

Should the U.S. Supreme Court Usher in Social Change?

by DonaldScarinci@yahoo.com

While everyone agrees that the U.S. Supreme Court dictates the law of the land, many argue that it should stay out of [social issues](#). The issue recently resurfaced during the same-sex marriage debate.

Of course, this is not the first time the justices of the Supreme Court have been asked to make fundamental changes to our country's social institutions. In some cases, the legislative and executive branches gladly threw the controversial issues into the lap of the Supreme Court.

A few examples include:

- *Brown v. Board of Education*: The Supreme Court struck down laws requiring or permitting segregation in public schools according to race. It concluded that the doctrine of "separate but equal" had no place in the field of public education, and that separate educational facilities were inherently unequal.
- *Roe v. Wade*: The Supreme Court ruled that a criminal law banning abortion violated the right to privacy embodied in the Constitution. The justices concluded that the ["zone of privacy" guaranteed by the Constitution](#) is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.
- *Lawrence v. Texas*: The Supreme Court invalidated a Texas law criminalized consensual, adult homosexual intercourse as sodomy. The Court reasoned that homosexual couples should be free as adults to engage in private conduct in the exercise of their liberty under the Due Process Clause.

In each of the above cases, the Supreme Court overruled laws that were implemented by state legislatures and supported by large segments of the public. With regard to legalizing abortion, liberal Justice Ruth Bader Ginsburg believes the Court may have jumped in too soon and created a backlash. The Court "moved too far too fast.... The legislatures all over the United States were moving on this question," she said. "The Supreme Court's decision was a perfect rallying point for people who disagreed with the notion that it should be a woman's choice. They could, instead of fighting in the trenches legislature by legislature, go after this decision by unelected judges."

It remains to be seen whether the Court is willing to embrace its role as an agent of social change this time around. During oral arguments in the same-sex marriage cases, several justices raised questions regarding whether they should let the political process take its course. Chief Justice John Roberts specifically noted to opponents of DOMA that that "political figures are falling over themselves to endorse your side of the case," suggesting that the tide has already changed. In response, the lawyers highlighted recent [state laws banning](#) same-sex unions, which suggest that momentum is not building everywhere.