Letter to Catholic politicians on abortion and the law

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legal challenges as the empirical data from a multitude of embryonic sciences enter the legal arena), will clarify that the mother of an unborn child has merely a trust-dominion over the child, just as she has only a trust-dominion over children already born. This will be an extension of the principle in Common Law, quoted earlier, governing this relationship: Qui in utero est pro jam nato habetur, quoties de ejus commodo quaeritur: one who is in the womb is held as already born, whenever a question arises for its benefit. (28)

As Labor Law developed from the conflict between industry and the industrial worker with new legal principles to resolve the conflict, so Embryonic Law emerges from the conflict between the rights of the woman carrying a child and the unborn child itself. For this, new empirical data, drawn from the embryonic sciences, and new legal principles, based on the right of dominion, will emerge through new cases brought before the Court, creating a new development in American Law with precedents to resolve such cases in the future. The advocates of abortion will have you and others believe that, first of all, there are no legal issues involved in the abortion question, that it is merely a religious issue, and that the unborn child is merely a fetus, a mass of tissue and protoplasm, with no rights or identity under the law.

What is in question in this whole debate is not a religious doctrine or some religious argument based on Church tradition; it is the rights of an identifiable human subject, a developing human person, with its own unique genetic code, possessing the right to exclusive dominion over its own person. The ''argument'' is not based merely on church tradition, but on a basic principle of law: that government does not give ''rights'' and that law does not create rights. The purpose and function of law, since the rise of constitutional government, is to recognize and safeguard rights by appropriate legislation, and the failure to do so is a matter of law, not of religion, and those who pretend otherwise are using the law for some private or personal advantage.

It is ridiculous and scientifically untenable to state that, because the child in embryo has not reached full biological development or developed to the point of consciousness and personal autonomy, that its right to dominion over its own person is handed over to another who has the right to destroy it. That dominion extends to its total person, in space and in time, at any stage of development, and to deny this is to deny that human reproduction is the way that a human subject comes into existence.

> *''The only honest thing that a Catholic politician can do is to uphold the Catholic teachings in his public and private life, or not pretend to be Catholic and declare himself so. If he insists upon holding publicly what is contrary to the teaching of his Church, he should not be surprised if there are public consequences to his action. He should also understand that abortion is not a negotiable question for the Catholic Church and that he is obliged, as a Catholic, to give it the moral weight it deserves. If he cannot or is unwilling to do this, he, in a sense, cuts himself off from the body of the Church.''*

Conception is the process by which a human person comes into existence, and gestation is the process by which the human person exercises its powers and gradually emerges into the human community. It is contrary to every legal principle and every legal precedent that conception and gestation should become liabilities for any human person. The securing of rights for the unborn is the next step in the advancement of human civilization and human rights, an advancement furthering no particular religious tradition, but an advancement towards a more just and humane society.

In the case of the unborn, the crucible of the law has not completed its work and that is something that Catholic politicians and public officials should clearly understand before they support abortion as a legal and constitutional option.

PART II: The hard facts of abortion

The savagery and barbaric methods of abortion hide under the cryptic and seemingly harmless designations of abortion related Dilation and Curettage, Dilation and Evacuation, and Dilation and Extraction, and it is almost certain that most women who have abortions themselves do not know the raw details of what is happening in their womb. While it is true that surgical operations, themselves, are grim and bloody, their purposes are not death-dealing and the fact that abortions require a high degree of surgical skills only magnifies the evil of such operations. There is good reason why the Hippocratic Oath and the mandates of medico-legal history considered abortions contrary to and in violation of a sacred trust: the oath of the physician to use medical science only for life-giving and life-preserving purpose. It is hard to see how the three designations listed above are anything but violations of that oath and a betrayal of a sacred trust to preserve life rather than destroy it.

As in the case of the sacred character of marriage and the sacred obligation of rulers to govern justly and fashion just laws, its position is drawn from the humane and carefully reasoned inheritance of human wisdom. It is when this inheritance has been ignored or rejected by nations that they sink into barbarism. What is even more disturbing is the politics of abortion, the claim that a woman has a right to choose, without revealing WHAT she is choosing. Exactly what is meant by ''having an abortion'' is hidden under the phrase ''freedom of choice'' or one of the surgical terms listed above. No one dares to discuss in public exactly what those terms mean.

