

May 1997

The Conscience of a Christian Lawyer After Roe, Romer and Casey

Peter J. Riga

Follow this and additional works at: <https://epublications.marquette.edu/lmq>

Recommended Citation

Riga, Peter J. (1997) "The Conscience of a Christian Lawyer After Roe, Romer and Casey," *The Linacre Quarterly*: Vol. 64 : No. 2 , Article 12.

Available at: <https://epublications.marquette.edu/lmq/vol64/iss2/12>

The Conscience of a Christian Lawyer After *Roe*, *Romer* and *Casey*

by

Peter J. Riga

The author is an attorney in Houston, Tx.

The whole usurpation of power by the courts over intimate aspects of our lives began with the discovery of a Constitutional right which 1) no one else had ever seen in the Constitution and 2) which was legislated against in every state of the Union and 3) has no basis in history and finally 4) was a right which the 1973 Court itself could not specifically find anywhere in the Constitution. "This right of privacy, whether it is founded in the 14th Amendment's concept of personal liberty as *we feel* it is, or, as the District Court determines, in the 9th Amendment, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy," opined Justice Blackmun.

Courts are not supposed to feel; they are supposed to know exactly where and what in the Constitution permits or gives such a right. The majority could not find it then and they cannot find it now. The Court keeps on going back to *Roe* as foundational to justify all other rights which the Court "found" emanating from *Roe*. If, therefore; *Roe* is illegitimate the whole structure (abortion, contraception, homosexuality, right to die) comes crashing down. That is why every few years the Court must reiterate this abortion right as foundational to its legitimacy of all the cases about privacy decided since *Roe* (*Casey*).

Upon this newly discovered "right" all the rest of the judicial structure was built with a flurry of rights born of an uncertain and judicially created structure: the right of the unmarried to fornicate with access to contraception; the same right for teenagers; the right to commit suicide with the help of doctors has been vindicated by two Federal Courts of Appeal (2nd, 9th) based on the same rationale as *Roe*; homosexuality may not be proscribed, discriminated against or legislated about because such "discrimination" is the product of animus and unreasoned prejudice (*Romer v. Evans*).

Finally the Court in *Casey* tells us that we must give complete obedience to a Court which created those rights out of thin air and enforced them on a population most of whom think that such rights are wrong and immoral, under pain of undermining the Court's legitimacy. The Court has made abortion the

benchmark and lynchpin of its own legitimacy. This is marvelous and it was, ironically, a Catholic who proclaimed this obedience (Justice Kennedy).

Again when the same Justice Kennedy called upon pro-life Americans to stop this resistance to legalized abortion and accept "a common mandate rooted in the Constitution" he called for two things: recognition that the abortion freedom is really contained in the Constitution, which is a hotly disputed proposition, to say the least; and that resistance to that freedom as the benchmark of obedience to the Constitution, is to try and stop the conscience of millions of Americans from protecting a fundamental breach of morality and human rights of the most defenseless. Both appeals to pro-life Americans are outrageous, immoral and a form of judicial tyranny. The only conscientious response to *Casey* is resistance at every level and a clear *non serviam* to the immoral use of the Court.

How do millions of people give assent to decisions that they think are inherently immoral and an abomination (abortion, homosexuality?) Is this not a replication of the demand of the 3rd Reich that its policies and laws be accepted by the folk under pain of undermining the established order? (*Volk und Reichstag in ordnung*). Patriotism demanded that the Germans submit to unjust and immoral laws and be quiet about it just as we are reminded by Justice Kennedy that unless we submit to the ukase of the Court on the abortion decision, the Court's very legitimacy will come into doubt.

Such a demand places the committed Christian in an impossible dilemma, a choice between the legal system and his conscience. Most Christians do not realize what the Court has asked of them in *Casey* because the media has not told them; but the clerks (intellegentsia) and the lawyers do. They know very well that what the Court is asking for is a surrender of conscience to the state; a surrender of our conscience to the Court's decision on abortion as touchstone of our loyalty to the whole American governmental and legal system, much like the Roman Praetor who demanded the pinch of incense to the divine emperor by other Christians. The ultimate result of this demand is to approve of partial birth abortion which is within the purview of *Roe*. We are asked to approve not only of abortion and homosexuality but now of infanticide as the benchmark of the legitimacy of the Court's power. Hence our moral and mortal dilemma.

This power of the Court was always a usurpation, an invocation and application of raw judicial power of force imposed on a whole people in the name of a right which cannot be found honestly from any reading of the Constitution or from a historical analysis of the reasonable intent of the original framers. We are asked to consent and legitimate the power of the Court by setting aside our conscience, our religious and moral precepts and scruples to save the legitimacy of the Court.

If that is the case, better that the Court implode upon itself with its arrogant seizure of power. In the words of Justice Scalia, "Day by day, case by case, [the Court] is busy designing a constitution for a country I do not recognize." These decisions concerning human life have changed the moral basis of our law, oppressed, enslaved and killed the poorest and most defenseless among us and have made all of us participants, directly or indirectly, in murder of the innocent.

When I became a lawyer I swore to uphold the Constitution of the United

States which as interpreted by the Court, I do not even recognize the rights it has "discovered" therein and which, if accepted, would destroy my moral and religious beliefs and therefore my conscience. This oath was always conditional relying on its protection of the rights of the poor and defenseless among us. As interpreted by the Court, the Constitution has become an instrument of and a machine for, death for the defenseless. No conscientious Christian can accept such a Constitution as interpreted in *Roe*, *Romer* and *Casey*. This interpretation can only meet our continuous and unmitigated resistance.

Long before I took the lawyer's oath I took another oath to commit myself to God's law and precepts unconditionally which takes preference over all human laws: "We must obey God rather than men" (*Acts 4:19*). I must follow conscience and God rather than *Roe*, *Romer*, and *Casey*. There is no other choice as the Pope reminds us in *Evangelium Vitae*.

Now the only question which remains for me is: Can I still remain a Christian as an attorney under a regime of usurped powers and immoral laws imposed on me in the name of a Constitution which I neither recognize nor accept? In the words of St. Augustine: "What are nations without morality than bands of brigands?"
