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Abortion in Louisiana: Passion Over Prudence

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On July 3rd, 1989, the United States Supreme Court made known its opinion on the long-awaited *Webster* case. Among its rulings, the court held that states could exercise greater regulatory powers concerning abortion. At the time, many pro-life groups hailed the decision as a new day in the abortion battle. The *Webster* decision was viewed as a stake in the heart of *Roe vs. Wade*. However, subsequent events have shown that *Roe* will not die easily. In fact, the *Webster* decision gave further evidence to support the doctrine of unintended consequences. Namely, the *Webster* decision activated the pro-choice advocates. Without the protection of the courts, those who favor abortion now realize that the fight has shifted from the courts to the state house. And, to date, the pro-choice advocates have enjoyed the post-*Webster* landscape. The euphoria which gripped the pro-life movement after *Webster* HAS BEEN REPLACED BY A SOMBER REALIZATION THAT THERE IS NO LIGHT YET VISIBLE AT THE END OF THE TUNNEL. In fact, unexpected victories have been realized by the pro-choice side. (A recent example is the veto of a restrictive abortion bill by Idaho Governor Cecil Andrus who had been viewed as pro-life.)

The most recent battle over abortion took place in my home state, Louisiana. I am sorry to report that what transpired confirmed my worst fears for the future of the abortion debate, the articulation of public policy, and the need to protect the unborn. If there is any silver lining to this unfortunate episode, it is that other states might learn what *not* to do, what rhetoric *not* to use for the enflaming of passions; what pro-life religious and political leaders might *not* propose as law. Clearly what took place in Louisiana was a classic example of passion over prejudice; the ideal being misused in the service of destroying the possible.

In this article, I shall present the following: a background account of the events which led to the defeat of the pro-life legislation and the subsequent

failed attempts to enact substitute legislation in the face of Louisiana Gov. Buddy Roemer (a self-styled pro-life politician!). Secondly, I shall turn from description to analysis. To be specific, I want to offer my own analysis as to *why* the pro-life forces managed to snatch defeat from the jaws of victory. And finally, I shall close this article with some preliminary observations and proposals for the abortion debate in the '90s. Of special concern is the need for the Catholic hierarchy in America to select spokesmen who are informed, pastorally sensitive, and culturally attuned to the complex and pluralistic current at work in our society. Without such leadership we will only witness more defeats for pro-life legislation and the continued loss of unborn human life.

Background

It would be hard to find a state more likely to restrict, if not eliminate legal abortion than Louisiana. There is a powerful Catholic presence which prevades much of public life in southern Louisiana. There is a powerful Protestant presence in the north of Louisiana, which is opposed to abortion. In addition to this strong religious presence, the governor of the state, Buddy Roemer, claims to be pro-life, and as a Congressional candidate in 1980, endorsed the Hyde Amendment to prohibit federal funding of abortion. Roemer went so far as to oppose exceptions for rape and incest, which he termed "loophole." Along with Louisiana's "pro-life" governor, the Legislature has strongly favored severe restrictions on abortion.

Given this powerful pro-life environment, it would seem to be a sure bet that restrictive legislation on abortion would be proposed, passed, and signed by the governor. Perhaps it was too much of a sure thing. Legislators and various pro-life groups seemed more intent on sending messages to the nation, and in overturning *Roe*, than in fashioning a piece of prudent legislation. What emerged was HB 1637 Louisiana Human Life Act of 1990. After defining abortion and the various means of inducing one, the legislation contains the following:

The crime of abortion shall not be construed to include any case in which the termination of pregnancy results from the use by a physician of a procedure which is necessary to save the life of the mother, and which is used for the express purpose of, and with the specific intent of saving the life of the mother.

Whoever commits the crime of abortion shall be imprisoned at hard labor for not less than one nor more than ten years and shall be fined not less than ten thousand dollars nor more than one hundred thousand dollars.

Clearly the above is one of the most restrictive abortion bills in the nation. There is no exception granted for rape or incest. In addition, the performance of an abortion by a physician is a felony punishable by a maximum of 10 years of hard labor at Angola State Penitentiary and a whopping fine of \$100,000.

