

## The Alito Draft

### 1.0 - Introduction

I am taking some time away from writing the second letter to my children (on Covid-19) to comment on recent developments regarding the Supreme Court and Roe-v-Wade.

While the actual court ruling is not known at this time, it is anticipated that Roe will be overturned.

First, contrary to what a large percentage of the population believes, the overturning of Roe would not make abortion illegal; it would leave the issue for the states to decide.

Regardless of how we may individually feel about the issue, this ruling would be the best possible outcome for the citizens of the United States.

My thinking on this matter flows from several streams:

- \* The purpose and ethos of government
- \* The design of the US government
- \* The current political situation
- \* The cogency of the draft
- \* The practicality of the result

Because it would take a book to fully cover everything, these points are touched on lightly in this letter. If you have any questions or counterarguments, please let me know.

### 2.0 Purpose and Ethos

To my mind, the justifiable purpose for a government is the protection of the rights of its citizens from:

Foreign aggression  
Domestic aggression  
Tyranny in all its forms  
    Tyranny of the one  
    Tyranny of the few  
    Tyranny of the masses  
And,  
    To provide rational assistance

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As to the question of which rights and which citizens, the fundamental ethos of the United States, the motivating ideal for which throughout its history men and women have voluntarily sacrificed their lives, is stated in The Declaration of Independence:

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, ... “

The great changes that have occurred since that revolutionary statement, such as the abolishing of slavery and women’s suffrage, have not been deviations from the ethos; rather they represent an ever increasing alignment of society with that ideal.

Whenever an ideal is not followed, it is not the ideal that is at fault. Many people with good intentions gave to the BLM movement, only to subsequently find that one leader had spent millions of funds on swanky real estate, and others were under federal and state investigation for fraud. Did the possible criminal actions at the top have anything to do with the ideals of those who donated? No.

While it has recently been socially fashionable to question the basis of the founding, as with the 1619 project, history and cold reason provide a clear answer. The public and private writings of the founders, the architecture of the government they designed, the thought and will of the citizens, and the country’s aggregate history are all in harmony with the noble ethos as stated in the Declaration of Independence. When viewed with an informed, unbiased, rational mind, popular challenges to the validity of the founding look like no more than glossy conspiracy theories.

Frederick Douglass, escaped slave, social reformer, abolitionist, orator, writer, and statesman, a man who fully understood the injury that unjust government can inflict, said of the Constitution that it is a “glorious liberty document” and of the Declaration of Independence, “The principles contained in that instrument are saving principles. Stand by those principles, be true to them on all occasions, in all places, against all foes, and at whatever cost.”

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### 3.0 The Design of the US Government

When the founders set out to formulate the structures and functions of the government of the United States, they had to not only think of the institutions and processes and how those would provide the necessary protections over time, but also how to handle the fact that government must be made up of flawed people who are elected by flawed people.

One such flaw is a tendency toward tyranny wherein a person or group of people try to exert their will over others. The Constitution creates checks and balances to reduce that threat. The underlying idea is that no one component of government can act alone; each is dependent on the other parts.

A few examples of the checks and balances are:

- In Congress, the House (representing the people) and Senate (representing the states) have to work together to generate legislation.
- The president may veto any new laws, but by 2/3 majority Congress can override his veto.
- The president is the Commander in Chief of the military, but the House sets the budget of the military.
- The House sets the federal budget, but the President must approve it.
- The Supreme Court passes judgment on laws and actions of the other two bodies, to ensure that they stay within the Constitution, but it has "... neither FORCE nor WILL, but merely judgment ..." (Alexander Hamilton)

Another Constitutional protection designed to minimize the damage to society that government can do is limiting its reach. The 10<sup>th</sup> Amendment limits government powers to those specified by the Constitution; everything else is the province of the States. Further, the US government cannot add to its powers.

I have a lot more to say about the government, but that will have to be in a future letter. I will just say here that for me the issue of Roe-v-Wade lies largely in the how and why of government functions.

#### 4.0 The Current Political Situation

I am not nostalgic for a time past when the US government worked as it should. As any man-made system would be, it has always been subject to poor implementation. But the essential architecture laid out in the Constitution mitigates the dangers of government and is vital to the protection of the rights of citizens.

