



Judicial Lawlessness and the Need for Interposition

The [passing of Supreme Court Justice Antonin Scalia](#) has the political pundits prognosticating, the talk-show hosts prophesying, and the **conservatives palpitating**. Who will nominate the next Supreme Court Justice is all the buzz. Already, the GOP rustlers are proclaiming the perceived threat in order to stampede the faithful into voting for their Presidential nominee. The perceived threat is that “A Democrat President will appoint Supreme Court Justices.” Therefore, “You must vote for the GOP Presidential nominee so he can nominate justices to the Supreme Court and Roe v. Wade can be overturned.” Actually, the GOP has stampeded the faithful using this ruse for over 40 years now. Every four years they bring out the scarecrow – a Democrat President who will appoint liberal, pro-abortion justices. Scalia’s passing has given fresh vigor to the ruse.

The truth is – though the faithful have voted for the Republican Presidents and the Republican Presidents have nominated many justices – Roe v. Wade still stands.

In fact, a short history lesson shows that when *Roe v. Wade* was decided – six of the nine justices on the court were Republican-appointed. And over the next 40 years the Republican-appointed justices always outnumbered the Democrat-appointed justices either seven to two or eight to one. And yet, *Roe* remains intact.

And now this year, they will stampede the faithful yet again using the same ruse. Regardless of what Party nominates the justices – this problem with the judiciary declaring evil to be good and good to be evil will not be remedied, adjudicated, or fixed in the courts. The courts are the dispensers of injustice and immorality in this nation.

To end this blithering cycle, conservatives and Christians need to come to grips with the cold, stark reality that there is no federal solution to our nation's ills – rather – the federal government *is* the problem. Sitting around waiting for this four-year cycle to endlessly repeat itself so we can do it all again only ensures our nation's demise.

Regardless of your desire to be a Pollyanna, or agreement that “Yes Virginia – there is a Santa Claus,” or insistence that the Emperor really does have new clothes, the reality is the federal judiciary is a tyrant that will not correct itself. It is incapable of correcting itself, as they are drunk on their own hubris. Nor will our spine-less Congress correct it, as most of them are bought and paid for by wealthy men and special interests.

Understand, you cannot appease a tyrant – you must confront him.

Governors, and Attorney Generals, and state legislatures (as well as county and local governments) simply must interpose against such judicial lawlessness. The Emperor needs to be told – “You have no clothes!” *Roe v. Wade* is not “the law of the land” – it is a court opinion and nothing more. *Obergefell* is not “the law of the land” – it is a court opinion and nothing more.

A true federalism understands that whenever one branch of government begins to play the tyrant – it is then more incumbent than ever for all other branches (whether federal, state, county, or local) to uphold the Constitution and resist the branch playing the tyrant – even if that branch is the Supreme Court.

Antonin Scalia understood that the Supreme Court needs to be resisted by the other branches of government. In his scathing dissent, he wrote that the *Obergefell* opinion “*is a naked judicial claim to legislative—indeed, super-legislative—power; a claim fundamentally at odds with our system of government;*” *Id.* at *43 (Scalia, J., dissenting)

Scalia understood that the courts do not have law-making power. Legislators write laws. The federal judiciary has usurped the legislative branch and given itself powers the Constitution did not give to it.

Through so-called “Judicial Supremacy” the federal courts claim to be the lone and final arbiter of what is constitutional and what is not. They claim this through the so-called “Supremacy Clause” – Article 6, paragraph 2 of the Constitution. But when one actually reads [Article 6, paragraph 2](#) they see that the Supreme Court is not mentioned there (nor any federal court). Rather – it is the Constitution itself that has supremacy.

The Supreme Court wrote themselves into this role – as lone and final arbiter of the Constitution – through their rulings. They did this early on. Thomas Jefferson wrote extensively against the Court. He stated in 1820 in a letter to William Jarvis: *“You seem ... to consider the judges as the ultimate arbiters of all constitutional questions; a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy.”*

Even Abraham Lincoln spoke of it in his first Inaugural Address: *“The candid citizen must confess that if the policy of the government, upon vital questions, affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made, in ordinary litigation between parties, in personal actions, the people will have ceased to be their own rulers, having, to that extent, practically resigned their government into the hands of that eminent tribunal.”*

Though men will always try to forbear, the judiciary’s lawlessness is bringing this 200 year old debate to a head. Men are realizing they no longer have the convenience of acting indifferent towards the unjust and immoral actions of their government.

On October 8th, 2015, the week that the Supreme Court began its current session, 72 prominent legal scholars issued [a statement](#) that Obergefell is *not* “the law of the land.”

At the end of their statement, they wrote:

Therefore:

We remind all officeholders in the United States that they are pledged to uphold the Constitution of the United States, not the will of five members of the Supreme Court.

We call on all federal and state officeholders:

- 1.) To refuse to accept Obergefell as binding precedent for all but the specific plaintiffs in that case.*
- 2.) To recognize the authority of states to define marriage, and the right of federal and state officeholders to act in accordance with those definitions.*
- 3.) To pledge full and mutual legal and political assistance to anyone who refuses to follow Obergefell for constitutionally protected reasons.*

This is the interposition of the lesser magistrates. This is true federalism.

The time for pondering political theory is ending. The day for application is here. Bravery and sacrifice are essential in this hour. May we humble ourselves under the mighty hand of the Lord and do what is needed and necessary.

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