



Michelle Peterson from Silver Spring, Maryland, stands outside the U.S. Supreme Court building holding a sign in support of abortion rights in the wake of a leaked draft opinion in “Dobbs v. Jackson Women’s Health Organization” in Washington, D.C., on May 11, 2022. Photo: Diego M. Radzinski/ALM

COMMENTARY

## Justice Alito’s Hypocrisy

Religious liberty means that all religions are able to thrive in harmony. It does not mean that a majority of SCOTUS justices who share a religion should be able to demand that other religions subjugate their own beliefs to the majority’s will.

August 09, 2022 at 10:44 AM | By Lauren Stiller Rikleén

As Justice Samuel Alito's ability to dominate the U.S. Supreme Court increases, his heartlessness and hypocrisy seem to grow commensurately. That is a reasonable conclusion to draw following his recent [speech](#) at the Religious Liberty Summit in Rome, where he spoke about the symbiotic relationship between religious liberty and other fundamental rights, without any self-awareness of the growing list of liberties he is willing to deny others.

The University of Notre Dame Law School [described conference attendees](#) as the world's leading defenders of religious freedom. In a presentation focusing on the importance of protecting religious liberty, the justice revealed how his views on religion dominate his world view. That position is of particular relevance as he imposes that view on the entire country through his jurisprudence.

In addressing his role as the author of the Supreme Court opinion overturning *Roe v. Wade*, Alito mocked foreign leaders who criticized the decision's wholesale rescission of women's reproductive freedom. The receptive audience laughed and applauded when he stated that one of those leaders, Boris Johnson, "paid the price" of such criticism, notwithstanding the utter lack of causal relationship between the prime minister's criticism and his resignation.

Hearing the attendees applaud and laugh at the justice's sarcasm seemed as cruel as Alito's failure to acknowledge the trauma that his decision has caused. His thin-skinned remarks, and the receptive audience's response, belied the [human suffering already unleashed](#) as physicians, fearful of prosecution, are altering practices, including medically appropriate [responses](#) to life-threatening and nonviable ectopic pregnancies and miscarriages that, to protect the mother's health, require the same treatment as an abortion.

Other aspects of Alito's speech displayed an arrogance fueled by indifference to the impact of his rulings. The justice stated that religious liberty is under attack because it is dangerous to those who want to hold complete power. Yet he wields his own ample power as a ranking member of a SCOTUS voting bloc that has issued inconsistent opinions dangerously disguised in the constitutional doctrine of originalism, a convenient way to avoid recognizing rights of anyone other than the white male landowners included in the Constitution when the nation was founded.

Such inconsistencies were on full display at the end of this Supreme Court term. It is hard to justify the court's claim that it is protecting unborn life by removing federal protection for abortion with its ruling a day earlier striking down a concealed carry law designed to protect the living from rampant gun violence. Neither religious liberty nor originalism provide a large enough protective shield to rationalize these results.

Alito's speech emphasized the historic role of religious institutions in social reform movements, citing to, among others, abolition leaders as people of faith. Just as he cherry-picks from the Constitution to reach a desired result, Alito failed to mention the ways in which [slaveholders relied on text](#) from both the Old and the New Testament to justify their cruel practice of kidnapping, selling, buying, and enslaving human beings for their economic benefit.

Religious liberty means that all religions are able to thrive in harmony. It does not mean that a majority of Supreme Court justices who share a religion should be able to, by fiat, demand that other religions subjugate their own beliefs to the majority's will. For example, the [Central Conference of American Rabbis](#) condemned the decision to overturn *Roe*, stating that it violated the First Amendment guarantee of the right to the free exercise of religion by those faiths that permit abortion and do not believe that life begins at conception.

In a sermon following the court's ruling, Rabbi Danny Burkeman [stated](#) that the decision is not only antithetical to the Jewish understanding of when life begins, it fails to recognize that the fundamental Jewish belief in the primacy of saving lives includes terminating a pregnancy to save the life of a mother. Rabbi Burkeman noted that the "ability to freely follow Jewish laws and teachings around reproductive health are challenged" by this decision.

Justice Alito's speech was yet another piece of evidence that the Supreme Court has been politicized to a degree that threatens confidence in this branch of our government. Religious liberty as a constitutional principle is not an opportunity to piously impose one's religious beliefs on others by labeling it as jurisprudence.

The independence, integrity, and nonpartisanship of the judiciary are central to our democratic system. If Americans cannot trust the Supreme Court to deliver opinions free of personal and political taint, our constitutional democracy is in grave danger.

This is not a crisis that can be solved by a textual review of a constitution written by white male landowners who did not recognize the rights of a majority of the population living in the country when it was adopted. It will require courage, independent thinking, and a compassion that is disappearing from this court majority's single-minded devotion to its goals.

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