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ADDRESS

THE POPE JOHN XXIII LECTURE
September 30, 1994

The Honorable Robert P. Casey
*Governor of the Commonwealth of Pennsylvania**

I come here today to speak on a subject that talks to the professional ideals of the people of this law school, a school in the mainstream of the American legal profession and also committed to the educational mission of The Catholic University of America. What is that mission? The university declares itself to be "a community of scholars . . . set apart to discover, preserve, and impart the truth in all its forms, with particular reference to the needs and opportunities of the nation"[1] and, the statement continues, "Faithful to the Christian message as it comes through the Church and faithful to its own national traditions, The Catholic University of America has unique responsibilities to be of service"[2]—and all these words are important—"unique responsibilities to be of service to Christian thought and education in the Catholic community as well as to serve the nation and the world."[3]

The mission statement of this law school underscores these very ambitious and expansive commitments, these guiding principles that chart the course of this institution. The law school, in its statement, pledges "[t]o support and advance the aims and goals of the university as a whole."[4] Specifically, the law school declares that it aspires to develop "professional skills within constraints of moral responsibility"[5] and to contribute

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* Robert P. Casey served as Governor of the Commonwealth of Pennsylvania from 1987 to January 1995. He is currently chairman of the Campaign for the American Family and the Fund for the American Family, two pro-life, pro-family organizations located in Arlington, Virginia and Scranton, Pennsylvania respectively.

1. THE CATHOLIC UNIVERSITY OF AMERICA, 1994-95 ANNOUNCEMENTS 11 (1994).
2. *Id.*
3. *Id.*
4. THE COLUMBUS SCHOOL OF LAW, 1994-1995 ANNOUNCEMENTS 42 (1994).
5. *Id.*

"to the advancement of knowledge and to the resolution of problems facing the legal profession, the community, the nation, and the Church."[6]

That is who this institution is. That is its essential character, self-declared. And I come to speak about that today as it applies to some of the problems facing the people of this country—intractable problems, divisive problems, but ones from which we cannot turn away. Clearly, when you look at the mission statement, the professional ideals of the people of this law school have a unique dimension: a commitment which includes academic excellence, but which goes beyond it, and includes, as one of its central motivating forces, a witness. It is an active mission, a witness which takes the form of service to the broader community, emphasizing not only the rule of law, but also the moral dimensions of the problems confronting society today.

Now when you reflect on this commitment, it is a reminder that the law, like all great vocations, is a profoundly humble calling. Most lawyers are—what is the expression?—often wrong, but never in doubt. In law, as much as any vocation, the beginning of wisdom is really humility. And, the reason is obvious. The law demands humility, it seems to me, because it deals in ultimate truths, in ultimate situations; it affects people's lives, the relationships between people, the relationships within families, the relationships between an individual and his or her government. It deals in truths and mysteries about humanity itself, in things which cannot be altered or nullified by judicial decree or by the hand of man.

It is also true that the legal profession brings power, especially for those who become lawmakers or judges. When a powerful person is prosecuted, under our system, just as a lowly citizen would be, we declare that no man is above the law. But, this saying goes much deeper than that. It applies equally, indeed, especially, to those who would write or interpret our laws. To be a lawmaker or judge, I believe you need first and foremost to understand that laws are but a conventional adaptation of permanent principles.

It is not wrong to rob or defraud or kill because lawmakers have declared it so. If the books said otherwise, it would still be wrong. There have always been, there are today, and there always will be—things that are right and things that are wrong. That used to be an article of faith in this country. Today it would be treated as heresy. Many of the learned solons of the United States, many law schools as a matter of fact, would challenge that—would challenge it directly, and argue about it, hour after hour. But if the books said otherwise about these activities—robbery or fraud or killing—the books would be wrong and so would the lawmakers

6. *Id.*

who promulgated them. We ought to listen to one of history's most tragic lessons—the lesson of slavery. You know, if courts alone were the source of law, then up until 1868 if you lived under like-minded legislators and jurists of that day, it would have been perfectly right and defensible to own a slave.

Now all this is just an echo of what many great men have said before. It is our fortune that many of them founded this country. Ours is still, after all, the only country in the world with a birth certificate, a document of legitimacy, explaining exactly where our rights, duties, and laws come from. We were endowed with these rights, says that Declaration, by our Creator.[7] We are not only created, but created equal, says the Declaration.[8] Our rights are, therefore, unalienable.[9] They do not come from man, or the state; they come from the Hand of God. Therefore, neither man nor the state can take them away. That's what the Declaration means to me. And all laws protecting such rights are, therefore, not to be tampered with by man.