Act Passes House and Senate

HB 1637 Louisiana Human Life Act of 1990 passed the Louisiana House by a vote of 74-27. The Senate passed the bill 24-15. Many in the pro-life camp assumed that this bill would become law with a quick signature by Governor Roemer. This proved to be an assumption without merit. The Governor indicated his concern that the bill might be unconstitutional. But most of all, the Governor expressed his concern over the bill's failure to make exceptions for rape and incest. The Governor indicated he would have to give this bill a great deal of thought before deciding what to do. This hesitation by Roemer caused the pro-life forces to gasp and the pro-choice forces to catch their second wind. Perhaps the pro-choice forces could win from the Governor what they could not win through the legislative process.

The lobbying was intense and often lacking in reason, respect, and the kind of public discourse this serious issue deserves. For example, one legislator addressed the legislature, all the while holding up a model of a human fetus. Several churches in the Baton Rouge area were defaced with painted slogans denouncing the Christian community's support of this legislation.

The Governor finally made his decision to veto this legislation. Roemer did so out of his concern for those women who were the victims of rape and incest. Also the Governor expressed his reservations about the constitutionality of the bill. Finally, the Governor objected to the strong penalties for those physicians who perform abortions. However, Roemer did say that he could support a bill which would make exceptions for rape and incest. Pro-life groups and legislators did not want to endure this most unexpected defeat. What to do?

A new abortion bill was written which allowed for abortion in the case of rape and incest. Unfortunately, the way in which this bill was proposed left everything to be desired. This new anti-abortion bill was attached to a flag-burning bill in hopes that some form of restriction on abortion could be passed before the legislature adjourned. Such cynical and ill-conceived legislative maneuvers were immediately challenged as unconstitutional. Many legal scholars were of the opinion that the attachment of a bill to an unrelated bill violated the Louisiana constitution. The flag-burning bill was totally unrelated to the abortion bill. Hence, even if the legislature passed the abortion-flag bill and the Governor signed the measure, in all likelihood the Louisiana Supreme Court would have declared the bill unconstitutional.

Another Advisement, Another Veto

Once again Governor Roemer took this new measure under advisement. Once again he vetoed this bill because it gave "uneven and unsatisfactory" protection for rape victims. (Abortions could be performed in rape cases only if done within seven days of the rape and reported to authorities. Also, only forced rape and not simple rape was covered by this bill; simple rape is in which the woman is drunk, mentally retarded or incapable of

understanding what is happening.) Secondly, the bill was passed without proper deliberation and "was completed at the last minute without full scrutiny or open hearings." And finally, Governor Roemer rejected the bill because it was passed in the "non-germane" form of a rewritten bill on an unrelated matter.

After this second veto, there was some outcry for a special session of the Legislature in order to override Roemer's veto. However, there seemed to be very little enthusiasm for continuing the battle at this time. No doubt the abortion debate will continue in the next regular session of the Legislature. For now, the legal status of the unborn in Louisiana remains much as it was before all this political activity. To some extent, the unborn may have been placed in greater peril because of the manner in which the entire abortion legislation was handled. Unfortunately, religious leaders provided little prudent guidance. Some opportunistic politicians tried to seize a hot button issue in an attempt to win favor with voters. It is to this part of the story that we now turn.

Analysis

It can be simply stated that throughout the long and heated debate concerning abortion, pro-life forces (and their political and religious leaders) badly miscalculated the power of the pro-choice forces; the limited extent to which Governor Roemer would back a severe restriction on abortion; the mood of voters; and the present reality on the United States Supreme Court. At every turn pro-life forces came to believe their own rhetoric, and worst of all, the rhetoric of politicians. What was truly sad was the lack of a prudent voice from religious leaders; especially Catholic religious leaders who should have been able to draw on the wisdom of St. Thomas Aquinas. One was left with the distinct impression that bishops were more interested in impressing one another, the clergy, pro-life groups, Cardinal O'Connor and, ultimately, Rome. Clearly Catholic bishops in Louisiana wanted the most restrictive law possible. Lost in the desire to secure the most restrictive abortion law was the deeper challenge of fashioning a prudent law.

