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Abortion in Louisiana, Act II: Prudence Over Passion

by

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What a difference a year makes!

This time last year my home state, Louisiana, had obtained both the attention and the ridicule of the nation for its handling of abortion. The Louisiana legislature had passed a tough anti-abortion law. The debate was heated (not to be confused with enlightened), and the real moral issues were easily lost in all the name-calling and sloganeering. The Louisiana Catholic bishops supported, very imprudently in my judgment, a no-exceptions bill which was defeated. The Governor, Buddy Roemer, vetoed the anti-abortion bill (1990). The legislature did not come back into session in order to override his veto. Everyone was emotionally tired, intellectually frustrated, and politically spent; hence, the thought of an override battle was out of the question. The pro-choice forces celebrated their victory. The pro-life forces promised to be back and continue their fight for a human life bill.

It is the thesis of this short paper that the pro-life forces not only returned to fight for a human life bill, but learned the lessons of politics as well. More importantly, the pro-life forces in Louisiana made a conscious decision to close ranks behind an anti-abortion bill which does allow for some, very limited, exceptions. The Louisiana bishops followed a very prudent path in supporting the exceptions anti-abortion bill. I will have more to say about these bishops later. Suffice to say at this point that in my first article ("Abortion in Louisiana: Passion Over Prudence", *Linacre Quarterly* 57, No. 4, (Nov., 1990): 36), I was strongly, and still believe rightly, critical of the Louisiana Catholic bishops for their support of a no-exceptions bill. However, I am very pleased that the bishops chose to support an anti-abortion law which allows for exceptions in very limited cases. The bishops' moral leadership was crucial in both forming and holding a consensus on the exceptions bill as well as helping bring about its passage in the legislature. The Catholic bishops of Louisiana are to be commended for their prudent and moral pro-life stand during these highly emotional months.

By contrast, the pro-choice lobby believed that the past would be repeated since the pro-life forces had learned nothing, especially the pro-life forces had not learned how to get along with each other. But the biggest asset in the pro-

choice forces' camp was the power of the veto by Governor Buddy Roemer. Pro-choice forces were certain that both the Governor would veto *any* anti-abortion bill and the legislature could be unable or unwilling to override his veto. Hence, any legislative victory by the pro-life forces would be short lived and illusory. The executive branch would deliver the victory to pro-choice forces that the legislature wouldn't and the judicial branch seems more reluctant to grant. The pro-choice forces were correct in their assessment of Governor Roemer. He did veto the exceptions anti-abortion bill (1991). However, they were wrong about the ability of the pro-life forces to close ranks in order to achieve a compromise bill which protects a great many of the unborn. They were wrong about the determination of the legislature to override Roemer's veto. Once again we find abortion making its way into the uncertainty of the judicial process.

Anti-Abortion Legislation: 1991

The main author of the 1991 anti-abortion bill which successfully passed both houses of the Legislature is Representative Sam Theriot (D). His bill calls for the following:

1. Abortion shall be understood as the administering or prescribing of any drug, potion, medicine, or any other substance to a female or using any instrument or external force on a female with the specific intent of terminating a pregnancy.

2. Abortion shall be illegal except to save the life of the mother, to terminate pregnancies resulting from incest, provided the crime is reported to police and the abortion is performed within 13 weeks of conception, and to terminate pregnancies resulting from rape. The victim of rape must be examined by a doctor other than the one performing the abortion within five days of the rape to determine whether she was pregnant before the rape. The victim must report the rape to police within seven days and the abortion performed within 13 weeks of conception.

3. The penalties for those performing an illegal abortion are as follows: One to 10 years in jail and/or a fine of \$10,000 to \$100,000. The mother who has an abortion is subject to no penalty either for seeking and obtaining an abortion or for a self-administered abortion.