Alexander Hamilton put it so beautifully when he said: "The sacred rights of mankind are not to be rummaged for, among old parchments, or musty records. They are written, as with a sunbeam, in the whole volume of human nature, by the hand of divinity itself; and can never be erased or obscured by mortal power."[10] Scholars still debate the relationship between the Declaration and the Constitution. The latter, of course, makes no mention of a Creator, whereas the Declaration does, more than once. One school of thought says the Constitution stands all by itself, that the Declaration was a compelling piece of propaganda, but of no legal relevance. The other school has long pointed to the view of Abraham Lincoln, who called the ideals of the Declaration America's civil religion—in Lincoln's words, "The faith that animates the Constitution."

I am going to go way out on a limb here today, and cast my lot with Lincoln. With him, I believe the Constitution must also be read with reference to the Declaration, which explains where all our laws derive their legitimacy. The Constitution asserts, in essence, that no man is above the law, and establishes all the checks and balances and procedures to see to it that principle is observed. But, it is the Declaration that reminds us of the even more American ideal that no one is beneath the law, that we're all equally created in His image.[11] The Constitution is the vehicle for the

7. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

8. *Id.*

9. *Id.*

10. A. Hamilton, The Farmer Refuted (Feb. 23, 1775), *in* 1 THE PAPERS OF ALEXANDER HAMILTON 81, 122 (H. Syrett ed. 1961).

11. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

national journey, but the Declaration points the way to our common destination and says that none shall be left behind. Neither document would have its full greatness without the other, and, of course, as lawyers, we know that both demand the utmost reverence. But, how about today? How does this overlay the problems of today—particularly, the most contentious, and intractable and divisive problems of today that create that tension in society that all of us are so familiar with? We look at our legal system today, and we find that the principles of the Declaration, these so-called "self-evident"[12] truths, so essential to the definition of who we are as a people, are no longer self-evident in many quarters of this land.

Forgive me, for what I have to say is about a case I am most familiar with, which was in the Supreme Court a few years ago, called *Planned Parenthood of Southeastern Pennsylvania v. Casey*.[13] Well, I am Casey—the defendant. Of that case, George Weigel, who has written extensively and very cogently on this subject, recently said:

> In the 1992 decision, *Casey v. Planned Parenthood of Southeastern Pennsylvania* [sic], for example, three of the Court's justices, seeking to legitimate their decision to uphold the "central finding" of *Roe v. Wade*, had this to say about the meaning of freedom in America: "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of life."[14]

Weigel continues, "Despite the high-sounding words, one would have to go back to the *Dred Scott* decision to find a judicial pronouncement more ominous in its implications for American democracy."[15] And Weigel continues: "The American experiment is no longer about working out the public implications of what Jefferson called 'self-evident truths.' "[16] No, says Weigel, "the goal of the American experiment is the satisfaction of the unencumbered, autonomous, self-constituting, imperial Self."[17]

The tradition that inspired this university, which it in turn vows to uphold and communicate, is a vast reservoir of such truths, truths of the sort reflected in the Declaration of Independence, which come before the law and always remain above it. It is, to me, a great tragedy that in our laws, over the last twenty-five years, we have witnessed not just occasional deviations from that tradition, but a wholesale rejection of its very premise.

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12. *Id.*

13. Planned Parenthood of Southeastern Pennsylvania v. Casey, 112 S. Ct. 2791 (1992).

14. George Weigel, *Abortion and the Kind of a People We Are*, RESPECT LIFE PROGRAM (NCCB Secretariat for Pro-Life Activities), 1994, at 3.

15. *Id.*

16. *Id.* at 4.

17. *Id.*

As a nation, we are just now seeing the awful consequences of false promises of liberation held by such fashionable causes as abortion on demand and no-fault divorce. Harvard Law Professor Mary Ann Glendon has effectively traced the radical nature of our social experiments in these areas, experiments that have placed us on the radical fringe of Western society.[18] Scholars like Lenore Weitzman[19] and Judith Wallerstein[20] have traced the economic and psychological trauma that divorce has brought to women, to children, and to families. The feminization of poverty, juvenile crime, teenage suicide: these and a host of other evils are directly attributable to the breakdown of the family.

