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 Mattate–“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,
Fr. John L. Ubel,
Rector