

Primary Voting Guide

Letter to Catholic politicians on abortion and the law

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licit to obey it, or to “take part in a propaganda campaign in favor of such a law or vote for it.” (32)

History has been severe in its judgments of Catholics who failed to protest unjust laws or sins against human rights. The nearest example is the Nuremberg Laws of Nazi Germany, against which even religious leaders were silent, and in the more distant past the laws upholding the African slave trade or those of Apartheid in South Africa. These, too, were contrary to religious doctrine, common decency and were a grave assault upon human rights. We justly admire an Abraham Lincoln, a John Quincy Adams (33) or a Martin Luther King for their open and public opposition to injustice in the marketplace and we praise the courage it took to speak out in the face of massive public opposition. The Catholic Church expects that kind of courage in those who claim to be Catholics, and there is no doubt that history itself will deal harshly with those who fail to possess that kind of courage.

Conclusion

This letter has been written as a friend to those brave Catholic men and women in public life in the legislature, in government, in public service. It is meant to be a helpful word to them in facing the most serious moral crisis of our time, and the subject of our most serious public debate since slavery. I have come to have a deep respect and admiration for those who govern our nation and frame its laws, and I also know that Catholic politicians, today and for the better part of a century, have been in the forefront of social justice and the struggle for human equality. I have read some of their books and studied some of their speeches; I have seen the miracles they accomplished for the people of their states and districts; I have seen the support they have given to just laws for the poor and helpless and for national policies to further the welfare of all the nation's citizens. And this letter is certainly not a criticism or lack of appreciation for their outstanding public service. I just want to remind them of the critical role they play in the history and welfare of this nation and the true dimensions of the most critical moral issue of our time.

And I would like to insist that the question of abortion is not a specifically Catholic or religious

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issue. It is a human and legal issue and it is on principles that human beings have in common that the debate takes place. The question of the unborn as a national issue is a matter of reason and law, not of religious doctrine, and if the question is to be resolved in the public arena, it is solved as a matter of law, not of faith. The victory over the rights of the unborn must be a legal and juridic one, drawn from principles embodied in the Constitution of the United States and in a juridic doctrine based upon it.

Catholics take part in this debate as citizens, not as Catholics, since their faith and the tenets of their faith are not binding upon others. Their faith requires them to use their reasons to their fullest and to further and defend those human rights they hold in common with every other human being.

As in the Abolitionist Movement that brought about the outlawing of chattel slavery, we are on the threshold of a totally new juridic development, Embryonic Law, based on legal and anthropological principles, as well as new developments in genetics. Whenever such developments have taken place in the past, new laws to safeguard the human rights of those not previously covered by the law were enacted and inhuman practices violating those rights were outlawed. And in every case, there was fierce opposition to this new development by those who exercised power over others or by those who profited by ignoring or violating the rights of others.

What has to be shown in the legal arena is that abortion violates the rights of an identifiable human subject, based upon empirical data drawn from a host of sciences. That is what the abortion battle is really all about and that is what has to be proved in a court of law. What is being pioneered is a new development in juridic doctrine and a final phase in the historic battle for the human rights of every human being. What is critically important is how the battle is fought and that it takes place in more than the arena of public opinion. It is time to move into the legal arena.

Unless and until new cases are brought to the courts, the Roe v. Wade decision will stand. Without

litigation, even massive litigation, (34) challenging the constitutionality of Roe v. Wade, the Supreme Court's hands are tied, since it is bound by that decision until new data and new testimony are brought before the Court in specific and concrete cases.

The Constitution of the United States is like a giant searchlight that throws its beams onto the political and social landscape of the United States and reveals the inequities and flaws in that landscape. The landscape of 1788, when the Constitution was ratified, is quite different from the landscape of 1857, when slavery divided the nation. And the landscape at the turn of the 20th century, when workers rights were the issue, is quite different from that of 1857. Each period has its own problems and its own inequities and these problems and inequities are faced by the decisions of the Supreme Court that throw the light of the Constitution on a new set of challenges. These decisions become part of the constitutional fabric of the nation and record the march of the Constitution through history.

In his monument study of Black America's century-long struggle for equality under the law, Richard Kluger recognized the critical role of the Supreme Court in solving the problems of American society. His book is a graphic illustration of how access to the courts is the only way to change the ethos of a society. The tool is the Constitution of the United States and it is only by action in the courts, in the Supreme Court in particular, that the Constitution is brought to bear upon the life of the nation.

“It is to these nine men that the nation has increasingly brought its most vexing social and political problems. They come in the guise of private disputes between litigating parties, but everyone understands that this is a legal fiction and merely a convenient political device. American society thus reduces its most troublesome controversies to the scope — and translates them into the language — of a lawsuit. In no other way has the nation contrived to frame these problems for a definitive judgment that applies to a vast land, a varied people, a whole age.” (35)

A dispassionate analysis of the phenomenon of legalized abortion

may, in retrospect, show it to be the greatest human rights issue of our times. Although this generation may be inured to the grim reality of abortion, it seems likely that once civilization has come to its senses, future generations will look back on our time as the most barbarous in history, not merely for our wars and terrorism, but especially for the antiseptic extermination of the most defenseless members of our society, the poorest of the poor, the most helpless of the helpless, simply because they have no voice. (36)