St. Thomas Aquinas, in his discussion on law, reminds us that the role of law is to establish justice, promote the common good, and meet the needs of individual citizens. Law is not an end but a *means* to achieving these goals. Hence, when a law is proposed, we must not only ask if such a law is moral or worthy, but if it is possible, feasible, and prudent so as not to help a greater evil flourish. St. Thomas tells us we must ask very practical questions about the laws we want to enact: Is a given law the prudent way or means to achieve the goal desired? Does a given law propose prudent means to achieve human goods? Will a given law be obeyed? Can a proposed law be enforced without giving rise to greater lawlessness and civil unrest? All of these questions reflect St. Thomas Aquinas's belief that human laws are anything but expressions of absolute wisdom and justice. We must be

sensitive to the provisional, cultural, historical, limitations of the human condition, and the reality of sin which makes us self-seeking and not just other-directed.

The desire to restrict abortion legally is a moral, social, and human good. The killing of 1.5 unborn human beings is anything but morally neutral or a private choice between a woman (a teenager as well) and her conscience (usually guided by the overly individualistic ethic of sexual reproductive rights). All major opinion polls and surveys indicate that a majority of Americans do favor some restrictions on abortion (parental notification if a minor wishes an abortion; a greater voice for the husband or male partner; limits to using public monies for abortion; limits on those abortions which do not involve the physical life of the mother, rape or incest.) At the same time, a majority of Americans do not favor a total ban on abortions (rape, incest, and severe defects to the unborn are viewed as legitimate grounds for an abortion.) Of course, we ought not decide what is moral by counting noses. However, we are given a picture of our cultural values and what a majority of citizens are thinking. This information, however imprecise, is very important in fashioning law and public policy. It is crucial in proposing legislature that we have a prudent grasp of what is possible **ON THE WAY TO WHAT IS MORALLY DESIRABLE**. The call to prudence is anything but a moral cop-out to our individualistic, materialistic, and hedonistic culture. Political prudence requires that we work with the cultural, historical and human givens at any one time. In working with these givens we labor, aided by grace in the Holy Spirit, to transform our society into one which is more just, free, peaceable, and welcoming of the stranger who comes across our borders and through the birth canal. This "more" that we desire is always partial, imperfect, tainted with sin, and in need of redemption. It is only when the kingdom of God comes in its completeness that perfect justice, peace, freedom, and community will be realized. Until that time beyond time, we look through a glass darkly and continue to play with the things of a child.

A prudent law restricting abortions could have been fashioned, passed the Legislature, and signed by Governor Roemer. Such a law could have found a way to the Supreme Court so as to allow the Court to consider *Roe* and various other abortion decisions. However, this was the road not traveled. Passion overcame prudence.

Statute Failed Test

On every one of the points of St. Thomas about the law, the abortion statute proposed by politicians and backed by religious leaders failed the test. From the outset, there was no chance that Governor Roemer would sign a bill which would allow no exceptions for rape and incest. Furthermore, no serious student of the present United States Supreme Court would believe that HB 1637 Louisiana (Human Life Act of 1990) would be allowed to stand. Even if this bill made its way to a Supreme Court

minus Justice Brennan, it is very doubtful that the court's conservatives would uphold this law. Except for perhaps Justices Scalia and Kennedy, the moderate conservatives (especially Justice O'Connor) have shown little zeal for dismantling the entire abortion liberty edifice. Hence, prudence would indicate that a total ban on abortions, except saving the life of the mother, would be rejected by the electorate, as well as the executive and judicial branches of the government.

Finally, the failure to enact prudent laws brings the rule of law itself into disrepute. Citizens ignore imprudent laws for such laws may even bring about lawlessness as well as a disdain for the legislative process. The abortion episode in Louisiana brought about a great deal of negative publicity as well as criticism from many within the state. The actions of the Louisiana legislature left a great deal to be desired. Rather than the Legislature being viewed as an assembly of wise citizens, at work for the common good, the legislature was seen as an assembly of politicians seeking to please various interests groups. Lost in the whole sorry affair is the unborn. The unborn child remains in peril because those with voices too often shouted and those with power forgot virtue, especially the virtue of prudence.

Abortion in the Future

If there is anything to be gained from the Louisiana episode with abortion legislation, it is the realization that all who favor protecting the life of the unborn must think long and prudently about the challenges ahead. Below I simply want to sketch some preliminary observations about what will be required in the decade ahead if we are to tell a better cultural story about unborn life, fashion more prudent laws which advance the dignity of all human beings, and be a faith community which witnesses to the truth of the Gospel and the wisdom of our Catholic tradition.

