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BOOK REVIEWS

Two Reviews of:

Abortion and the Constitution: Reversing "Roe v. Wade" Through the Courts

Dennis J. Horan, Edward R. Grant, and Paige C. Cunningham, Editors
(Washington, D.C., Georgetown University Press, 1987) pp. xvi + 374, index and appendices.

For a decade and a half, Americans United for Life has gathered together the best legal, ethical, theological and medical minds of the pro-life movement to combat abortion, infanticide and mercy killing. In my opinion, this book represents AUL's highest accomplishment. Uniformly, the articles in this work are superb, well-researched, carefully conceived and to the point. This book will become a classic of pro-life literature as it presents some of the sharpest criticism of that dreadful decision, and anyone concerned with the reversal of *Roe v. Wade* must read this book.

Abortion and the Constitution is a compilation of essays written by presenters at an AUL Conference, "Reversing *Roe v. Wade* through the Courts" on March 31, 1984, and in it, the decision itself is minutely analyzed, its historical research criticized, its legal arguments scrutinized and its legal conclusions subjected to scathing criticism. In doing this, *Abortion and the Constitution* presents the finest critique of this decision yet made.

Michael Pearce Pfeifer traces the history of Supreme Court reversals, and he notes that the court has regularly and frequently reversed its previous decisions. The average time of reversal is 24 years, but in some instances it has only taken a matter of months for the court to reverse itself.

Richard Myers compares the civil liberties case of *Brown v. Board of Education* and *Roe* and he notes that the meticulous research, prudent timing and unswerving commitment of Thurgood Marshall to the cause of promoting Black civil rights won the day for them. What is critical in bringing about reversals is presenting such overwhelming evidence that the court can draw no other conclusion but that the previous decision should be reversed. He urges pro-life litigants to follow Marshall's tradition, not overreact to the situation, and to avoid some of the indiscretions of the past. Myers argues that the best strategy is to stress that limiting and restricting abortion is in the state's interest, and he feels that other plans would not be as fruitful. He properly warns for the need for caution and deep awareness of the many cross currents that confront the court in decisions such as *Roe*.

Dennis Horan and Burke Balch argue in "*Roe v. Wade: No Justification in History, Law or Logic*", that major legal and social trends of the 18th, 19th, and 20th centuries were reversed by the decision. In a scathing criticism of the decision, they note the feeble foundations in history and law of the decision. And in a minute critique of the decision, they show the inferior scholarship of the *Roe* court.

John East and Steven Valentine argue in "Reconciling *Santa Clara* and *Roe v. Wade: A Route to Supreme Court Recognition of Unborn Children as Constitutional Persons*", that the weakest aspect of *Roe* was its declaration of the nonpersonhood of the unborn. In *Santa Clara* the court held corporations to be legal persons, and yet it denies that the living, breathing and growing unborn child was not a person. Like other authors, they cited Robert Destro's famous article: "Abortion and the Constitution: The Need for a Life-Protective Amendment", to bolster their claims. What is regrettable is that Professor Destro was not a presenter at the symposium. His article had a major impact on the pro-life movement when it was published 10 years ago, and his reflections on the issues years later would have been most enlightening and helpful.

John R. Connery, S.J. the master moral theologian of the American Catholic Church, expertly explains the teachings and law on abortion of the Catholic Church, and he demonstrates how egregiously the *Roe* court misunderstood the Church on this issue.

Joseph Dellapenna, in his "Abortion and the Law: Blackmun's Distortion of the Historical Record", analyzes the historical arguments presented in *Roe* and is sharply critical of the biased and ill-informed reading of the history of the decision presented by Justice Blackmun. He rendered foolish the claims of the court of an historical foundation for its decision, and any future decisions on abortion will have to contend with the history of abortion which he has given us.

In "*Roe* and the Hippocratic Oath", Martin Argabi corrects the historical misunderstanding of the development and nature of the Hippocratic Oath, and he sharply criticizes the Court for demeaning its role and importance in the history of medicine. Argabi's historical analysis is profound, careful and enlightening, and he demonstrates that the highest quality scholarship is now on the side of the pro-life movement.

William Bentley Ball discusses tactics to be used in attempts to reverse abortion decisions in his "Case Tactics and Court Strategies for Reversing *Roe v. Wade*". He wisely urges prudence, patience, careful preparation and restraint when arguing abortion cases. These are forced on the pro-life movement by the unyielding hostility of pro-abortionists and their judicial advocates, and his advice is well taken.

Thomas Marzen and Victor Rosenblum argue in "Strategies for Reversing *Roe v. Wade*", through the courts that pro-life litigants must focus on limiting the right to privacy to exclude abortion, abolition of the doctrine that the unborn person is not a constitutional person meriting constitutional protections and affirmation of state interests in protecting unborn human life. Adoption of such a broad front will probably be the most successful because it would have the effect of destroying the conceptual framework of the decision, thereby toppling it.

Lynn Wardle focuses on the judges of the federal judiciary in his article "Judicial Appointment to the Lower Federal Courts: the Ultimate Arbiters of the Abortion Doctrine" and he notes that President Carter radically altered the traditional procedures for appointment of these judges by creating a Circuit Judge Nominating Commission, which was unyieldingly pro-abortion. Carter's statements and the policies of this commission made it patently evident that the endorsement of a pro-abortion judicial philosophy was the litmus test for admission to the federal circuit judiciary.

In recent years, Professor Lawrence Tribe has been the driving legal mind behind the pro-abortion judiciary. In a short book, *God Save the Honorable Court*, written in 1985, Tribe urged the Supreme Court Justices to remain on the bench as long as possible until another pro-abortion administration could be elected to replace them. It is clear that the Supreme Court has adopted this strategy, and Wardle rightly criticizes Tribe and the court for this compromising and politicizing of the Court.

Edward R. Grant, in the concluding essay, "Abortion and the Constitution: The Impact of *Thornburgh* on Strategy Reverse *Roe v. Wade*", argues that the *Thornburgh* case is probably an omen of future abortion cases. On the one hand, the pro-life majority of the court is growing and it is showing the inherent weaknesses of *Roe* more clearly. But on the other hand, the pro-abortion majority is growing weaker and more hostile in its desperation and crumbling position. He rightly urges caution and coordination of attempts to reverse the decision so as not to destroy growing possibilities for reversing the decision.

This book is simply excellent. The articles are masterfully written and quite enlightening. The individual authors, AUL and Georgetown Press are all to be highly commended for having given us this superb volume.

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