Primary Voting Guide

# Letter to Catholic politicians on abortion and the law

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Catholic Faith to uphold Catholic doctrine, and by his oath as an elected representative of the People of the United States to uphold, defend and support the Constitution of the United States and the laws of the country.

First, it must be said that Catholic politicians have no obligation and no right to impose the teachings of the Catholic Church upon the nation.Their obligation and their right is to further, defend and uphold the Constitution of the United States. And it must be said at the outset that there is nothing in the Constitution of the United States and its valid interpretation that is contrary to Catholic teaching. If that were not so, no Catholic could, in conscience, hold political office in this nation.

But there can be laws and decisions of the Supreme Court that are immoral, unjust and contrary, not only to Catholic teachings, but also to the laws of decency, justice and a genuine respect for the human person. That is the issue here and will be examined in this *Letter to Catholic Politicians and Public Officials.*

For instance, there were laws in certain states, up to very recent times, that forbade interracial marriages and mandated the sterilization of people of low mental capacity. No Catholic could, in conscience, support or carry out these laws, since they were both contrary to justice and to the genuine freedoms granted under the Constitution of the United States. The Supreme Court itself declared unconstitutional one of these cases dealing with interracial marriage, and the other law has fallen into disuse.

The Supreme Court itself has declared, in a case challenging laws upholding Sunday rest, that just because a law or custom has its origin in religious law or custom, does not mean that it does not have a non-religious value. (4)

The way in which the practice of abortion in Roe v. Wade was declared constitutional by the same Court is a revealing study in American jurisprudence. It is something the Catholic politician should be aware of. We should also be aware of the tenuous legal foundation upon which the decision is based. It is not only Catholic doctrine that declares this decision immoral, inhuman and contrary to every law of human decency, it is the whole tradition of medico-legal history that condemns it, as well as the sane, humane and carefully reasoned tradition of Common Law upon which the whole catalog of rights embodied in American law is based.

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There is no obligation on the part of any politician or elected representative of the United States, Catholic or otherwise, to uphold the constitutionality of the Roe v. Wade decision, even though he is powerless to do anything about it in his public life. To pretend that opposition to abortion is a uniquely Catholic or a religious matter is to be totally uninformed of the historical roots of American Law and the whole humane tradition of Western civilization.

At present, this is an unresolved dilemma for the Catholic politician, or for any politicians who holds to the tenets of the legal and religious traditions that have shaped Western democracies.

It seems that if he holds to Catholic conscience in the abortion question, he must violate the doctrine of the separation of Church and State which he is bound to uphold by his oath as an elected representative of the United States. And if he supports abortion, he violates a sacred tenet of the Catholic Faith. It seems that the only position a Catholic politician can take, if he is to hold public office at all, is to renounce allegiance to his Catholic Faith, at least in the public exercise of his office. It is this contradiction and this dilemma that the Catholic politician is faced with.

Let me say that, except in this matter of support for abortion, the record of Catholic politicians in the areas of social justice is truly magnificent, and bill after bill has been passed under their sponsorship directed to the care of the poor, help for the sick and elderly, and multitude causes that are a glorious part of recent congressional history. And I believe it is because some of them look upon the "right" of abortion itself as a matter of social justice and personal liberty that they support it publicly and, tragically, they do not see it for the massive social evil that it is ... 40,000,000 planned deaths of unborn children in the United States alone since 1973, making the killing of the unborn the greatest social evil of our time.

## PART I: The crucible of the laws (5)

The constitutional question in Roe v. Wade has never been examined, and the issue of the unborn has never been studied as a constitutional question. It entered into the legal arena as a matter of personal freedom. . .the freedom of a woman to destroy the child in her womb. Yet, it was precisely the fate of the child in her womb that was the object and focus of every abortion law of history, from Hippocrates to English Common Law. In fact, enshrined by Blackstone as the heart and hub of the question is the clear and concise principle laid down in his "Commentaries": "Qui in utero est pro jam nato habetur, quoties de ejus commodo quaeritur: (6) One in the womb is held as already born, whenever a question arises for its benefit." The change of focus in Roe v. Wade indicates a seismic change in American jurisprudence, comparable in its legal impact to the Dred Scott (7) decision a century before, and the Alien and Sedition Laws of 1798. (8) The Alien and Sedition Laws broke against the unyielding will and purpose of John Marshall (9), later Chief Justice of the Supreme Court, and Dred Scott was shattered in its legal intent by Abraham Lincoln. (10) Roe v. Wade has yet to find its Marshall or its Lincoln.