REFERENCE NOTES

- 1) United States Conference of Catholic Bishops, *Catholics in Political Life*, June 2004.
- 2) *Ibid*.
- 3) “Letter to the Duke of Norfolk,” January 14, 1875, cf. Ian Kerr, *John Henry Newman*, Oxford University Press, 1988, pgs. 679-690.
- 4) “McGowan v. Maryland,” 366 U.S. 420 (1961).
- 5) Cf. Clifford Stevens, “The Rights of the Unborn: The Constitutional Challenge to Roe v. Wade,” at www.priestsforlife.org
- 6) Sir William Blackstone, *Commentaries on the Laws of England*, 4 vols. Oxford, 1765-69. Also cited in Black's Law Dictionary, pg. 1481.
- 7) “Dred Scott v. Sandford,” 60, U.S. (1857).
- 8) “Alien and Sedition Acts,” 1798.
- 9) Cf. *John Marshall: A Life in Law* by Leonard Baker. Macmillan Publishing Co., 1974.
- 10) *Lincoln at Cooper Union* by Harold Holzer, 2004. An account of Lincoln's Cooper Union Speech of 1860, in which Lincoln dissected the Dred Scott Decision and showed its constitutional flaws and falsehoods.
- 11) *The Common Law* by Oliver Wendell Holmes, Jr., Little Brown & Co. 18.
- 12) *Ibid*.
- 13) *Op.cit* (see footnote 10).
- 14) “Muller v. Oregon,” 208, U.S., 412 (1908).
- 15) Supreme Court of the United States, October Term, 1917, No. 107.
- 16) *Cf.* note 7.
- 17) “Plessy v. Ferguson,” 163 U.S., (1896).
- 18) “Lochner v. New York,” 198 U.S. 45 (1905).
- 19) “Hammer v. Dagenhart,” 247 U.S. 251 (1918).
- 20) Cf. “Griswold v. Connecticut,” 381 U.S. 479 (1965), also, “The Right to Privacy” by Louis D. Brandeis & Samuel Warren, Jr., *Harvard Law Review*, 4, (1890-91).
- 21) “Brown v. Board of Education” 347 U.S. 483 (1954).
- 22) “United States v. Darby Lumber Co.” 312 U.S. 100 (1941).
- 23) *Cf.* Note 14.
- 24) John W. Davis: “John W. Davis unsuccessfully defended school segregation in Brown v. Board of Education in 1954. He had served as President Woodrow Wilson's Solicitor-General from 1913 to 1918, and was the Democratic candidate for President in 1924. He was con-

vinced that the principle of stare decisis, the appeal to precedent, would hold in the segregation case, but instead the Supreme Court decision of 1896, Plessy v. Ferguson, upholding segregation was reversed.

25) Cyril Means, “The Law of New York Concerning Abortion and the State of the Foetus, 1664-1968: A Case of Cessation of Constitutionality,” *New York Law Forum* 14 (fall 1968). “The Phoenix of Abortional Freedom: Is a Prenumbral or Ninth Amendment Right About to Arise from the Nineteenth-Century Legislative Ashes of a Fourteenth-Century Common Law Liberty”, *New York Law Forum* 17 (fall 1971).

26) Sir William Blackstone, “Commentaries on the Laws of England”, 2 390-391.

27) Cf. “Brief of Amicus Curiae Clifford Stevens, President of the National Organization for Embryonic Law,” the United States Court of Appeals of the Fourth District, in the case: Mary Doe v. Donna Shalala et al., filed November 30, 2001, Record # 01-1298.

28) *Op.cit* see footnote 26.

29) “Commentaries on American Law,” James Kent, 1826-30, Book I, 462.

30) Theodore C. Sorensen, *Kennedy*, Harper & Row, 1965, pgs. 190-191 on Kennedy's speech at the Houston, Texas, Ministerial Association in Dallas, Texas on September 12, 1960: “In the most controversial paragraph of the speech, Kennedy said he would resign his office rather than violate the national interest in order to avoid violating his conscience.” Sorensen adds: “I read the speech over the telephone to the Rev. John Courtney Murray, S.J., a leading and liberal exponent of the Catholic position on church and state...it was (also) based on my talk months earlier with Bishop (John J.) Wright.”

31) *The Encyclicals of John Paul II, Evangelium Vitae*, 1996, Our Sunday Visitor Publishing Division, pgs 863-864, paragraphs 73.1,73.2

32) *Ibid*.

33) After his term as President, John Quincy Adams was elected to Congress, where during his terms in Congress, he read petitions from his constituents opposing slavery, always shouted down by slavery advocates. His determination and persistence earned him the admiration even of his opponents, and his defense of the Africans in the Amistad affair, and his consequent victory in the Supreme Court, laid the groundwork for the abolition of slavery.

34) “Litigation is the vehicle by which the fundamental principles of our Constitution are given content and relevance in each generation ... Constitutional adjudication is the genius of our democracy and its noblest attribute.” Supreme Court Justice Tom C. Clark, Hastings Constitutional Quarterly, 1, (1974).

35) Richard Kluger, *Simple Justice*, Random House, New York, 1975, in the Forward.

36) Cf. An interview with Father Thomas Williams, L.C., Dean of the School of Theology of the Regina Apostolorum Pontifical Athenaeum, (Rome) April 26, 2004.