Nowhere is the governing premise behind these false promises so grandiloquently expressed as in the plurality opinion in the *Casey*[21] decision. That premise is the view of the human person as a radically autonomous self, creating its own world and its own truths, irrespective of society and of other human beings. I think it is quite easy to see that no view could be more corrosive of that indispensable institution which is the building block of all civil society—the family.

We are finally waking up to the truth. Our error has been very expensive. It is expensive to the people of this country. As a governor, I see that expense in every line of our human services budget. We are called upon to make up for the fallout from the disintegration of these institutions. It is not just wrong, it is very expensive—very expensive—and we must change it.

We are not autonomous selves, with the freedom to create the kind of world we want for ourselves without respect to its implications for the rest of society. We are members of a complex human society—large and small, public and private—in which the decisions of one person affect all the others, in which responsibilities, once accepted, cannot be casually terminated. And the threads that run through both of these phenomenons—no-fault divorce and abortion on demand—share a common defi-

18. *See generally* MARY ANN GLENDON, THE TRANSFORMATION OF FAMILY LAW: STATE, LAW, AND FAMILY IN THE UNITED STATES AND WESTERN EUROPE (1989) (tracing the development of family law in the last two decades).

19. *See generally* Lenore J. Weitzman, *The Economics of Divorce: Social and Economic Consequences of Property, Alimony and Child Support Awards*, 28 UCLA L. REV. 1181, 1184 (1981) (presenting economic data on divorce awards and analyzing the economic and social consequences of these awards).

20. *See generally* Judith S. Wallerstein & Shauna B. Corbin, *Father-Child Relationships After Divorce: Child Support and Educational Opportunity*, 20 FAM. L. Q. 109, 109-11 (1986) (reporting on a ten-year study that examined the consequences of separation and divorce, specifically on the father/child relationship).

21. Planned Parenthood of Southeastern Pennsylvania v. Casey, 112 S. Ct. 2791, 2802 (1992).

nition. It is essentially an evasion of responsibility. And therein lies a big part of the problem, it seems to me.

In retrospect, it is obvious that if a society wanted to forget these obvious truths, it would be necessary to deny the binding forces of the bonds of marriage and of parenthood. And, consequently, necessary to have no-fault divorce and abortion, which strike so directly and lethally at those most crucial human bonds. There is a novelist by the name of Pat Conroy who, speaking of the collapse of his own marriage, observed, "[e]ach divorce is the death of a small civilization."[22] When we talk about the breakdown of society, we have got to direct our attention first to the breakdown of the most basic human society. For what is more emblematic of the decline of the family than the breaking of solemn vows when one spouse casts aside another or when a parent ends the life of a child in the womb. This indeed is family breakdown, the collapse of a small civilization, if you will, with a vengeance.

In the wake of the *Planned Parenthood* decision, we find ourselves beset by confusion about the most fundamental question a society can ask itself: Who is a person, and who shall be recognized and protected as a member of the human family? Today in this country, in this great country of America, that question has no clear answer. Consider two recent cases. In Florida, a woman is charged with murder for ending her pregnancy by shooting herself.[23] She went down to the abortion clinic for a late-term abortion.[24] The clinic demanded so much money, she could not afford to pay it, so she shot herself, and the child died as a result.[25] She was charged with murder.[26] Earlier this year in California, in a six-to-one decision, the Supreme Court of California held that a person can be convicted of homicide—now listen to this—*homicide*, for causing the death of an unborn child that could have been legally aborted.[27] The Supreme Court of California almost unanimously made that decision. The majority opinion stated, "[t]he third party killing of a fetus with malice aforethought is murder . . . as long as the state can show that the fetus has

22. Barbara D. Whitehead, *Dan Quayle Was Right*, THE ATLANTIC, Apr. 1993, at 64.

23. David Barstow & Tim Roche, *Life Appeared to Hold Few Options*, ST. PETERSBURG TIMES, Sept. 9, 1994, at 1B.

24. *Id.*

25. *Id.*

26. Although she was originally charged with third-degree murder, Circuit Judge Brandt Downey dismissed the murder charge, but allowed the manslaughter charge to remain. Craig Pittman, *Abortion It May Be; Murder, No*, ST. PETERSBURG TIMES, Jan. 24, 1995, at 1A. The judge held that a third-degree murder charge is justified only for unintentional killing. *Id.* If the defendant shot herself to abort her fetus, then it was clearly an intentional killing. *Id.*