Whenever a constitutional law has emerged, it emerged in the form of protective laws to protect the weak and helpless members of society from those who could use their power, their privilege, or their position to oppress and exploit. This is so true that law itself can be described as protection for the weak and helpless, since the strong and prosperous have their own means of protection.

In his classic treatise, *The Common Law* (11), Justice Oliver Wendell Holmes, in direct contradiction to the utilitarian views of Hobbes and Bentham, denied that laws were the mere instruments for the carrying out of government purposes, in order to secure the greatest good for the greatest number. In *The Common Law*, Holmes with one stroke revealed "the fundamental policy determining the shape of modern law: to allow the greatest personal freedom while avoiding unjustifiable harm to others." (12)

And so it is surprising that, in American jurisprudence, the destruction of the unborn is looked upon as "justifiable," an extension of the personal liberty of the woman bearing the child. One cannot but feel that there is some principle of law that has been overlooked here, one that neither the jurist nor the legal scholar has been able to identify. There is a principle that is staring them right in the face, a principle that every decent person in the intimate depths of his moral conscience is able to articulate.

One cannot but feel, in the light of the mammoth steps that American jurisprudence has taken in the past two centuries, that some social cancer is gnawing at the entrails of American law, a social cancer that cannot see that the "survival of the fittest" is not the founding principle of American democracy.

Legal studies take many forms, from the plodding monographs with mountains of footnotes found in the more scholarly reviews and legal journals to the crisp, essay-like opinions of Lord Mansfield and John Marshall, noted for their logical lucidity and sensitive humanity. Legal studies are as varied as the jurists themselves and that is why law and jurisprudence have become an absorbing and exciting business, their legal output even surpassing, in some cases, the political commentaries of the *New York Times*, *Le Monde*, and the *Manchester Guardian*.

And so it is something of a puzzling mystery and historical oddity that no legal studies of any consequence have been made of the legal fabric and social dynamics of the Roe v. Wade decision. Those of us who have grappled with the human problems facing what has now become a global village have wondered why the United States of America, with its enlightened doctrine of exceptionless rights, could authorize and sanction and declare legally justifiable the destruction of the unborn in the womb, contrary to every tenet of humanity that inspired this nation. Who would think that a nation and people of obvious greatness would sanction, legalize and authorize a form of national genocide in the name of the "Right to Privacy," under cover of which abortion related Dilation and Curettage, Dilation and Evacuation, and Dilation and Extraction pass as standard medical practice?

It is possible that the Catholic politician is totally unaware of the savagery of these "medical" procedures or of the legal fabric of the Roe v. Wade decision. It is also possible that he has never studied the legal precedents and juridic principles that were ignored or discarded in the framing of that decision. Abraham Lincoln, in his Cooper Union Speech of February 27, 1860,13 with the fine scalpel of legal reasoning, dissected the flaws and falsehoods in the Dred Scott decision, which legalized chattel slavery in every state of the Union, abrogating the Missouri Compromise and abrogating as well, in Lincoln's mind, the real intent of the framers of the Constitution. Roe v. Wade rests as well on just as shaky a legal foundation.

In a society without law, the strong destroy the weak, and the basic constitutional principle at work in the American judiciary is that there must be effective checks in the law to protect the weak and deter those who would use power unlawfully only for their own advantage. It makes no difference if the power is political, military, economic or brute physical force, the result is always the same: the weak are at the mercy of the strong, the strong using the law to cover their own lawlessness and using the cover of the law to conceal their destructive intent. The question of abortion is no different from issues that divided the country in the past: slavery, segregation, women's rights, child labor, and the condition of workers.

Those holding power, intent on their own private interests, commit violent acts under cover of property rights, contractual rights, states

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