1. Laws not only help form a cultural narrative; laws also reflect the values, mores, hopes, fears and dreams of a culture. Laws are a very important theme in our culture. We Americans place a great deal of importance on the power of law ("there ought to be a law" mentality which is so pervasive). Before we set about trying to enact laws, we must be aware of our cultural values. Of course, we should not simply have laws which reflect the culture. At times we need laws which are against or which transcend the culture. In fashioning our abortion laws, we must first enact prudent laws which can win support. Only then can we move farther along in the process of enacting laws and forming a cultural story which truly welcomes the unborn, the stranger, and the marginal person. Those who seriously want to make our world more welcoming to the unborn must be committed to the never-ending process of cultural formation.

2. How does such formation of culture take place? The Catholic tradition can offer a very fruitful approach through the principle of subsidiarity. There is great potential for change through the local and intimate levels of life: neighborhood, school, family, business, club, and parish. For the formation of culture is about winning the minds and hearts of the citizenry. Few institutions are so well positioned as the Catholic Church to touch the minds and hearts of so many on behalf of life. Daily in the schools and weekly in the parish, minds and hearts are

being exposed to the Gospel and the Lord Jesus, Who came to give life in abundance. From these local and intimate settings, the process of cultural formation can take on its public dimension through the efforts of citizens to fashion laws and form social structures which promote human life and the dignity of all persons.

3. Cultural formation requires prudent political and religious leaders. The *Webster* decision removed the pro-life free ride enjoyed by so many politicians. Before *Webster*, it was easy (cheap grace) for politicians to engage in pro-life rhetoric, knowing all the while the courts had effectively negated any legislation to limit abortion. Pro-choice groups were willing to allow such cheap talk, knowing nothing much would or could change. However, *Webster* changed all this. Pro-choice groups are energized for battle and are marking for defeat any candidate who dares to support any restrictions on abortion. Many pro-life politicians have had a conversion of sorts, that is, they have become sensitized to the news reality of abortion rights and are reluctant to tamper with these "rights." Pro-life groups are shocked and feel betrayed. Once again the political laws of survival triumph over the call to principle and the moral good.

True pro-life politicians must be prudent in building solid, secure coalitions which favor protection of the unborn. This coalitions building means compromise and a willingness to write legislation which falls short of the ideal in hopes of attaining the possible. Pro-life politicians at every level should work toward the goal of restricting abortions to only those cases in which the life of the mother is in danger. However, at this moment in our cultural history we are not ready to attain that goal. Hence, we must be about saving as many lives as we can. The ideal must not move us to refuse the attainable. The stakes are too high.

4. The role of prophetic witness is essential to biblical religion and the Christian tradition. Those who protest the killing of the unborn are offering a powerful public witness to the sacredness of human life. This protest can take various forms — marching, picketing, non-violent resistance, and lobbying for change in our laws. Without such public witness we can easily forget the voiceless, the powerless, and — the unborn.

Need for Compromise, Coalition

However, there is a legitimate need to engage in compromise and coalition-building when forming law and public policy. The Catholic bishops have been engaged recently in making their voices heard on the issues of war and peace, the economy and racism, to name a few. In writing their pastoral, the bishops deserve praise, not only for what they said, but also for the PROCESS by which they came to their positions. The bishops, like all good teachers, first listened. They opened their minds and hearts to those wishing to contribute. The consultative process helped the bishops to teach about the economy and the need for world peace with a great deal more sophistication and prudence than if the pastoral were forged in grand isolation. I would strongly suggest a pastoral on abortion following the same process be begun immediately.

The chances for such an abortion pastoral do not seem likely. The NCCB seems to have opted for a confrontational, finger-in-your-eye approach rather than one which attempts to build intermediate gains on the way to realizing the desired goal. We have witnessed so-called strong moral leadership by bishops who deny Catholic politicians the sacraments,

threaten excommunication, and demand all or nothing abortion legislation. We should not confuse decisive actions with prudent ones. Perhaps a better way can be found so that a wedge is not driven between bishops and Catholic public officials. I could not think of anything more tragic at this point in the public debate about abortion than to have a major split of this kind.

The following five elements are essential if better relations between bishops and Catholic political leaders are to develop:

Lower the rhetoric. The air is filled with threats and counter-charges. Fraternal love and respect must be present.

