policy. Among its many consequences are countless lost opportunities for global stability.

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