

# THE UNBORN

In January, 1973, the United States Supreme Court declared the abortion laws of Texas and Georgia unconstitutional. In its opinions in these two cases, *Roe v. Wade* and *Doe v. Bolton*, the court held that the unborn child is not considered a person in the terms of the Constitution, and that a woman's so-called right to privacy supercedes the right to life of the unborn child.

The court specified that there could be no state regulation of abortion during the first three months of pregnancy, and only such regulations as would protect the woman's health during the second three months. During the final three months of pregnancy, the state, in view of its interest in the "potentiality" of human life, may regulate or even proscribe abortion, except where it is necessary for the preservation of the life or health of the mother. Health was interpreted in the two opinions to include "all factors — physical, emotional, psychological, familial, and the woman's age — relevant to the well being of the patient." Thus, the court effectively denied the constitutional guarantees of due process and equal protection of the laws to the unborn. Despite denials by Chief Justice Burger, the court established an abortion-on-request atmosphere for the nation.

Thus, it is increasingly clear that the only effective way to provide legal protection for the unborn is to amend the Constitution. The type of amendment needed would provide that the unborn child is legally a person, and that the safeguards of the constitution extend to the unborn child at every moment of his or her existence from conception onward.

More than 25 constitutional amendments have been introduced in the Congress, and the United States Senate has begun to hear testimony on the various proposals. In the light of testimony submitted in the congressional hearings, it is valuable to re-examine some of the major points of the court's opinion and the prospects for changing the present situation.

In attempting to explain the denial of legal personhood to the fetus, Justice Blackmun, writing the majority opinion, argued two specific points:

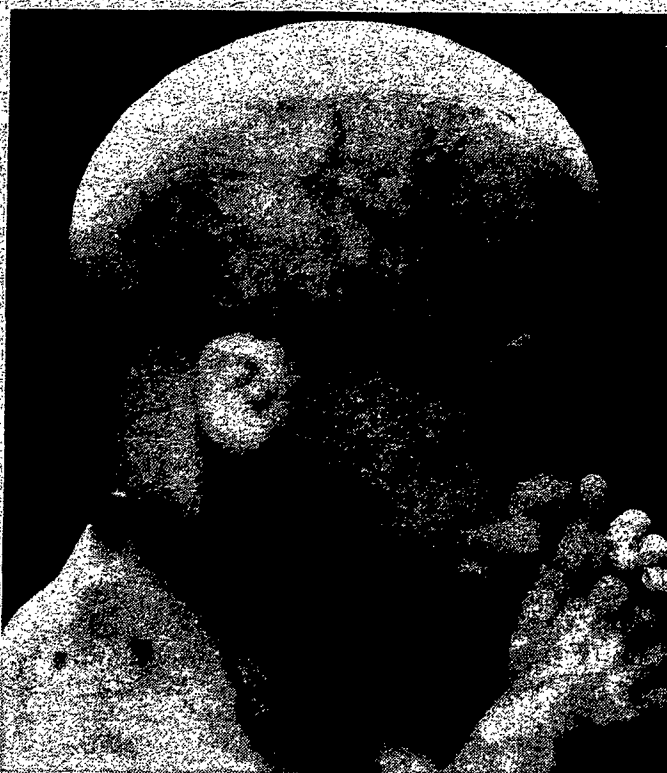
1. The fetus is not specifically recognized as a person in the Constitution; and
2. We do not know when human life begins.

Addressing the first point, Blackmun admitted that "the Constitution does not define 'person' in so many words." Citing a series of places where the term "person" is used, Blackmun concluded that "none indicates, with any assurance that it has any possible prenatal application." The Justice also cited an absence of case law indicating that the fetus is a person within the meaning of the Fourteenth Amendment. Finally, he stated that the Supreme Court "inferentially" held in a previous case (*U.S. v. Vuiton*) that the unborn child is not a person.

No one of these explanations proves conclusively that the unborn ever was — or must be — excluded from personhood within the meaning and language of the Constitution.

Justice Blackmun in his analysis ignored two other questions pertinent to his opinion. Is it clear beyond a doubt that the Fourteenth Amendment excludes the unborn as a person, and can the constitutional meaning of person under the Fourteenth Amendment be read to include the unborn? A historical reading of the views of the framers of the Fourteenth Amendment indicates that they equated the terms "person," "human being" and "man." They situated their understanding of these terms in the statement of the Declaration of Independence that "all men are created equal." The reference to creation, which was understood to mean a divine act prior to birth, raised no question in their minds.

Justice Blackmun admitted that his observations concerning the personhood of the unborn child in law are not conclusive, and thus he took up the question of the beginning of human life. In his investigation of this point he ignored impressive and unchallenged scientific evidence on the existence of human life from conception; he misread and misinterpreted Catholic teaching on the



matter; he admitted that "we need not resolve the difficult question of when life begins," yet he indicated a leaning toward the position that "life does not begin until live birth," and he concluded that "the fetus, at most, represents only the potentiality of life." The conclusion is not substantiated by the evidence, and it establishes a new term — "the potentiality of life" — that is not supported by the empirical evidence with regard to when life begins.