27. People v. Davis, 872 P.2d 591, 602 (Cal. 1994).

progressed beyond the embryonic stage of seven to eight weeks"[28]—not even the point of viability as stipulated by *Roe*. The court in California said that where the death is procured by a third party feloniously, someone not operating under the privilege of the so-called privacy right in *Roe v. Wade* can be convicted of homicide.[29] The law is schizophrenic, is not it? When those very acts, performed under the aegis of the privacy right, would have been transformed into a constitutional right. Now only lawyers would understand those distinctions. I mean, if you explain that to a child in the fifth grade, the child would say, "Wait a minute, there is something wrong here. Run that past me, one more time. What is going on here? What has happened to our country?"

We have out-smarted ourselves. We are so politically correct, and so sophisticated and so up-to-date, that method of expression that George Orwell discussed in the novel *1984* has arrived: doublespeak, where black is white, and white is black, and language is turned on its ear and has no meaning anymore.[30]

When you look at these tragic cases you are struck by a very basic fact. Homicide, as we all know, by definition, is the unjustified killing of another person—with malice. But, if the unborn child is a legal person, as these cases necessarily imply, then legal abortion is nothing more or less than the taking of the life of another person. Now under the circumstances surrounding legal abortion—that it is performed by a physician, in a clinic with maternal consent—that is private and legal, as we say. But none of this changes that fundamental point: the life being taken is the life of a person. And yet we see that abortion is legal under the magic wand of the privacy right in *Roe v. Wade*.[31] It is transformed from homicide to a constitutional right when the mother and her physician carry out the procedure under the aegis of that privacy right.

It would seem to me that it follows inexorably that with legal abortion we have finally severed the right to life from personhood. The unalienable right to life that Jefferson proclaimed in the Declaration is, for some persons, now alienable, subject to confiscation, subject to destruction by the state, operating under the license granted in *Roe v. Wade*. And so we have chaos and confusion. It gets smoothed over, and explained and apologized for and extenuated in the press. But still it is chaos and confusion in a world where principles of justice and moral reasoning have little weight. Lawyers and judges and legislators confront this every day in the

28. *Id.*

29. *Id.* at 595-97.

30. *See* GEORGE ORWELL, 1984 303-14 (1949) (describing the official language of the fictitious country of Oceania).

31. 410 U.S. 113, 152-54 (1973).

public square, in the courtrooms, in the legislatures and the Congress of this country. For leaders in this field, the challenge is to bring to bear the light of America's founding principles and sound moral and legal reasoning, in the words of the mission statement of this university. Lawyers here are trained to be good lawyers within the realm of moral principles. It is not an unfettered, unlimited excellence. There is a governing device that brings us back to fundamental truth in this whole exercise. The challenge is to bring those kinds of talents, those kinds of values, to bear on these and many other problems that today are tearing asunder the fabric of our society.

I want to state now a conviction. It is an empirical conviction, not a wish. A conviction that abortion has not taken and never will take a permanent place in our culture. In a country whose whole reason for being is to affirm the goodness and equality of all human life, how could such a thing ever fit in? Father Byron says it is divisive. You know why it is divisive: because it is not part of the American character. That is why. And the people know it. Because you cannot silence this debate with a piece of paper or a federal edict. Because that decision tore apart all of the relationships so central and important to the people of this country: between husband and wife, between mother and child, between the family relationship and the state. All these things were just torn apart by that decision.

Is it any wonder, therefore, that twenty years later, the cases still keep coming up from Texas, from Pennsylvania, and Missouri, and Massachusetts. All across this country, they keep coming. That has not happened with *Brown v. Board of Education*,[32] has it? I will come to that in just a minute. There is a big difference between those two decisions.

But this country's heritage, tradition, the American experience, is foreign to the idea of the taking of innocent, unborn human life. Other countries may accept it for the simple reason that other countries are not America. You see, we claim to be different. Read the words of the Declaration. We claim to be different. And many people in this country—and I am one of them—take that Declaration as it is written. Just as all of us have an obligation to take the mission statement of this great university as it is written. This is who we claim to be. And the people of this country are saying "prove it." They're saying that to the Democratic Party. They are saying it with increasing frequency to the Republican Party: Be who you claim to be; put up or shut up; put your money where your mouth is; talk is cheap; results are what count.

32. 347 U.S. 483 (1954).

