



Written by [Selwyn Duke](#) on December 1, 2021

Kennedy Ravages Roe: 1973 Opinion Should be OVERTURNED; Abortion Is a State Matter

“Moral issues are always complex matters — for people who have no principles.” When pondering this apocryphal saying, it could come to mind that the same is true of legal issues, in particular, constitutional ones. This was essentially the point Senator John Kennedy (R-La.) made Tuesday on the Senate floor. Criticizing the flawed *Roe v. Wade* (1973) opinion, Kennedy encouraged the Supreme Court to overturn its predecessors’ folly in the current *Dobbs v. Jackson* case, which concerns the matter of whether pre-viability restrictions on prenatal infanticide are constitutional.



AP Images
John Kennedy

The senator opened his speech [saying](#):

Mr. President, we talk a lot in this chamber, as well we should, about the least among us — about how we can protect and lift up the powerless. And that’s a good thing. I can’t think of any person who has less power than ... an unborn baby. *Roe v. Wade* is, of course, about abortion.... But it’s also about something else. *Roe v. Wade* is also about federalism. *Roe v. Wade* is also about the American people. *Roe v. Wade* is about whether a finite group of the managerial elite, and ... I mean the entrenched politicians, the bureaucracy, the media, the academics, the corporate phonies — all of whom think they’re smarter and more virtuous than the American people — should have the right to make moral decisions for the American people instead of the American people making those decisions for themselves. That’s really what *Roe v. Wade* is about.

Quite true. The unborn baby’s rights — notably his most basic one, the right to life — are ignored for the most disgusting, most un-American, and most un-Christian of reasons: He’s powerless. Unborn babies can’t vote. They can’t donate money. Unborn babies can’t protest. They can’t riot, loot, burn, and cause general mayhem. So they’re ignored by those who made famous the appeal, “Do it for the children.”

Kennedy went on to say:

I am pro-life. I am anti-*Roe v. Wade*.... But, Mr. President, even pro-choice legal scholars who believe in legalized abortion on demand understand — as does every fair-minded person who knows a law book from a J. Crew catalog — that *Roe v. Wade* is one of the most arbitrary, it’s one of the most ad hoc, it’s one of the most poorly-reasoned decisions in the history of the United States.

... There’s absolutely no foundation — not in the text, not in the structure, not in the history,



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not in the tradition of the Constitution — for a constitutional right to abortion, and certainly not on the basis of some unmoored general right to privacy that’s not enunciated in the Constitution.

The senator is correct. In fact, none other than far-left, ACLU-molded justice Ruther Bader Ginsburg once expressed “that *Roe* was a faulty decision,” [related](#) the University of Chicago (UC) law school website.

“My criticism of *Roe* is that it seemed to have stopped the momentum on the side of change,” Ginsburg stated, making her remarks while speaking at the school in 2013. “She would’ve preferred that abortion rights be secured more gradually, in a process that included state legislatures and the courts, she added,” the UC further wrote. “Ginsburg also was troubled that the focus on *Roe* was on a right to privacy, rather than women’s rights.”

Ginsburg was right about *Roe*’s wrongness, but for the wrong reasons. There simply is no “right” to prenatal infanticide in the Constitution, not based on “privacy” or “women’s rights.” Believing the Founding Fathers intended such a thing is preposterous, and, of course, many *Roe* supporters *don’t* believe it. They either suppose the Constitution can be misrepresented because it’s a “living document” — which is a bit like having living “rules” in baseball, decided by the umpires — or that the end justifies the means.

Returning to Kennedy, he also stated that the SCOTUS can say via *Dobbs* that “judgments made on behalf of people should be voted on by those people and not dictated from Washington D.C.... That’s why we ... have elected representatives ... who also can be unelected if we don’t like how they vote.”

“In *Dobbs*, the Supreme Court has the rare opportunity to de-federalize and de-constitutionalize abortion and return the issue to the states, where it was before *Roe v. Wade*,” the senator continued (video below).

Will the Court seize this opportunity? It may not be a good bet. There are six “conservative” SCOTUS justices, and many would say the *Dobbs* case is a litmus test for them. But the problem is the very fact that their mindset *is* conservative — instead of *constitutional*.

That is to say, the only consistent definition of “conservative” concerns a desire to “preserve the status quo.”

Well, the status quo is *Roe*.

Related to this is the disastrous “principle” *stare decisis*, the doctrine of “precedent,” which Anglo-Irish satirist Jonathan Swift put in perspective well almost 300 years ago in *Gulliver’s Travels* (1726). “It is a maxim among these lawyers that whatever has been done before, may legally be done again,” he wrote, “and therefore they take special care to record all the decisions formerly made against common justice, and the general reason of mankind.”

“These, under the name of precedents, they produce as authorities to justify the most iniquitous opinions,” Swift continued — “and the judges never fail of directing accordingly.”

A good justice, a rare breed, indeed, understands that the only thing that matters legally is what precedes all precedent: the Constitution. Conservatism, however, is rooted to “what is” instead of *what should be*. A practical example of the difference:

Two-thousand years ago, a “conservative” might’ve defended gladiatorial combat to the death in the



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Roman arena as tradition. A Christian, in contrast, would've recognized it as violation of eternal law and tried to end it (and the Christians ultimately did).

Speaking of which, such courage and conviction is in order today. Understanding that "judicial supremacy" is extra-constitutional, governors should simply enforce their states' pro-life laws regardless of judicial "opinions" (which *are* mere *opinions*). This would do justice to not just the Constitution, but to something that precedes it and every other document, great and small, produced by man.



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