



THE U.S. SUPREME COURT AND CIVIL RIGHTS: A LIGHT AMID THE DARKNESS

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The Supreme Court of the U.S. reaffirmed the civil rights doctrine.

Last week, on the leftover of the George Floyd crisis, in the case of Bostock v. Clayton County, the Supreme Court ruled that when Title VII of the Civil Rights Act of 1964 outlaws discrimination based on “sex” it also covers sexual orientation and transgender status.

In other words, it is clear from now on that no one can be discriminated at the employment based on their sexual orientation or because they are transgender. An employer who fires an individual merely for being homosexual or transgender violates Title VII of the Civil Rights Act.

The decision in question had been embraced by two out of the three circuit courts below, so the result should not have been a surprise. In this case, however, the amazement exists because the most conservative judges – notably, the newly appointed Brett Kavanaugh –voted in favor of the civil rights of LGTB workers and jobseekers.

Despite the racial crisis that erupted about two weeks ago with the murder of George Floyd, and which exposed racial tensions existing in the US, the truth is that both academic society and American jurisprudence have been particularly vibrant and progressive in affirming civil rights, enacting precedents which have been judicially influencing other countries, particularly in Europe.

The idea of tolerance, multiculturalism and pluralism, whether related to racial origin, gender, sexual orientation, or religion, has been defended since the last quarter of the 20th century as a necessary instrument for United States development, a country strongly characterized by demographic and ethnic diversity, and immigration.

We owe the Americans, after the Civil Rights Act of 1964, the concepts of disparate impact, affirmative actions, as well as the application of anti-discriminatory rules, not only in the performance of work, but also in the access to employment.

The latest decision comes to reinforce the progressive path of this high court, since the leadership of Chief Justice, Earl Warren (1953 – 1969).

Earl Warren was responsible for the commonly known “New Deal Court”, which boost several civil rights, repealing the doctrine “separate but equal”, grounded on the famous judgment Brown vs. Board of Education (1954), which was a landmark on the fight against segregation. Under the leadership of Earl Warren, the Supreme Court also spread the idea that the American Constitution is a living text that and must be constantly adapted to the changes that happen in society, to foster citizenship.

The recent decision of the Supreme Court reinforces something that is not always recalled: the role played by the United States of America institutions and liberal democracies in affirming the principle of equality.

It may seem paradoxical, but it is not: it is precisely in societies with larger racial problems, in historical terms, but with strong institutions with technically well-qualified professionals, where one can find scientific advances and winds of change in the affirmation of equality and non-discrimination.



The struggle for equal rights is part of the United States' history. From the 1776 Declaration of Independence to the 1964 Civil Rights Act, the path taken was always progressive and evolutionary, so much so that it can be said that equality and non-discrimination, on one hand, and social mobility, on the other hand, are part of the American Way of Life and the American Dream.

This is the legacy of, among others, Abraham Lincoln, Franklin D. Roosevelt, Martin Luther King and John F Kennedy, for whom freedom, equality, pioneering, free development of personality, diversity and multiculturalism were – and are – the key to progress and the consolidation of democracies.

At the very moment when American society was heavily shaken by the violence associated with the murder of George Floyd, the Supreme Court indorsed the superior quality of its doctrine and its judges, echoing that all people shall be free and treated with respect and dignity, and without violence, so they can pursue their happiness.

It is time to recall it.

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