Other countries are not America. So it goes down a lot easier there than it does here—thank God. No other country began with a promise on its sacred honor to love and protect all human life equally. That is a pledge only one nation on Earth is sworn to keep, and our people know it. And that is why this debate rages, and that is why it is divisive. And that is why it is not going to go away. That is what they told us after the 1992 election: it was finished; the values debate had been laid to rest. They were as wrong as they could be. They do not understand what is going on in this country and because of that, they are going to be swept aside. Because there is a tide moving across this country and it is coming directly from the people themselves. You know something: They have had it up to here. They have had the course with what is going on in this country today where values are concerned. And it is going to change. The only way that you have change in a democratic society is at the ballot box. Everything else is just talk. Everything else is just nice, polite discussion. But this change has to be made by the people. It will be made at the ballot box, just as it has always been in this country of ours.

I want to make a prediction today to the students that are here and those who will come after and will be sitting in this auditorium. In the lifetime of law students now enrolled here at The Catholic University of America, their successors here will study *Roe v. Wade* with bewilderment as a sad, mysterious chapter in American history, when America briefly lost its way. I am certain this is going to happen because of what is going on in this country, in the Congress of the United States: the assault on the Hyde Amendment, the Freedom of Choice Act, health care, with the monstrous abortion language in that bill, all have passed—not passed the Congress—but passed away. We are winning this battle, contrary to the popular notions you read about in the press. Hubert Humphrey put it well. He said, "There are not enough jails, not enough policemen, not enough courts to enforce a law not supported by the people."[33] Make no mistake about it, abortion on demand is not supported by the vast majority of people of this country. Twenty years after *Roe v. Wade*, all of these sophisticated people pushing abortion on demand have come to realize they have been hammering a square peg into a round hole. It just has not taken, and it is a passing phenomenon that will pass in due course into oblivion.

To hear some of the lawyers that defend the other side speak today, you would think the right to abortion was of unassailable legal origin, an idea we could trace straight back to the Magna Carta. To deny the prem-

33. *Law Must Be Just, Humphrey Warns*, N.Y. TIMES, May 2, 1965, at 34 (describing a speech given by Hubert Humphrey to the Virginia Bar Association).

ise of *Roe*, they say, is itself at odds with the whole movement of Western civilization and of civil liberties generally. But, in fact, if you look at the decision as a lawyer, and you analyze that decision, it was anything but a natural adaptation in our constitutional evolution. It was very different from *Brown v. Board of Education*,[34] for example, a decision that extended law and liberty to an excluded class who had been second class citizens up until that point. America cannot abide second class citizens. We reach out and correct these inequities in every other case except this one case I am talking about here today. Minorities, women, children who worked fifteen hours a day, the elderly, the handicapped; we changed those conditions by the force of law—not as a matter of voluntary action—by the force of law.

And some of those on the other side of this issue are for the most intrusive kind of government in all other applications except in this one case. Unlike *Brown v. Board of Education*, *Roe v. Wade* did not extend protection to an excluded class; it was an abrupt mutation, an aberration, a defiance of all precedent. It arose not from the wisdom of the ages, or the voice of the people, but from the ideology of the day and the will of a determined minority. *Roe v. Wade* was the case of seven men casting aside and rendering moot the laws of all fifty states of this country.[35] In *Brown* the Court said: "No, separate is not equal. No, you can't write off an entire class of people as somehow lesser beings. No, it is not for the government to draw dividing lines across humanity." That's why, after two generations, we look to this decision with reverence. And with no dissent. They are not picketing today saying "Overrule *Brown v. Board of Education*." Why not? Because it did the right thing, and it has the support of right-thinking people everywhere in this country. That is the difference.

But in *Roe*, Justice Blackmun took his pen and said, in essence: Well, all right, we are going to draw the dividing line right here—right between the unborn child and the other members of the human family. We are going to do it by government, by an edict, by a one-size-fits-all decision. We are going to keep the people out of this decision. State legislatures are gone—you do not get to vote on this anymore in Missouri, in Pennsylvania, in Texas, and California, and Massachusetts. We have decided one size fits all, and it is abortion on demand, take it or leave it. That is the law.

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34. 347 U.S. 483 (1954).