Is the above outlined bill a perfect one? Of course not. But then again if we lived in a perfect world, with perfect bills, we wouldn't need an anti-abortion law in the first place. However, this bill is a good *First Legislative Step* in the twilight's long struggle to bring about a culture and society which welcomes the unborn and reverences all human life. The purpose of law is not merely to settle disputes and establish domestic tranquility. Often the enactment of law can cause more unrest and only fan the flames of civil disobedience. Furthermore, there are times when a society must be morally mobilized so as to enact laws which go against the order for the sake of justice. A crucial role for law in a democratic republic is the moral role, that is, law can serve to instruct and challenge the conscience of a nation. Law is reflective of the kind of human beings we are and revelatory of the kind of human beings we hope to become. Law is an ongoing narrative which tells the story of the tension between our present identity and that identity which is yet to be revealed. Law also is a

legacy we leave to those who come after. It is a story of our wisdom and folly. Law is a precious gift to the future.

The Executive Response: 1991

Last year Louisiana Governor Buddy Roemer vetoed the anti-abortion bill. Shortly after his veto, the Governor attended a national conference of governors in which he received the praise of many of his colleagues for his so-called "courage and compassion" (if only Orwell could hear all the double-speak). He basked in the after-glow. However, Roemer continued to maintain to the homefolk that he was pro-life and would sign an anti-abortion bill which contained "meaningful exceptions." This phrase was never clearly defined, and as we shall see, for good political reasons, namely, Roemer had no intention of signing *any* anti-abortion law.

Throughout the legislative debate, Roemer stayed on the side-lines claiming to let the process take its course. He would speak with all sides on the issue but would not commit himself until a bill emerged for his signature (or veto). However, one theme became a constant drum beat: the Governor would sign an anti-abortion bill which contained those unnamed "Meaningful exceptions." The pro-life forces (the Louisiana Catholic Bishops included) took the Governor at his word. The Theriot-Bares bill was passed overwhelmingly in both chambers of the legislature. The Governor waited until the eleventh hour to make known his decision. At an afternoon news conference Roemer delivered the mother of all sucker punches to the pro-life forces: he would veto this bill. Why? Because the exceptions were not meaningful! He went on to explain that the exceptions bill did not go far enough in protecting women. Roemer assured everyone that his decision was not political but grew out of his genuine concern for "babies and women" who have been the victims of violence and brutality. In Roemer's view this legislation only continued the cycle of violence. Hence, the Governor announced he was morally required to veto this bill.

Pro-life forces were outraged. The Louisiana Catholic Bishops and members of the Legislature felt deeply betrayed. They all felt that Roemer had been given the bill he asked for and had indicated he would sign. Not so. This bill was not "meaningful" enough. Pro-choice forces celebrated. Ms. Terri Bartlett of Planned Parenthood hailed the veto as an act of "compassion and integrity." However, this time it was the pro-choice forces who would enjoy a short lived victory.

In a historic vote (state historians can find no previous instances of a legislative override of a governor's veto), the Louisiana Legislature overturned Roemer's veto in a resounding fashion: the Senate voted 29-9 to override and the House voted 76-25. A two-thirds majority in each house is required to override (26 in the Senate and 70 in the House). Pro-life forces were elated. Pro-choices were extremely bitter. One-pro-choice legislator, Representative Alphonse Jackson (D) said, "A male-dominated Legislature should not be making decisions about the bodies of women . . . That should be made within the confines of the family . . . This seriously invades privacy rights and human dignity. It flies in the face of reality." One cannot help but wonder if it is the rhetoric and logic of

Jackson which flies in the face of reality. The fact that the Legislature contains a majority of males does not necessarily mean that issues affecting females are dismissed automatically. Abortion, furthermore, is not about women's bodies but the life of the unborn. To claim that abortion decisions should be kept within the family is simply dishonest. From the standpoint of pro-choice groups, for we all know, that decision lies solely with the mother. There is little, if any, family input. There is an affront to human dignity; however, it is not from this bill but from the taking of innocent unborn human life.

Governor Roemer's response to the veto override went as follows: "I am disappointed for women and families across the state . . . It is not a good bill. It is going to be expensive to litigate, impossible to implement, totally unfair to women who have been brutalized and raped." Again a word of response to this characterization by Roemer must be made. Abortion is *not* a solution to women's issues especially when it comes to unwanted pregnancies. Abortion just *continues* the brutalization of women. Abortion does not solve the violence of rape but only *continues* the violence and violation of women. Unfortunately, the Governor chose to characterize the issue as a women's rights issue. It is not. Abortion is about fundamental human rights, namely, the right to life. The right to life of the unborn does not enter into Roemer's moral disappointment. His moral concern only extends to women.

