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After 20 Years Justice Clarence Thomas Has Made His Imprint on the Supreme Court, Conservatism and the Black Experience in America

By Juan Williams

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It has taken twenty years on the Supreme Court for Supreme Court Justice Clarence Thomas to strip away the political filth that nearly buried him.

In 1991 his left-wing critics created a public image of Thomas as a monster. They trashed him as an Uncle Tom, Anita Hill's harasser and the vote on the Supreme Court that would end legal abortion in America.

Today Thomas is one of the two most powerful black men in government, second only to President Obama. And at 63, relatively young compared to his brethren on the court, he is established among the elite of American conservative legal thinkers with the possibility of another 20 years on the court ahead of him. He is already the nation's leading black conservative.

Thomas is also the best-known Justice on the entire Supreme Court, according to polls. His autobiography was a national best seller. A 2006 poll found that nearly half of the nation, 48 percent, now views him favorably as compared to 36 percent who have an unfavorable opinion. And he operates in a world where Gallup polling finds more black Americans self-identify as conservatives, 29 percent, than liberal, 24 percent.

Fifty years after the heart of the civil rights movement the bulk of black America, 43 percent, labels itself as moderate.

But for all those trends shifting his way, Justice Thomas remains a man to be scorned by the nation's liberals. The same left-wing that gave license to assaulting a bright but Republican and conservative young black man's reputation 20 years ago still dominates the black political, media and civil rights establishment. And they still hate Clarence Thomas.

I first saw the hatred in the months after Thomas was nominated. Liberal advocacy groups called me repeatedly looking for anything that could stop his confirmation. Did he beat his first wife? Did he pocket money from South Africa's apartheid government? One senate staff simply asked: "Have you got anything on your tapes we can use to stop Thomas?"

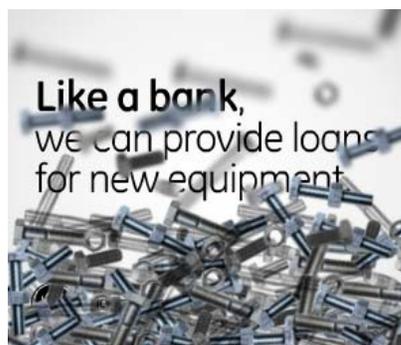
It was the start of a vicious political assault, a smear campaign that still dominates Thomas' public reputation. I came to understand it as a crusade by supporters of abortion rights. They felt justified in doing whatever they could to fight against right wing zealot's intent on denying American women the right to legal abortions. Kate Michelman, a leading abortion rights activist, said Thomas had views would lead "directly to the loss of a fundamental right for millions of American women and families."

Abortion rights groups had success in blocking the confirmation of conservative Robert Bork in 1987 by portraying him as a right wing opponent of abortion. But Michelman said Thomas' positions on abortion were "far more extreme" than Bork's. Michelman and other supporters of abortion rights feared Thomas's blackness was a distraction from the danger he posed as a fifth and deciding vote on the Supreme Court against legal abortion.

Abortion rights supporters particularly worried that Senate Democrats might give him a pass on his conservative political background because of political pressure to have a black man on the court.

In addition to calling me in their search for dirt to disqualify Thomas, the liberal establishment called Thomas's former co-workers, including Anita Hill. He hired her for two government jobs. He recommended her for a later job as a professor. She had never filed any complaint of sexual harassment against him. When the FBI agents and reporters from The Washington Post interviewed her about the nominee she had never mentioned any high-pressured sexual advances that amounted to harassment. The FBI agents did report that Hill "talked about {his} behavior," apparently sexual come-ons and off-color jokes shared among adults.

But Hill eventually came forward to testify about tidbits of conversation with sexual overtones. The Thomas nomination hearings took on a soap opera quality as they stretched into prime time, nightly television reality shows, featuring salacious talk about public hair on a Coke can and porn movies. During the hearings the reality of Thomas was swallowed up by a media storm of ceaseless rumors, and blinding personal attacks on him. The hearings gave Thomas' opponents a huge media canvass to paint him as the evil stand-in for any man who sexually harassed women at work and a puppet of the far right who was groomed and ultimately controlled by presidents Reagan and Bush.



