

# THE DAILY CALLER

## *Liberals in high dudgeon*

By Roger Pilon  
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More than a week after the Supreme Court concluded six and a half hours of oral argument over the constitutionality of Obamacare, the debate beyond the Court has hardly subsided. The president himself [weighed in on Monday](#), of course, with his unbridled pre-emptive warning to the Court, some of which [he walked back on Tuesday](#). Yet the next day, there was the hapless White House press secretary, Jay Carney, trying to convince reporters that the president [didn't intend to challenge the Court's authority](#), even as Attorney General Eric Holder was telling a different press gathering that Obama's comments were "appropriate." Can life in Washington be any more entertaining?

When liberals are in high dudgeon, you want to shelter the children. On Wednesday, for example, [The Daily Beast](#) plucked one David R. Dow from obscurity at the University of Houston law school to argue that if the justices overturn Obamacare, they should be impeached. Really! That puts the good professor in league with [Newt Gingrich](#), who called for a similar remedy when he was riding high a few months ago, albeit in different sorts of cases. [Liberals were up in arms then too](#), but on the other side, defending what the president on Monday called "an unelected group of people."

For the very best in liberal high dudgeon, however, you can rarely do better than to consult the doyenne of The New York Times, [Maureen Dowd](#), whose rage was on full display on Wednesday. The Court, she screams, "has squandered even the semi-illusion that it is the unbiased, honest guardian of the Constitution. It is run by hacks dressed up in black robes." Indeed, "all the fancy diplomas of the conservative majority cannot disguise the fact that its reasoning on the most important decisions affecting Americans seems shaped more by a political handbook than a legal brief" — and this even before they've committed their reasoning to paper.

We marvel too that in so short a compass as an op-ed Ms. Dowd managed to get in a rich panoply of iconic liberal targets: *Bush v. Gore* and the purloined election of W; the 2010 House takeover by Republicans (she left out the tea party); *Citizens United*; Fox News; the shameful Anita Hill-Clarence Thomas hearings; the Federalist Society; even the late, sainted Senator Ted Kennedy (criticizing Justice Anthony Kennedy, "could the dream of expanded health care die at the hands of a Kennedy?"). Well done!

That didn't leave much room for serious analysis, of course. But why bother with that? After all, the point is not to reason but to rail. So used, for so long, are liberals to treating the Court as just another political branch of government that they can barely imagine even what it means to decide a case *on the law*. Thus, when the president said on Monday that it's important "to remind people that this is not an abstract argument" and that "people's lives are affected by the lack of availability of health care," he was urging us all, but the Court in particular, to take into consideration a constitutionally irrelevant point. Yes, people's lives are affected if health care is unavailable. But what's that got to do with the issue before the Court? The Court's conservatives, at least, are grappling with a *legal* question — whether Congress has the *authority* to pass a law like the one before it.

For all their moral posturing, today's liberals fail to grasp that that, fundamentally, is a *moral* question, a question about the very legitimacy of Congress's action in passing the statute. Justice Kennedy saw it correctly. He saw that the individual mandate "changes the relationship of the federal government to the individual in a very fundamental way." But why should that bother the modern liberal? Since the New Deal, after all, he's seen Congress as having the power to do anything, except intrude on a set of rights thought to be especially important in his circles — not economic liberties, of course, but others that reflect his idea of evolving social values, the kind they like up at *The Times*. And who put that better than our president's mentor, [Franklin Roosevelt](#), writing to the chairman of the House Ways and Means Committee in 1935 about a measure then before the committee: "I hope your committee will not permit doubts as to constitutionality, however reasonable, to block the suggested legislation." What's the Constitution in the face of virtue?

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