Louisiana Catholic Bishops: 1991

In 1990 the Louisiana Catholic Bishops supported the no exceptions abortion bill. I believed at the time, and still do, that the support of such a bill was imprudent. A no exceptions bill would not have been signed by Governor Roemer. And even if such a law had been signed, it would never have passed constitutional muster even given the current make-up of the United States Supreme Court. I wrote that the bishops should have lent their support to a more moderate bill which allowed for very specific limited exceptions as a way of saving the lives of many of the unborn. Furthermore, the bishops would *continue* to work for a bill which would meet the ideal of no exceptions.

This time around the Louisiana Catholic Bishops supported an anti-abortion bill which allowed for abortion in very restricted circumstances: rape, incest, and in case the physical life of the mother was in danger. The bishops received, without foundation in my judgment, a good deal of criticism from Protestant fundamentalists and conservative Catholics. The main thrust of their complaint was this: the bishops abandoned their pro-life stance by supporting a bill which allows abortion. The bishops are, in effect, cooperating with a sinful act and policy which only weakens the pro-life movement and protection of the unborn. Critics believed that the bishops should have supported a no exception bill such as the one proposed by archconservative fundamentalist Representative Woody Jenkins (D). Again I believe that this would have been a grave mistake.

The Louisiana Catholic Bishops are pro-life and anti-abortion. They do not support abortion nor do they advance an abortion agenda. However, in the public realm of law and policy one must be prudent in trying to obtain as much

goodness and value as one can from a bad situation. The bishops chose to support a bill that will protect the vast majority of unborn children that would have been the victims of abortion. The bishops' position is one of moral prudent realism when it comes to issues of law and public policy. Father Thomas R. Ulshafer, S.S. in a most insightful article on the meaning(s) of compromise in the legislative process writes:

Although compromise is a bad word in the minds of many people, willingness to compromise is a necessary condition for political effectiveness in a democracy. the challenge is to make such compromises without falling into moral insincerity of formal complicity with evil . . . it appears that traditional Catholic thought would say that with sufficient reason and in a concrete situation where there is no other viable way to limit the harm being done by a law, one should not necessarily be ashamed to work out a compromise with those who support in imperfect, non-ideal proposal. And in some cases, one may even have an obligation to do so.

(The above passage is taken from "The Morality of Legislative Compromise: Some Historical Underpinnings," by Thomas R. Ulshafer, S.S., Ph.D., published in the *Linacre Quarterly*. I think it is a very significant contribution to the discussion about moral compromise. The article has helped to clarify and sharpen my own thinking about moral compromise.)

One should not think for a moment that the bishops are satisfied with the current state of affairs. The bishops must continue to work for a transformation of cultural values which will promote the dignity of all human life. The educational and spiritual task of conversion and renewal is ongoing and never ending. It should be mentioned that such a work of cultural transformation is not limited to bishops or Catholics. Such a work is the vocation of all men and women of good will who desire the protection of the unborn. Such is the vocation of those who desire to stop the hidden and ongoing abuse of women which abortion brings.

The After-math

No sooner had the Louisiana Legislature finished its work of overriding Roemer's veto than the American Civil Liberties Union filed suit to block enforcement of the new law. (According to Louisiana law this new anti-abortion legislation would not go into effect until sixty days after the close of the general legislative session.) Such was to be expected. However, the judicial outcome of this bill is uncertain as it makes its way to the United States Supreme Court. No doubt there is high anxiety on the pro-choice side since they are unsure about the court since the arrival of its newest Associate Justice. One thing is clear, however, with the passage of this bill; we will obtain a good reading about the current court about the abortion issue. We will learn a great deal about the new Associate Justice and his views on life-issues. And, finally, if the current court wishes to overturn *Roe v. Wade* the Louisiana law affords just such an opportunity.