It is hard to believe that anyone familiar with abortion related Dilation and Curettage, Dilation and Evacuation, and Dilation and Extraction could give these procedures the sanction of law.

What Roe v. Wade did was to provide a legal cover for these outlawed surgical procedures, completely ignoring, not only the real intent of the abortion laws of the past, but any principles of Common Law pertaining to the child in the womb.

This tactic follows exactly the pattern of Dred Scott, Plessy v. Ferguson and Lochner v. New York, all of which were eventually reversed in American law. Not only were the wrong principles appealed to in order to justify those outlawed actions, but a very important principle of Common Law was violated, indicating either a lack of knowledge on the part of those who submitted the legal brief to the Court, or their malicious will and intent. The principle violated was this one: Scire legis non hoc est verba eorum tenere, sed vim ac potestatem: To know the laws is not to memorize words, but to grasp their force and meaning. (29) The force and meaning of the abortion laws from antiquity was to recognize the unborn child as a subject of the law. In the light of all this, it seems to me, that Roe v. Wade, far from being a step forward in American law, as its proponents suggest, was in reality a tort, the twisting of the law to conceal the commission of a harmful and destructive act. An ancient axiom of Common Law recognized that laws can be twisted to serve private and personal ends that are contrary to law itself. It reads tortura legis pessima, (a twisted law is the most evil) and hints by its very wording that the stench of the tortured law will bring about its own retribution and such a revulsion for the destructive act that the law itself will arise to twist the metal of the law back into shape in the white-hot flame of legal judgment. We have seen this happen in the cases of Dred Scott, Plessy v. Ferguson, Lochner v. New York, and Hammer v. Dagenhart and I have no doubt that in time some legal and juridic talent of the stature of John Marshall, Abraham Lincoln and Louis Brandeis will emerge to assure that this particular decision is consigned to the ashheap of history.

PART III: Catholic politicians, public officials and abortion

For the Catholic politician and public official, whether he wishes it or not, this is a crisis of conscience, and everything depends upon the side that he takes in this national debate. He cannot have a public and a private face; he cannot believe as a private citizen that abortion is the massive evil that the Catholic Church teaches that it is and declare it to be ''good'' for his country and for his fellow citizens. He also cannot declare himself to be morally neutral in his public persona. John Kennedy, in his bid for the presidency, at least had the honesty to say that if he ever saw a conflict between his faith and his duties as president, he would resign. (30) As this letter has shown, abortion is not just a religious issue. The conviction that it is a violent assault upon unborn life, contrary to common decency and the law itself, is not the conviction of the Catholic Church, only. It is imbedded in the very fabric of civilized people and can be held by civilized people, apart from its religious context.

The only honest thing that a Catholic politician can do is to uphold the Catholic teachings in his public and private life, or not pretend to be Catholic and declare himself so. If he insists upon holding publicly what is contrary to the teaching of his Church, he should not be surprised if there are public consequences to his action. He should also understand that abortion is not a negotiable question for the Catholic Church and that he is obliged, as a Catholic, to give it the moral weight it deserves. If he cannot or is unwilling to do this, he, in a sense, cuts himself off from the body of the Church.

The Catholic position on the intrinsic evil of abortion is not merely a religious judgment. It is a judgment that the Catholic Church has shared with every major culture and all civilized peoples. The Church for its whole history has been opposed to abortion and euthanasia. In the Holy Father's *Gospel of Life*, he says this in paragraph 73, ''Abortion and euthanasia are thus crimes which no human law can claim to legitimize. There is no obligation in conscience to obey such laws; instead there is a grave and clear obligation to oppose them by conscientious objection. From the very beginnings of the Church, the apostolic preaching reminded Christians of their duty to obey legitimately constituted public authorities (cf. Rom 13:1-7; 1 Pet 2:13-14), but at the same time it firmly warned that 'we must obey God rather than men'.'' (Acts 5:29).'' (31) The Holy Father reiterates and summarizes his teaching in the following: ''In the case of an intrinsically unjust law, such as a law permitting abortion or euthanasia, it is therefore never

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