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It was unfair to Thomas. He was a news source for me when I was the Washington Post White House correspondent and I knew he was often branded by conservatives as not really conservatives and not a team player. But the image created by his liberal opponents played to a history of racist slander against black men as sexual predators and intellectual weaklings. Thomas famously called the attack a "high-tech lynching." It was a different kind of 'lynching.' This one included black civil rights groups who felt obligated, as part of the liberal activist community, to join the battle to protect abortion rights.

Time, however, is on Clarence Thomas' side.

Thomas has taken advantage of the first 20 years of his lifetime appointment to the court to steadily repair his disfigured image. As the hearings fade into history Thomas' goal has been to shift his public image from the hateful, cartoonish ogre to an independent thinker, free from both liberal and conservative orthodoxy. Twenty years later, Justice Thomas defines himself as being his "own man."

He came to my 50th birthday party and afterwards one friend who talked with him called me to say, "They lied on that man." And in his court opinions, his book and his public appearances Thomas has defined himself on his own terms as a black nationalist in the self-reliant, proudly independent tradition of his hardworking Georgia grandfather, Myers Anderson.

The ice deliveryman raised Thomas to be the living proof that whites are wrong to assume black people lack intellect, discipline and the capacity for achievement. This 'up-by-the bootstraps' view of the best for black people is in the tradition of another Black Nationalist icon, Booker T. Washington whose bust is featured in Justice Thomas' Supreme Court chamber.

In his first ten years on the court Thomas famously told a 1998 meeting of the National Bar Association, an organization of black lawyers, that he has a "right to think for himself." It is a theme he articulated and refined over the last twenty years: "Nobody owns me."

At the bar association meeting Thomas put it this way: "It pains me deeply - more deeply than any of you can imagine - to be perceived by so many members of my race as doing them harm...I have come here not in anger or to anger, though my mere presence has been sufficient, obviously, to anger some, nor have I come to defend my views, but rather to assert my right to think for myself, to refuse to have my ideas assigned to me, as though I was an intellectual slave."

Thomas has long been a critic of the Supreme Court's 1954 Brown decision ending legal school segregation because he thinks while integration may be nice the real goal for all children should be the best quality school.

He has never been a fan of government set-aside programs or affirmative action because he does not believe that there is a government solution to racial bias. The solution, for Clarence Thomas, is education, economic strength and performance that command respect.

The black conservative tradition that Thomas claims shares roots in the black separatism and militancy of Malcolm X. And from his days as a college student, when Thomas mastered and even memorized Malcolm's speeches, he can still quote Malcolm X as an advocate of black self-reliance, self-determination and self-sufficiency. During one interview with me in the late 80s, he cited Malcolm X's words verbatim: "The American black man should be focusing his every effort toward building his own businesses and decent homes for himself. As other ethnic groups have done, let the black people, wherever possible, however possible, patronize their own kid and start in those ways to build up the black race's ability to do for itself. That's the only way the American black man is ever going to get respect."

Malcolm X on the Supreme Court might look a lot like Justice Thomas seeking racial equality as a matter of original Constitutional protections for all citizens and not on the basis of integration, affirmative action, busing or other race based remedies.

In his 446 opinions Thomas has defined himself as seeking the original intent of the Constitution. His understanding of race in America boils down to 'all men are created equal' and he refuses to allow the Constitution to be interpreted so as to make any racial distinction among Americans.

In cases touching on race that means he will not back court imposed schemes intended to remedy past discrimination.

For example, in 2007 he opposed a Seattle effort to manage the racial diversity of schools by limiting the transfer of students based on their race as a violation of equal protection in the Constitution. "If history has taught us anything it has taught us to beware of elites bearing racial theories," he wrote. He looked to be taking shots at white liberals when he offered a stinging appraisal about Justice Stephen Breyer's dissent by writing in a footnote: "Justice Breyer's good intentions, which I do not doubt, have the shelf life of Justice Breyer's tenure."

