

***STARE DECISIS* AND THE RIGHT TO LIFE: THE ROLE OF THE SUPREME COURT**

While I'd **never trade** my priestly vocation, I suspect I'd have enjoyed **law school**. First, there are dozens of Latin phrases—right up my alley. Secondly, **constitutional** law fascinates me! As a branch of government fundamentally distinct from the legislative or executive branches, the **U.S. Supreme Court** is a venerable institution. It has been responsible for some of the most consequential moments in our nation's history. In his **Gettysburg Address** (19 November 1863), Abraham Lincoln masterfully articulated our nation's hope that "government of the people, by the people, for the people, shall not perish from the earth." **Article III** of the U.S. Constitution states: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

With its broad mandate, Federal Courts enjoy the **sole power** to interpret our nation's laws, determine their constitutionality, and apply it to individual cases. Following a purportedly ancient principle, no opinion is considered the **official** opinion of the Court until it is **delivered** in open Court (or made available to the public). Amid an instantaneous media feeding frenzy, this can present challenges as cases are decided. Just days before I began my assignment here, the Court released its decision regarding the **Affordable Care Act** at 10:06 a.m. on June 28, 2012. Immediately, the Court's website crashed. The few who were present to receive paper copies scrambled to speed read the syllabus (summary); initially it seemed that the Court ruled the mandate was unconstitutional. Less than **two minutes** later, CNN's banner headline read: **Individual Mandate Struck Down**. FOX news was much the same. While indeed it **was** struck down from the commerce clause, it was **allowed** as a tax. The media goofed!

In 1896, *Plessy v. Ferguson* held that state-mandated **segregation** laws did **not violate** the equal protection clause of the Fourteenth Amendment. You may recall from American history class in high school that on June 7, 1892, a man named **Homer Plessy** (he was multiracial) seated himself in a white compartment of a train. The conductor first challenged, then arrested and charged him with **violating** the state law. Eventually reaching the Supreme Court, the infamous decision upheld a Louisiana law that allowed "equal but separate accommodations for the white and colored races." In his lone and courageous dissent, Justice **John Marshall Harlan** wrote: "Slavery as an institution tolerated by law would, it is true, have disappeared from our country, but there would remain a power in the States, by sinister legislation, to interfere with the blessings of freedom; to regulate civil rights common to all citizens, upon the basis of race; and to place in a condition of legal inferiority a large body of American citizens..."

Though he died in 1911, Harlan's opinion was **vindicated** fifty-eight years later. There is precedence for the U.S. Supreme Court reversing earlier decisions. It took **58 years** for this horrific decision to be effectively **overturned**, with the unanimous *Brown v. Board of Education* decision of 1954. That case ruled that separating children in public schools on the **basis of race** was unconstitutional. It effectively paved the way for future legislation, including the Civil Rights Act of 1964. The Supreme Court neither makes laws nor is a political chamber comprised of individuals conveniently labeled with "R" or "D" after their names. Attempts to paint it as a political body (in either direction) inflict **severe damage** to it as an enduring non-partisan institution. Judges at all levels are to interpret the law, not create it. The principle of *stare decisis* (Latin "to stand by things decided") is sound, though certainly **not absolute**, as the above case illustrates.

The **leaked** majority opinion DRAFT in the *Dobbs v. Jackson* case states: “We hold that Roe and Casey must be overruled. The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision, including the one on which the defenders of Roe and Casey now chiefly rely—the Due Process Clause of the Fourteenth Amendment.” Obviously, this has major implications, but as noted, a draft is **not** a decision, so it is futile to speculate prematurely. But the draft is authentic, giving a glimpse into the thinking of **Justice Samuel Alito**, its author, and presumably four additional justices who would substantially support its line of reasoning. Roe’s division of pregnancy into three trimesters was linked to medical technology that is **obsolete** today, as viability is a continually moving target.

The degree of **vitriol** and rancor swirling around this issue is quite stunning. While negative reactions were expected, picketing “with the intent of interfering with, obstructing, or impeding the administration of justice or with the intent of influencing any judge, juror, witness, or court officer, near a U.S. court or “near a building or **residence occupied** or used by such **judge**, juror, witness, or court officer,” violates 18 U.S. Code § 1507. **It’s illegal!** When asked if protesting outside a justice’s private residence is acceptable, the White House spokesperson replied that they “have been peaceful to date and we certainly continue to encourage that outside of judges’ homes and that’s the president’s position.” No, that is **not** okay— not outside a private home. It is a brazen attempt to **intimidate** members of our highest court. Let us pray for all nine of our justices.

- U.S. priests, Class of 2022 stats: **average age** is **33**, consistent with the trend (older) since 2000. Ethnic breakdown: 60% Caucasian, 22% Hispanic; 11% Asian; 4% African/African American; **26% are foreign-born**; 40% Catholic school educated, 9% homeschooled. As one who grew up five blocks from the seminary campus and was ordained at 25, I feel like a dinosaur!
- Christians and Jews were persecuted in the 1st century Roman Empire. Recently, researchers unearthed a sprawling **underground** Turkish city in **Midyat**, near the Syrian border. They found coins, lamps, silos for storing grains and a Star of David in what was likely a synagogue. Upwards of 50,000 people may have **taken refuge** over the course of five centuries. It has been named **Matiate**—“homeland” in Assyrian.
- The **Catholic News Service**, an arm of the USCCB, will cease operations at year’s end. It served as a clearing house for stories that were disseminated more broadly by diocesan papers. Twenty-one employees will be laid off. My takeaway? In 2020, I wrote of the USCCB bureaucracy. The Church is being **crushed** under the weight of its own structures. Independent sources of Catholic news have also sprung up, providing **competition** to the “official” news of the USCCB.
- When President Biden cited St. Thomas Aquinas’ teaching on “**quickening**,” it was wildly out of context—though he is surely not the first to make this error. It is critical to understand Catholic teaching on the **beginning of life**. A future column will address these texts.
- Obviously, I am pleasantly surprised at how well the **Twins** are playing this year. Clearly, they have **young talent**, but after a horrible year, skepticism is warranted. And **pesky** injuries can change fortunes quickly. There is still plenty of time to jump on the bandwagon!

Sincerely in Christ,

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