The U.S. Senate Subcommittee on Constitutional Amendments has attempted to probe more deeply this critical question of when life begins. Dr. Jerome Lejeune, a geneticist from France who discovered that the cause of one specific genetic defect is due to an extra chromosome, testified that "the transmission of life is quite paradoxical. We know with certainty that the link which relates parents to children is at every moment a material link, for we know that it is from the encounter of the female cell (the ovum) and the male cell (the spermatozoa), that a new individual will emerge."

Dr. Lejeune summed up his testimony with the conclusion that "(F)rom molecular genetics to comparative reproduction, nature has taught us that from its very beginning the 'thing' we started with is a member of our kin. Being its own, human by its nature, never a tumor, never an amoeba, fish or quadruped, it is the same human being from fecundation to death. He will develop himself if the surrounding world is not too hostile. And the sole role of medicine is to protect the individual from accidents as much as possible during the long and dangerous road of life."

In light of the conviction that human life begins at conception, a fact strongly supported by scientific evidence, and because of the high value placed on the life of each and every human being, the Church has always prohibited direct abortion as a morally evil act. Moreover, recognizing that the primary role of law is to defend human rights, the bishops of the United States have repeatedly called upon Congress to amend the Constitution so as to provide a constitutional base for legal protection of the rights of the unborn child.

In presenting the testimony of the U.S. Catholic Conference, Cardinals Krol, Cody, Manning and Medeiros refrained from endorsing any existing amendment and from presenting specific language. Instead, they outlined the following "guiding principles" that should govern the drafting of an amendment.

1. The amendment should establish that the unborn child is a person under the law in the terms of the Constitution from conception on.

2. The Constitution should express a commitment to the preservation of life to the maximum degree possible. The protection resulting therefrom should be universal.

3. The proposed amendment should give the states the power to enact enabling legislation, and

to provide for ancillary matters such as record-keeping, etc.

4. The right to life is described in the Declaration of Independence as "unalienable" and as a right with which all men are endowed by the Creator. The amendment should restore the basic constitutional protection for this human right to the unborn child.

In the discussion following the prepared testimony, a number of points were clarified that merit close attention to understand the Church's position.

1. Morally, direct abortion is the unjustified destruction of human life and cannot be condoned.

2. The responsibility of law is to safeguard human rights, including the right to life of the unborn.

3. Restoring legal personhood is necessary to provide due process and equal protection of the laws to the unborn.

4. A constitutional amendment will insure that the lives of the unborn are legally protected and that the law and the judicial system will be called into play before any procedure is performed that endangers the life of the unborn child.

5. The Church recognizes that on some rare occasions a true conflict arises between the right to life of the child and the continued life of the mother. The solution to this problem is not to be found in compromise or suspension of moral judgment, but in the development of a principle of law that can guide human judgments. The moral principle calls for saving the lives of both mother and child, and for utilizing those procedures that save as much life as possible. Thus, moral theology has always allowed procedures directed toward saving the mother's life, although an indirect and unavoidable result was the loss of the fetus. The USCC witnesses urged the Senate subcommittee to study this principle in attempting to formulate an amendment that is morally sound and constitutionally feasible.

Legal scholars, government leaders and concerned citizens have been baffled by the opinions of the Supreme Court. It is quite clear to all that the abortion dilemma has not been solved, nor has the problem "gone away." Yet legal mechanisms alone are not the final solution. The long range responsibility is described well in the concluding section of the USCC testimony.

"We do not see a constitutional amendment as the final product of our commitment or of our legislative activity. It is instead the constitutional base on which to provide support and assistance to pregnant women and their unborn children. This would include nutritional, pre-natal, childbirth and post-natal care for the mother, and also nutritional and pediatric care for the child through the first year of life. Counseling services, adoption facilities and financial assistance are also part of the panoply of services, and we believe that all of these should be available as a matter of right to all pregnant women and their children."

The changing of public attitudes to appreciate the human dignity of the unborn is perhaps the most important and the most difficult task before us. This process of public education is accomplished in a variety of contexts, formal and informal. Wherever an informed individual or organization is engaged in dialogue on the issue of abortion — whether in a gathering of friends, a classroom discussion or a TV production — the process of public education is advanced.

Effective social work to assist both mother and child is a demanding challenge, often requiring skills and training beyond that of the ordinary person. Nonetheless, depending on one's natural ability, interest or professional background, the individual person can become involved in constructive works of charity.

Pregnancy counseling and Birthright programs enlist volunteers to provide one-to-one assistance to pregnant women in distress.

Formation of a citizens' group to investigate the needs of pregnant women in the local community could be a valuable first step in formulating constructive proposals for adoption by a social work organization or as a basis for needed legislative reform.