35. *Roe*, 410 U.S. at 113 (1973). Justice Blackmun delivered the opinion of the Court in which Chief Justice Burger, Justice Douglas, Justice Brennan, Justice Stewart, Justice Marshall, and Justice Powell joined. *Id.* Justice White and Justice Rehnquist dissented. *Id.*

It has gone down very hard. It is still like a bone in my throat. As a people, we cannot assimilate it. That is why, after a whole generation, twenty years of brainwashing and promoting and hyping and misrepresenting, that decision just still has not been accepted. And we look back to that decision in 1973 with deep, collective unease as a people.

Even those that claim to defend it are very uneasy about this whole question. Our President says he wants to make abortion safe, legal, and rare. Why does he put it that way? We do not say we are going to make the right to freedom of speech safe, legal, and rare. We want to expand it, defend it. We are not ashamed of it. It is a constitutional right. It is right in the language of our Constitution. What about freedom of religion? What about freedom of the press? Do we want to make them safe, legal, and rare? No. We want to expand them. Fight for them. We are proud of them. But not this right. This right is different. We have got to make it safe, legal, and rare. Do you know why? Because abortion is a dirty business, that is why. Everybody knows it. Including the ones that are involved in it. So you have to make it safe, legal, and rare. But instead, they have made it safe, legal, and everywhere. That is what our federal government is up to right now: trying to make it safe, legal, and everywhere.

Take a look at *Roe*, with all of its bizarre penumbras and emanations of penumbras and looking into the interstices of this, that, and the other thing, and all that legal mumbo jumbo that they used to rationalize that result. No lawyers defend it as a model of legal reasoning. Quite the contrary. It is one of the badly kept secrets of our profession that among themselves, lawyers rarely defend it as a model of legal reasoning. Even pro-choice lawyers—good ones—have taken it apart. To defend abortion, they do not do it on the basis of the genius of the reasoning in *Roe*; they shift to broader justifications.

Sadly, these apologists have tremendous sway in the media and the secular institutions of this country. Those who would defend life will find powerful forces arrayed against them. Consider a current illustration of what I am talking about, from our profession, from the legal world. In recent years, we have witnessed the resignations of several Supreme Court Justices. The marked differences in the tone and content of the public commentary on respective departures makes the point. It tells a very important story for anyone starting out in the law. Some were lauded and profiled extensively. The praise from the mainstream media was fulsome. Justice Blackmun, in particular, was singled out for praise for the one opinion for which he will be remembered. Now contrast that treatment with the treatment accorded to Justices Rehnquist and White

who dissented in *Roe* and Scalia and Thomas who have called for the overturn of *Roe*. In the newspapers and on television, we see no admiring profiles about them. No accolades, no encomia, no newfound respect. In some cases, outright, virulent hostility. Take Justice Byron White, in particular. Truly a storybook figure: Whizzer White, All-American football hero at the University of Colorado, appointed by President Kennedy, Rhodes Scholar, three decades on the High Court. You would be hard-pressed to find a career, or profile, more worthy of praise. But when he stepped down last year, hardly a word appeared on the subject of his retirement. The media seemed to find only one thing praiseworthy, and that was the fact he was ending his career. He had made a decision to end it. And, of course, all comment in the slick press turned immediately to the question of what legal titan would be succeeding him.

Justice White, of course, in the real world surrendered any expectation, forever, of positive press coverage the moment he decided in *Roe v. Wade* that the majority was engaged in an act, as he called it, "of raw judicial power."[36] He had a second chance in the *Casey* decision and he stuck to his guns and continued to say that *Roe* was an exercise in raw judicial power.[37] If anyone doubts the power and influence of this issue, in terms of how a Supreme Court Justice is perceived in the popular press, just look last Sunday in the *New York Times Magazine*: a glowing profile of Justice David Souter.[38] The piece contrasted sharply with earlier and more skeptical portraits of Justice Souter. The *Times* article is entitled *A Surprising Kind of Conservative*.[39] Translation: he evolved to the left on the abortion question, and therefore he's politically correct, and therefore, is a conservative in the sense that he believes in *stare decisis*, which is OK, in this case, because it arrives at the result that the politically correct want to reach, which is that we sustain abortion on demand as the law in this country. If you want to make big headlines, and be a big man around town, just take that position. You are progressive, you are enlightened, and you are all those other good things. If you are on the other side, you are a real Neanderthal who does not understand what is going on. That is the way it works.