Lower the public displays of disagreement. Such confrontations attract a great deal of media attention; however, little of substance is accomplished and bad example often given.

Engage in a real dialogue of genuine listening and mutual respect. Too often we assume we know what the other person is thinking and feeling. Bishops need to be supportive of the contributions of Catholic public leaders. Catholic leaders need to recognize that the bishops have a moral responsibility to teach. Such a mutual recognition and respect can help both parties appreciate what unites as well as what remains to be decided.

Bishops need to be appreciative of the complexity of public life and policy decision-making within the American context. Ours is a pluralistic society in which many interests and values are at work. Prudent legislation requires that we be expansive and multi-dimensional in meeting the concerns of citizens. No one group or segment will be happy all the time. The common good is often achieved by the sacrifice of some on behalf of others. Rather than being condemned, Catholic public officials should be encouraged to build realistic bases of support for abortion legislation that will help the unborn be more secure. No doubt such legislation will be less than perfect. Yet we must keep in mind that all legislation outside of God's kingdom is less than perfect.

Catholic public officials must not become complacent with the cultural and legal realities of the moment. Such officials must daily work to bring about change which will safeguard the unborn and enrich the moral dimensions of public life as a whole. Bishops can do much to help support these efforts by Catholic officials through prayer, conference, and personal meetings which build bonds of trust and fraternity.

5. Finally, the pro-life movement must not allow itself to be seen as anti-woman. I am afraid that we in the Catholic Church have not listened as attentively and respectfully to the experiences of women. Listening does not mean that we accept everything that is said or that we abandon our values and insights. Listening does mean that we are open to the work of the Holy Spirit in the whole of the

Church and throughout the entire good creation. For example, Archbishop Rembert Weakland, O.S.B., taught all of us the importance of listening by holding a series of meetings with women about abortion, as well as their hopes for the Church. Such listening can be painful at times. However, pastoring requires that we listen through the suffering as the way into redemptive healing. The pro-life movement must witness to the dignity of all persons and the sacredness of all human life. Especially there must be an abundance of love for those women who have had abortions and are in need of reconciliation. Their pain is enormous, but never greater than Jesus' forgiving love which we are empowered to minister.

Conclusion

In this time after *Webster*, abortion remains the hot-button issue (simply look at the reaction and concern of many over the nomination of Judge David Souter to the Supreme Court); in fact, its heat has only increased. This means that we must be even more vigilant in the use of language and the public witness we give through our actions. Yes, we must proclaim the sacredness of human life and the need to enact laws and public policy which promote the dignity of all persons. Of special importance is the need to protect those who are most at risk in our society: the unborn, the handicapped, the elderly, the sick, the dying, and all who find themselves on the margin. The proclamation of the Gospel will touch hearts and help transform our social structure because our words are matched with deeds of love. However, there will always be miles yet to run and obstacles to overcome as we journey to the New Jerusalem. But our faith tells us there is a victory in the trying and a hint of that final triumph is each small victory.

The small victories on behalf of life are important and necessary. Each time we can save a life, heal a hurt, show healing love, and help in the reconciliation, the work and hope of the kingdom is done on earth as it is in heaven. The Catholic Christian community carries the treasure beyond price in an earthen vessel—the Gospel in our hearts. The good news of salvation tells us that God is love and we most especially encounter this love in the least of our brothers and sisters. We simply cannot be truly human without love. We simply cannot truly love if we do not make a special place for the weak and the powerless. For if we ignore the least in our midst, it is we who suffer the most. We lose our humanity and tarnish the soul which has been fashioned out of love in the image and likeness of God.

Abortion is an issue which touches the deepest parts of who we are as human beings and what we hope to be as people. At times we feel the frustration of a debate which seems to be without end or even progress. We long for the quick victory. At other times, we simply want to walk away from it all. Yet we must continue the twilight-long struggle on behalf of life in all its forms. We must speak with conviction and listen with the heart. We must labor in love to build, and this building is slow and imperfect, a world

which is more welcoming to the stranger and hospitable toward new life. None of this is easy, even under the best circumstances. Yet the small victories on behalf of life will not be won because they are easy or because we out-shouted the other side. Small victories will be won, as the prophet Isaiah reminds us, by "They that hope in the Lord will renew their strength, they will soar as with the wings of eagles. They will run and not grow weary, walk and not grow faint." (Is. 40:31).

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