



Written by [Selwyn Duke](#) on June 25, 2022

## Why *Roe v. Wade* Was Always Un-American

With the just-issued Supreme Court ruling overturning the *Roe v. Wade* decision, abortion supporters are exercised and pro-lifers exultant. Yet there's a reality around which many from both sides could, conceivably, unite. It concerns something anyone who's truly American should cheer:

Friday's 5-4 decision, *Dobbs v. Jackson Women's Health Organization*, strikes a blow not just for those who could be born, but for what was born 235 years ago — the Constitution.

For the truth is that wherever one stands on abortion, standing behind the Constitution and not on it can quite reasonably be said to be a prerequisite for Americanism. And supporting the Constitution means trampling *Roe*.

This is not opinion, but a fact even abortion proponents have emphasized. Late left-wing justice Ruth Bader Ginsburg is a good example, having expressed during a 2013 University of Chicago [visit](#) that *Roe* was a faulty opinion. Abortion supporter and eminent constitutional scholar John Hart Ely went even further, stating, “‘What is frightening about *Roe* is that this super-protected right is not inferable from the language of the Constitution, the framers’ thinking respecting the specific problem in issue, any general value derivable from the provisions they included, or the nation’s governmental structure,’” [related](#) Minnesota Citizens Concerned for Life (MCCL) in 2020. “‘It is bad because it is bad constitutional law, or rather because it is *not* constitutional law and gives almost no sense of an obligation to try to be.’”

Then, bearing in mind that the *Roe* majority opinion was authored by Justice Harry Blackmun, consider the following: “Indeed, ‘[a]s a matter of constitutional interpretation and judicial method,’ writes Edward Lazarus, a former Blackmun clerk who is ‘utterly committed’ to legalized abortion, ‘*Roe* borders on the indefensible,’” MCCL also informs. “Justice Blackmun’s opinion provides essentially no reasoning in support of its holding. And in the ... years since *Roe*’s announcement, no one has produced a convincing defense of *Roe* on its own terms.”

In fact, legal scholars have called *Roe* the most damaging decision in American history, a national-fabric-rending error. As Clarke Forsythe, J.D. [wrote](#) illustrating the point, “*Roe* created at least three constitutional conflicts: Congress’ debate over pro-life constitutional amendments between 1973 and 1983, the dispute between Congress and the Court over abortion funding that induced the Court to retreat a few years after *Roe* in *Harris v. McRae*, and the ongoing 48-year tension between the Court and a growing number of States that are determined to protect human life.” Yet its damage went beyond even this.

First realize that, as is par for the course, there are two aspects to this matter: the moral and the legal.



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Note also that the Friday decision in [Dobbs v. Jackson Women's Health Organization](#) is *not* a statement about abortion's morality, but about *Roe's* illegality. This said, morality is reflected in both decisions because it's moral to take the republic-preserving action of upholding just law.

It's immoral to take the republic-degrading action of undermining it.

This is not a universal condemnation of *Roe's* supporters, as some don't grasp this reality. But apropos to this, here's some food for thought: If someone claims devout Catholic status, but thoughtlessly tramples the Bible and the Church's catechism, do not his boasts of catholicity ring hollow? Why, when Republican politicians thus violate their party's foundational "rules" they may be called RINOs (Republicans in Name Only).

Okay, well, what can we say about those who'd lay claim to Americanism while undermining our nation's foundational rules: the supreme law of the land, the Constitution?

Making this more inexcusable still is that, contrary to some oft-heard rationalizations, we needn't be "hamstrung" by a 200-year-old document "set in stone." For we can alter it via the Amendment Process. This is difficult, but for good reason: It ensures that any change made reflects the will of the *vast majority* of the states and their people.

In contrast and as with all judicial overreach, the *Roe* decision amounted to a tiny oligarchy of black-robed lawyers essentially saying, "No, Americans coast to coast, you're no longer going to be able to vote on this controversial matter the Constitution places in your hands. *We* are going to make that decision for you from D.C., impose it nationwide and, we hope, in perpetuity."

Not only is this perilously close to playing God, but how can one boast Americanism and love for what many call "democracy" while negating democratic processes dictated by America's supreme law?

To add further perspective, consider the common metaphor about how a justice's role is calling balls and strikes. Expanding on this, baseball's players and fans could be likened to the "people," its governing body to a legislature, its rule book to the Constitution, and its umpires to judges. Now, the legislators can obviously alter the rule book in accordance with the process for doing so, and the people can petition them in this regard. But the umpires' job is merely to apply those rules, without fear or favor and despite their feelings about them.

Imagine, however, that the umpires began imposing their own biases, saying things such as, "Three strikes are too many; the pitcher here needs help — it's two strikes and you're out now"; or, "Equity for the batters! So now the first two foul balls won't be counted as strikes."

Note, first, we'd recognize these were rogue umpires who refused to do their jobs and should be fired; we wouldn't dismiss their misfeasance as "pragmatism." We'd also question these umpires' and their supporters' love of the game, as you don't undermine what you care about. But what of the "people's" response?

While a losing side is usually disappointed, it will accept an outcome if it *knows the game was fair*. What, though, would be the reaction to the aforementioned kind of cheating? There could be a riot — and that's just over a game.

This illustrates how *Roe* (and all unconstitutional decisions to a degree) sowed disharmony and distrust of the system while modeling, and thus tacitly endorsing, dishonor. This is always the result when judges game the game so their side can win.

This also helps explain much (not all) of the post-*Dobbs*, abortion-proponent protesting and [violence](#).



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Not knowing civics and having been accosted with decades of propaganda about how abortion is a “constitutional right,” many credulous Americans believe the Supreme Court umpires have gamed the game against *them*. It’s another testimonial to the imperative of following just rules, the one at issue here being: don’t lie.

Oh, and lying, while un-many things, is un-American as well.



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