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36. Doe v. Bolton, 410 U.S. 179, 222 (1973) (White, J., dissenting). *Doe* was a companion case to *Roe*, 410 U.S. at 113. The Court intended that the opinions in *Roe* and *Doe* be read together. *Roe*, 410 U.S. at 165.

37. Justice White joined the opinions of both Chief Justice Rehnquist and Justice Scalia concurring in the judgment in part and dissenting in part. Planned Parenthood of Southeastern Pennsylvania v. Casey, 112 S. Ct. 2791, 2855, 2873 (1992).

38. David Garrow, *Justice Souter: A Surprising Kind of Conservative*, N.Y. TIMES MAG., Sept. 25, 1994, at 36.

39. *Id.*

But in the case of Justice David Souter, skepticism was magically transformed to adulation by *Planned Parenthood v. Casey*. That is the way it works in the real world. The point here is that great challenges await anybody who wants to step up to the plate and say what I am saying here today, if you try to be true to yourself and your conscience, and the principles that I would say made America great.

If you try to stand up and say what you believe, and if you ground that belief in American principles, you are going to run into very powerful forces.

Thinking about these challenges, two portraits of lawyers come to mind. Both had enormous power; both were asked, in the context of a grave national crisis, to be accomplices to injustice, to lend their authority, the authority of their office, to falsehood: in one case, a lie about a class of human beings; in the other, about the relationship between secular power and religion.

In the dissent in the *Planned Parenthood* case, Justice Scalia describes movingly a painting in the Harvard Law School, a portrait of Chief Justice Roger Taney, the author of the *Dred Scott* decision.[40] These are Justice Scalia's words about Chief Justice Taney: "He is all in black, sitting in a shadowed red armchair, left hand resting on a pad of paper in his lap, right hand hanging limply, almost lifelessly, beside the inner arm of the chair . . . [t]here seems to be on his face, and in his deep set eyes, an expression of profound sadness and disillusionment."[41] Long before *Dred Scott*, Justice Taney had denounced slavery as an evil that must be steadily wiped away. Long before the decision in *Dred Scott* he had begun emancipating his own slaves. In today's jargon we might say he was personally opposed to slavery. And yet, in 1857, he wrote an opinion saying that African-Americans could never be American citizens "within the meaning of the Constitution."[42] So he wrote off an entire class of human beings, wrote them out of the Constitution by judicial decision. He told a divided nation that these members of the human family could never enjoy the protection of our laws. While ostensibly resolving a national controversy, he was in reality feeding the fires of division. By setting aside the fundamental truth about human dignity, he was setting the stage for bloody conflict in this country. In this haunting painting, Justice Scalia sees the sadness of a truly great Supreme Court Justice who seems to fear the judgment of history.

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40. *Casey*, 112 S. Ct. at 2885 (Scalia, J., dissenting).

41. *Id.*

42. Dred Scott v. Sanford, 60 U.S. 393, 411-12 (1857).

When I think of Justice Taney, I also think of another portrait. A much older one. It hangs in the Frick Collection in New York City. It is a portrait of Saint Thomas More by Hans Holbein the Younger. Thomas More, of course, was many things: a humanist, a scholar, a lawyer, Lord Chancellor of England, a man of conscience, a Catholic—truly, a man for all seasons. In the portrait, More is robed in his office as Lord Chancellor. He gazes into the distance with an air of confidence. In the play, *A Man for All Seasons* by Robert Bolt, there is a scene in which More has a conversation with Cardinal Wolsey. The Cardinal is pressuring More to abandon his opposition to the divorce of Henry VIII. The Cardinal says, "Oh, your conscience is your own affair; but you're a statesman!"[43] And More responded with these lines: "I believe," he said, "when statesmen forsake their own private conscience for the sake of their public duties . . . they lead their country by a short route to chaos."[44]

All of us know the consequences of that position, of course. He refused to forsake his conscience; he lost his career, his friendship with the King, his freedom, and, ultimately, his very life. When he was beheaded, I am sure the verdict of the day was that he had lost everything in the process of defending that principled position. But did those colleagues and peers exercise in life even half the leadership that he had exercised in death? I think the answer is clear. He held fast to the truth. Remember that truth we talked about in that mission statement? He held it fast. Even those that were persecuting him knew they would never turn him around. They were fighting a losing battle. Centuries later, Dr. Samuel Johnson would call Thomas More "the person of the greatest virtue these islands ever produced."[45] And all of the persecutors are gone, and he is still to this day remembered.