Lessons To Be Learned

Act II in Louisiana's play on abortion, unlike Act I in 1990, has much to teach the pro-life movement (and Catholic bishops) how to conduct a successful

political campaign in the service of human life. Furthermore, the current situation in Louisiana can help many in leadership positions (especially the Catholic bishops) to focus on the crucial issues facing the pro-life movement.

I will bring this essay to a close by briefly mentioning some of the major lessons learned as to how to fashion prudent pro-life legislation. And secondly, I will briefly mention some of the crucial issues which are going to demand the best thinking and deepest spirituality of those in the leadership of the pro-life movement.

The legislative victory by pro-life forces in Louisiana shows that victory is possible if, and the if is crucial, prudent bills are written. At this moment in time, given the makeup of the court and our cultural values, a total ban on abortion is unwise. However, partial victories are possible and should not be minimized. For these partial victories, restrictions on the vast majority of abortions, slowly build a moral climate which affirms the values of human life at all stages of development.

Pro-life forces need to keep ever before their eyes the common goal which unites them — protecting unborn human life. Pro-choice forces continue to rely on division within the pro-life movement. There are going to be *means* about which men and women of good will have genuine disagreement. However, the goal sought should unite all who wish to defend the dignity of human life. In the political realm the virtue of prudence is essential. The virtue of prudence is not timidity or crass pragmatism. Rather, prudence is good judgment in concrete situations to achieve as much value as possible. Prudence recognizes that there are instances in which compromise is desirable in order to achieve the greater good or minimize the greater evil.

The National Conference of Catholic Bishops must address with all possible speed the role of the Catholic elected public official in the American political and religious context. I am calling for more than individual position papers, homilies, or even state conferences of bishops' statements. What is needed is a systematic reflection on the role of Catholic public officials on the *many* troubling moral issues which face us as a people (racism, AIDS, poverty, etc.). Catholics have made huge strides in American public life. Bishops must recognize this change and offer prudent guidance for Catholic officials. Of course, such guidance is not providing officials with a particular way of voting on specific issues. Rather, what is needed is a framework of values, and guidance within our Catholic tradition, to help the public official to render to Caesar what is Caesar's and to God the things that belong to God.

A deep challenge faces the pro-life movement (and Catholic bishops in particular) when it comes to facing the claim that those who are opposed to abortion are anti-women. Even if one is not anti-women, anyone opposed to abortion is insensitive to women's issues and the right to reproductive freedom. Pro-life forces can no longer go on speaking to the converted (women who are pro-life). There is much evangelization that needs to be done for the population of Catholic women and all women who are open to a serious consideration of Catholic teaching. This is not a call for fads, slogans, preaching, or activating the guilt machine. What is needed is a thoughtful, pastorally prudent, and spiritually

sound presentation of Catholic teaching. Above all, there must be an abundance of Catholics who are loving, life-affirming disciples of Jesus Christ. The Catholic Church must listen with love and respect to the experience of women. All good teachers listen. We don't compromise our teaching authority and the soundness of our message by listening. Rather, our teaching is enriched as we enrich many for the glory of God.

Concluding Word

By no means is the situation in Louisiana the last word for the abortion debate. The courts will play a large, if not decisive role in the latest skirmish over the issue which will not go away. Perhaps *Roe vs. Wade* will be overturned to some degree. Perhaps a vast majority of abortions will be banned and the unborn will be more secure. Perhaps. Yet we must not grow faint in the ongoing task of cultural transformation. Even more demanding is the transformation of the political will to promote women with pregnancies with genuine alternatives to abortion. This means that we must as a society in its political expression, provide the material resources for a whole array of services: pre and post natal care, education, community based hospital care, and sufficient economic resources for mothers to care for their children. In other words, the real victory over abortion will not be won in the state-house, White House, or court-house. It will be won by working together as a people for a change of heart and a change of cultural values. We cannot become so spiritual as to reject the hard work of political and cultural change. At the same time, we cannot become so political that we judge our work by the standards of worldly success. In the end we must be faithful to the One who feeds the multitudes with the bread that perishes as a sign of that bread which nourishes the soul for eternal life.
