

Respect Life: A Constant Ethic

Abortion 1985

Are Small Victories a True Weather Vane?

By JOHN T. NOONAN, JR.
We were surprised and defeated.
We have survived.
We shall overcome.

No one in 1973 anticipated the radical decision — the most radical in American judicial history — by which the U.S. Supreme Court established abortion as a fundamental constitutional right in the United States. Every state and several municipalities had laws regulating abortion. The regulation of abortion went back in Anglo-American legal history to the thirteenth century or earlier. Some of the statutes were as old as the 19th century, other were freshly minted in response to suggestions of the American Law Institute. Some of the statutes have survived strenuous political efforts to amend them; others had been moderately altered in response to political pressures. Old or new, unchanged or amended, all these statutes became at one swoop unconstitutional by the decisions of the United States Supreme Court in *Roe v. Wade* and the companion case *Doe v. Bolton*.

The Court established an absolute right of every woman to have an abortion until viability (reckoned by the Court as usually occurring at seven months). The Court established a further right to have an abortion for the sake of health in the last two months of pregnancy, and defined health so broadly in terms of psychological and emotional well-being that for all practical purposes any abortionist could justify a late-term abortion as fitting within the conditions set by the Court. No enforcement of an abortion law covering even the last two months of prenatal life was possible. Effectively, the human being in the womb was stripped of the protection of the law at every stage of his or her existence.

With the 1973 Supreme Court decision in *Roe v. Wade*, the United States was presented with the most radical abortion law in the world.

Who was the "we" who were surprised and defeated? The "we" were most of us who believe in a government of laws, not of men exercising raw power; who believe in the traditional values of our country, among which innocent human life ranks high; who indeed prize human life from its inception.

"We" could not reasonably have anticipated that a disaster such as *Roe v. Wade* could occur. Hence we were surprised. We could not prevent the massive social damage caused by its occurrence. Hence we were defeated.

Who is the "we" now? Not of course the more than 15 million unborn children whose lives were taken in the womb. The "we" who have survived are the rest of us. We have survived and with us our country and its institutions, mutilated though these are.

We have won small successes and suffered large losses.

The small successes have been largely in the area of funding abortions. We have seen Congress, session after session, refuse to appropriate Medicaid money to pay for elective abortion. We have seen the Supreme Court, by the narrowest of margins, hold that *Roe v. Wade* did not establish a constitutional right to have an abortion paid for by the United States

Treasury. We have seen the Court hold that the individual states had no constitutional obligation to pay for elective abortion. These successes have reduced our complicity with the abortion machine. We do not have to see our federal taxes used to pay for killing the innocent, and in most states we do not have to see our state taxes employed for such a purpose. But the two most populous states, California and New York, impelled by skewed interpretations of their own constitutions, continue to fund abortion; and the withdrawal of taxpayer

the rest of the country — agree that their actions are beneficial, reasonable, right. So conflict is inevitable. Each push against our vital values stimulates a vigorous response. These vigorous responses will result ultimately in the overcoming of *Roe v. Wade*.

• The hardest barrier for the pro-life movement to cross has been that erected by the media. The media treatment of the controversy between Geraldine Ferraro and Cardinal O'Connor, while slanted to present Ferraro as a feminist heroine, made

peaceful protest to picket a Planned Parenthood clinic that performs abortions. Another married couple with three children of their own, adopted a fourth child because it was necessary to do so to convince that child's mother not to abort him. With such examples of devotion and compassion, hearts are sure to be converted.

• Conversions are occurring. Women Exploited by Abortion is a nationwide group of women who have suffered abortion and are able to testify to their abhorrence of what they have experienced. The most public of all converts is Bernard Nathanson who once presided over the largest abortion clinic in the world. Now passionately dedicated to the defense of life in the womb, he has made a movie, *The Silent Scream*, that depicts the course of an abortion. These converts testify to the evil of the experience they now regret and reject.

• Human experience is in the end on the side of life. For centuries the law stood as a shield protecting the defenseless unborn against the impulse of the moment or the calculation of seekers of profit. The American aberration of the last 12 years will be overcome as attention to human experience, ancient and recent, negative and positive, shows the shield to be still essential.

• The greatest grass roots ecumenical movement in America has been the pro-life movement, bringing together a broad band of believers, including Catholics, Evangelicals and Mormons and small but devoted contingents of Episcopalians, Lutherans, Presbyterians and Orthodox Jews in the campaign to protect life. The most fundamental difference between activists in the pro-life cause and activists in the cause of abortion, a study in *Family Planning Perspectives* has shown, is not in denominational affiliation, but in the degree of religious commitment. Pro-life activists are, for the most part, religious persons; those on the other side are not. The religious conviction that human life is sacred animates and unites the defenders of the unborn.

More could still be done. Formal agreements between the leaders of the different churches could be perfected. It would be desirable to have an increase in overall coordination and direction. But nothing could be better than the present appreciation that persons of different faiths now have of each other's efforts as they work together towards the common end of eliminating abortion.

A President cannot enact a constitutional amendment or pass legislation singlehandedly. But by his public utterances he can create a climate and by his acts he can create a judiciary sensitive to the sacred character of human life. The current President is in the course of doing this.

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(Photo by Dr. Landrum Settles)

support in other states has not produced any marked decline in the overall number of abortions. The killing has continued.

Meanwhile, the mutilation of our institutions has multiplied:

Husbands have been denied the right to object to the destruction of the children they helped to procreate — the institution of marriage has been injured.

Parents have been denied the right to object to an abortion performed on their minor child — the institution of parenthood has been subordinated to the unfettered freedom of choice in favor of abortion.

The federal courts have arrogated to themselves the awful life-and-death power of deciding which human beings are human beings within the protection of the Constitution — the institution of natural rights inherent in every human being has suffered a fearful blow.

We who have survived shall overcome. Why?

• Those who defend the right of abortion cannot bear that what they defend should be considered the taking of human life. They will not be content until we — the "we" that is

the media say more than had been their custom about abortion in America. President Reagan, in the presidential debates, kept the subject alive. Then came the abortion clinic bombings, a frightening collision between the fruits of raw power and raw outrage, which shocked the media into due attention. *Newsweek* ran a cover story on abortion which, for the first time, attempted to be fair to the pro-life position. *The Wall Street Journal* ran a column finding the leader of the Moral Majority more persuasive on abortion than the leader of Planned Parenthood. The media barrier had cracked.

• Political leadership — Ronald Reagan is the first president clearly to condemn the *Roe v. Wade* decision and to act by appointing a Supreme Court Justice critical of the decision. He has also banned from the receipt of federal funds private agencies promoting abortion abroad. He has taken the extraordinary step for a sitting President of authoring a book, *Abortion and the Conscience of the Nation*.

• Example — the President is setting an example. A married couple spend their Saturday mornings exercising their First Amendment right of