

# Democracies Never Last -- They Cause Their Own Demise

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- June 25, 2010, Wall Street Journal comment posted by Karl Loren
- [Karl Loren](#) wrote: (published comment)



These three Supreme Court decisions point up the over arching fact that our world, our society, our nation is undergoing the greatest volatility in our history.

History has proven that "democratic" countries, where the citizens vote and politicians create the law -- that such a form of government never lasts more than a short time a few hundred years.

The fatal flaw of democracy?

When the voters discover that they can vote themselves free lunch they elect politicians who promise free lunch.

When politicians discover that they can get elected by offering free lunch, they run their campaigns on free lunch promises.

When political leaders realize the the voters and the legislatures now believe in the free lunch economy, those political leaders KNOW that it is just and moral for them to get large hunks of free lunch for themselves.

I've written much on this historical fact including this short excerpt:

xxxThus any group of voters in virtually any country NOW will elect the worst possible political leaders who understand how to manipulate the voters with emotional messages and images, with offers that appeal to their low moral, educational and robotic levels. What areas are safe from this stupidity? Those areas least influenced by Western Culture. China, not included in this group, achieved this state of dictatorship by simple force, without voters. Most of the West has chosen, by popular agreement, the very dictators who now control the central banks and therefore the entire economy and social structure.XXX source:

<http://www.vibrantlifellc.com/3/14.htm>

**America is now a sick nation. Our doctors are the source of the sickness.**

**When a nation gets this way -- and all do -- the laws finally are seen as "FORCING" good people to do bad things.**

**What else can you conclude from this article?**

**In a nation that has turned this corner, there are still honest people who think they can force bad people to be good.**

**It never works.**

**Obama thinks he can fix the world. He makes it worse.**

**Law makers think they can force companies and executives to be honest.**

**Force never works, whether in law making or war.**

**Honesty must start at the bottom and work upwards.**

**Honesty must start with people who eschew free lunch and believe that an honest day's work is the source of an honest pay.**

**When a leader "KNOWS" the right thing but uses force (health care bill) on the public, it won't work.**

**Our nation, whether it wants or not, will be going through a period of huge austerity, then cleansing, then discovery and adaptation of morals and honesty.**

**The Supreme Court reminds us, for now, that laws can be SO bad that the rule of law becomes the enemy of society.**

**Karl Loren**

**Article in the Wall Street Journal on which Karl Loren commented (above).**

**REVIEW & OUTLOOK JUNE 25, 2010  
Conrad Black's Revenge**

**Vague laws beget injustice, and in a trio of decisions yesterday the Supreme Court dispensed with major parts of a murky statute that has long been used as a catch-all tool to criminalize business. These are the Court's biggest white-collar crime cases in years and are a long overdue victory for the rule of law.**

**In a unanimous decision in *Skilling v. United States*, Justice Ruth Bader Ginsburg wrote that the so-called "honest services" fraud law could not be used to convict former Enron CEO Jeffrey Skilling for his role in the company's accounting scandal. His case will be sent back to the Fifth Circuit Court of Appeals for further consideration, and the High Court's pruning of the statute will reduce opportunities for future prosecutorial abuse.**

### **The 'Honest Services' Decision**

**Justices Limit Fraud Law Enron Ruling Dims Prosecution Picture For Skilling, an Elusive Victory News Hub: High Court Sides With Skilling Bios: Where Enron's Leaders Are Now Graphic: The Cases and Decisions Timeline: The Fall of Enron Law Blog: Q&A - Future for Honest Services Fraud The 1988 law, which made it a crime to "deprive another of the intangible right of honest services," has become a favorite of prosecutors in white-collar cases precisely because of its ambiguity. Prosecutors use it as the kitchen-sink charge against politicians and executives when they're worried that they can't make more specific allegations stick.**

**As Justice Antonin Scalia wrote last year, the 28-word provision has been "invoked to impose criminal penalties on a staggeringly broad swath of behavior" by those who "engage in any manner of unappealing or ethically questionable conduct." Different appellate courts have interpreted the law in different ways, leading to wide variation in what "crime" is prosecuted where, and crying out for Supreme Court clarification.**

**The Court went far to provide that clarification yesterday, with Justice Ginsburg writing that the statute is "properly confined to include only bribery and kickback schemes." Her opinion specifically rejected the Justice Department's request to allow a broader interpretation that included "undisclosed self-dealing by a public official or private employee" who claimed "to act in the interests of those to whom he owes a fiduciary duty." Justice Ginsburg rightly described this as overbroad, and she cited Court precedent that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity."**

**While all nine Justices concurred in the judgment, three Justices said they would have gone further and junked the entire statute. In an opinion joined by Clarence Thomas and in part by Anthony Kennedy, Justice Antonin Scalia wrote that the statute is so vague that it violates due process rights under the Fifth Amendment. And he scored the majority for cooking up the bribery and kickback interpretation of the law "all on its own."**

The implications of Skilling were immediately clear in the Court's decisions in two other business and political fraud cases yesterday. The Justices vacated the honest services conviction of Alaska state legislator Bruce Weyhrauch, who prosecutors said had failed to disclose he was in job negotiations with an oil company at the same time the legislature was considering an oil bill. And in *Black v. U.S.*, also a 9-0 ruling by Justice Ginsburg, the Court said the honest services conviction of media baron Conrad Black also didn't meet its Skilling test.

Mr. Black had been convicted of pocketing the money from noncompete agreements related to community newspapers, which the defense said were merely attempts to reduce taxes. A Chicago jury had dismissed nine of the 13 counts against Mr. Black, inviting the question of whether the honest services statute could be applied even if the jury did not find that the defendants "reasonably contemplated economic harm." Messrs. Black and Weyhrauch will now get rehearings.

The Black reversal is another blot on U.S. Attorney Patrick Fitzgerald, who has previously abused legal process in his extrajudicial public declarations against I. Lewis "Scooter" Libby and former Illinois Governor Rod Blagojevich. In Mr. Libby's case, Mr. Fitzgerald gave reporters the impression at a news conference that Mr. Libby had obstructed his ability to find out who leaked the name of CIA analyst Valerie Plame when he already knew the leaker was Richard Armitage. This was a deceptive attempt to poison media and public opinion against Mr. Libby.

The Black and Skilling cases are precisely the kind involving high-profile, unsympathetic defendants in which willful prosecutors like Mr. Fitzgerald are inclined to abuse the honest services law. They know the media won't write about the legal complexities, and they know juries are often inclined to find a rich CEO guilty of something. We regret that in the case of Mr. Black, that failure of media oversight included us.

We agree with Justice Scalia that the Court would have been wiser to toss out the entire honest services statute and force Congress to define precisely the specific behavior it wants to criminalize. But yesterday's decisions are nonetheless a victory against prosecutors who would use vague laws to turn legal if unpopular behavior into crimes.