In support of their stance on Roe, some have taken positions which would be destructive to the fundamental government architecture and thereby injurious to the protection of the citizens.

A few of these are:

- The idea that the Constitution is a 'living document', something subject to interpretation by prevailing public narratives. This would make the Constitution meaningless, as any two-bit sophist could find whatever message they wanted in the 'penumbra' of the Constitution.
- Court Packing: Increasing the number of justices on the Supreme Court so that pro abortion judges could be added. This would make the court merely an appendage of the legislature and not a check against its power. Whichever interest was in control could always add more judges.
- Applying a litmus test on the abortion issue for the appointment of judges. As with court packing, this distorts the decisions of the Supreme Court.
- Illegal protests at the homes of Supreme Court justices. The courts are supposed to rule based on law and reason. By advocating such demonstrations people are supporting an illegal and unwise act. Would these same people want a judge in a murder trial to be swayed by a mob? Shouldn't justice be blind?

These positions are assaults on the proper functioning of the Court. They are attacks on the checks and balances of the Constitution.

If the court were to become an activist, political appendage, a rubber stamp for the prevailing party, then the country would have lost one of its fundamental protections against tyranny. In advocating the removal of vital checks and balances, activists come down on the side of the usurpers.

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### **5.0 The Cogency of the Draft**

The Alito draft (February 10, 2022) is clearly and plainly written. I cannot see that the logic has skipped any steps or that its basis has stretched any points. The draft does not deal with moral issues; instead it methodically counters the assertions and reasoning of Roe and that decision's judicial overreach. That Roe could be thus dismantled should come as no surprise when even the abortion supporting RGB said that Roe was a faulty decision, too far reaching and too sweeping.

I would encourage anyone who is doubtful to read the draft and then to decide whether they can find technical or factual flaws.

### **6.0 Practicality of the Result**

The involvement of US Government in the daily lives of citizens takes many forms, from the more serious like abortion and education to the less important such as what light bulbs we are allowed to use or what size toilet we can have. The more that is mandated from the top, the smaller the tent under which we all must live and the greater the likelihood of discord.

Much of the current friction between citizens is a result of the increasing insinuation of national government into daily life. If everyone thought the same way on every topic, there would be no problem, but as the US is a diverse country, the 'one size fits all' approach needlessly pits groups against each other. The resulting polarization only helps those who benefit from our division and distraction.

The US Government was designed to be a Federalist system, meaning that the states are sovereign and the national government is limited and focused on defense and protection of fundamental rights. This way of governing promotes harmony amid diversity. It allows unity to exist among those who may differ on some issues, but agree on the fundamental ethos.

The Alito Draft is not only intellectually honest, it also moves the US Government toward the original Federalist model of the Constitution.

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### 7.0 Conclusion

John Adams said, "Our Constitution was made only for a moral and religious people." To me this means that if citizens in general lack the inner moral conviction to 'play by the rules', society descends into corruption which robs everyone and paves the way for tyranny.

The rights of the citizens of the US are constantly under attack. Unscrupulous powerful interests, working outside and inside our country, seek every opportunity to take advantage of any weakness. We should insure that in pursuing our goals we do not take steps that advance the destruction of the foundations of our liberty and render ourselves weak in the face of foes.

Perhaps more than any other issue, the top down handling of the abortion question has fanned the flames of highly polarized politics, a situation that weakens the nation. The moral crime unseen by most is not what we have done to ourselves, it is that the vulnerable around the world suffer far more than we do, as the enemies of freedom take advantage of our self inflicted wounds.

Finally, abortion opponents favored an originalist court, one that interpreted the Constitution based on the original understanding at the time that it was adopted. They wanted this because it would likely rule in their favor. If the Roe-v-Wade decision had banned abortion country-wide, then the roles would have been reversed and abortion proponents would have favored originalist judges in order to overturn Roe. In either case I would have been for originalist judges and courts because, for all its flaws, the United States has been the greatest protector of individual liberty in the world, and to remain such it must function as originally designed.

Robert Gray Moore  
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