Similarly, in 2009 Justice Thomas opposed extending a provision of the Voting Rights Act requiring jurisdictions with a history of racial discrimination in voting to clear any changes in how they organized elections. Thomas appeared sensitive to the issue in his dissent but opposed the law as a matter of his conservative Constitutional principles. He wrote that the federal government has no Constitutional power to interfere in local elections without first finding evidence of racial discrimination.

In 2010 Justice Thomas gave a unique racial slant to his opinion repealing a Chicago law banning handguns. The case was brought in the name of a 76-year-old black man who said he wanted a gun to protect himself from black "gangbangers." Thomas made it clear that during the Reconstruction era blacks often had their guns confiscated by whites. On that basis, Thomas said the black man's right to have a gun was "essential to the preservation of liberty."

His fidelity to original interpretation of the Constitution extends to a case often cited by his critics as evidence that Thomas is out of touch with racial realities. A Louisiana prisoner was kicked and punched while handcuffed and shackled. His teeth were knocked loose and he sued under the Eighth Amendment protections against cruel and unusual punishment. Thomas told Senators during his confirmation hearings that he felt compassion for prisoners he saw outside his D.C. Court of Appeals courthouse and apparently citing the large number of black prisoners said he told whispered daily "but for the grace of God there go I."

But Thomas sided with the prison guards in the case. He argued in dissent that the Constitution's protection against harsh treatment applied only to sentencing and was not to be taken as a "code of prison regulations." He said the legal remedy might exist under other laws but was not intended to be the focus of the Eight Amendment. Again, Justice Thomas approach is to keep the Constitution simple in its protections of individual rights despite racial differences.

In his concurring opinion to 1995's Adarana Construction vs. Pena, a key affirmative action case, Thomas gave us a valuable insight of how he applies his philosophy of racial injustice to the cases he decides.

"There is a 'moral and constitutional equivalence' between laws designed to subjugate a race and those that distribute benefits on the basis of race in order to foster some current notion of equality. Government cannot make us equal; it can only recognize, respect, and protect us as equal before the law. That affirmative action programs may have been motivated, in part, by good intentions cannot provide refuge from the principle that under our Constitution, the government may not make distinctions on the basis of race."

One interesting exception has been Justice Thomas interpretation of free speech protections when it comes to the racially charged issue of cross burning. In 2003's Virginia vs. Black, he dissented from the majority who struck down a statute that banned cross burning. The only black man on the court cited the purpose of cross burning to intimidate and terrify black people and defended the state law as a reasonable limitation both in terms of its constitutionality and simple, human decency.

But in general Justice Thomas insists on eliminating racial distinctions in interpreting the Constitution on the theory that the law is to be applied without racial distinction. Despite the national history of white majority discrimination against blacks, Justice Thomas' approach is to pursue the law so as to protect the rights of people of all races.

His race neutral approach is a sharp contrast to race conscious programs approved to remedy past discrimination. He stands apart from liberals on the court and the legal strategy that drove the civil rights movement during the 20th century.

He believes, for example, that that the Interstate Commerce Clause in Article I of the Constitution has been too broadly applied in cases of racial discrimination. And for twenty years he has tried to narrow its interpretation. He is a Federalist, deferring to the power of state governments more often than the national government, a potentially dangerous tact given the past use of 'State's Rights' to defend the use of local laws denying equal rights to blacks.

None of this, however, is why he attracted such opposition to his nomination twenty years ago. His foes feared his stand on abortion and they were right. On the court he takes the position that the Constitution does not deal with the issue of abortion and it is up to the states to regulate or ban it as they please. With Thomas added to the conservative wing of the court the nation has seen a turn to more limits on abortion.

But that is not what defines Justice Thomas' first twenty years on the bench. It is his approach to dealing with America's racial divide that is blazing a new path for the 21st century.

His jurisprudence has added new racial dimensions to conservative legal thought and forced new strategic thinking among liberals. He has made his imprint on the Court, on conservatism and on the black experience in America.

Juan Williams is a writer, author and Fox News political analyst. His latest book is "Muzzled: The Assault On Honest Debate" (Crown/Random House) which was released in July. This opinion piece also appeared on TheRoot.com.

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