So there they are, two portraits: Chief Justice Taney and Thomas More—a choice that all who are called to the legal profession have got to make in their own lives. There can be no question, it seems to me—taking the mission of this university as it is written—which of the two should be the model for those that pass through these halls. The example of Thomas More is what we should look to and follow.

What relevance does that have for us today? Let us bring it right down to today. It means first of all a steadfast adherence to the truth. But it means much more. It means an obligation to educate, advocate, and participate in political action, because that is the only effective means of

43. Robert Bolt, *A Man for All Seasons*, *in* THREE PLAYS 120 (Heinemann ed., 1967).

44. *Id.*

45. *Id.* at 89.

change in a democratic society. We are not a debating society; we are a democracy.

I think adherence to the truth begins with the realization that the message of respect for human life is not an exclusively religious message. Let us talk about that for a second. The pro-life religious consensus in the country was not dictated by any religion. It came directly from the people. So it is not an exclusively religious message. It is, of course, in the minds of many people. But it is not exclusively that, much less an exclusively Catholic or sectarian message. It is a truth reflected in most if not all of our major religions. It is also a universal truth, embraced both by those who have faith and by those who have no faith. It reaches back to the founding principles of our nation, in that Declaration we talked about a few minutes ago. It is a truth about mankind, according to Thomas Jefferson and Abraham Lincoln. It is more than that. It is a truth that has been part of the American experience from the very beginning. A truth we have not only known in our hearts, but also practiced in our lives and seen reflected in the laws of our country, the secular laws of our country, and in the laws of all civilized nations.

Go back before 1973. The laws of this country reflected an overwhelming consensus that children before birth deserved the protection of the law. That was a secular consensus, arrived at by people of all faiths and people of no faith across this country. Visit a state legislature sometime. You want to talk about diversity? You are looking at it—diversity to the twentieth power, capital D, all kinds of people reflecting like a mirror the diversity of the state itself. They are the ones who decided. Not the Catholic Church, not the Presbyterian Church, not any church. The people of this country, through their elected representatives in the legislatures of the states of the United States, said abortion is a crime. That was the consensus, a secular consensus. Let me say that again—it is very, very important—a secular consensus. And number two, it was a popular consensus, the product, if you will, of diversity, in all of its texture, in all of its differences, in all of its conflicts; it was the product of popular diversity. And finally, it was a national consensus, not a regional consensus, like slavery. It was a national consensus. The whole country spoke with one voice. The people spoke with one voice. Diversity spoke with one voice. And what was the verdict? Abortion is a crime. This view was not unique to any one class, or any one region. It was embodied in the laws of virtually every state in this country. Do you want to talk about consensus? It has been a long time since we have had consensus like that. Not unique to the left or the right; it defied ideological division or analysis. Democrats and Republicans, liberals and conservatives—it represented

the mainstream of America. And do you know something? It still is the mainstream of America. Do not be fooled. Do not be conned. Do not be taken in.

All the survey data proves that overwhelmingly. Justice Blackmun's opinion has not persuaded the people of America. Every poll shows a vast and growing unease with the abortion license and the industry that serves it. I say that a pro-life consensus already exists in this country. And that consensus grows every time someone looks at a sonogram. You can see it with your senses, with your eyes, with your heart. The plain facts of biology. The profound appeals of the heart are far too unsettling—no matter what side of this issue you are on—far too unsettling to ever fade away.

But many of our fellow citizens do not know what I am saying here today. You have got to tell them. You have got to educate. You have got to impart the truth. You cannot keep it to yourself. It is not a private thing. There is an obligation to be active on this whole question, because there is widespread misrepresentation around this country about the effect of the *Roe* decision. You know, millions of Americans will tell you that, under that decision, abortion is only legal in the first trimester, when, in fact, legal abortion can be carried out through all nine months of pregnancy. When you tell a lot of people that, they look at you in amazement. Do you really mean that? Yes. You see, that is what the fight was in Wichita. You remember the fight in Wichita? That was about third trimester abortions, because the doctor in that clinic was performing third trimester abortions. Let me remove the euphemism: Seventh and eighth month abortions were done in that clinic. People will tell you it does not happen. It does happen. There was a man in Wichita, Kansas, making his living doing that kind of thing. Because under the *Roe* decision, together with *Doe v. Bolton*[46] decided the same day, you can do that. When you put the two together, it adds up to abortion on demand for the full nine months. That does not apply in the countries of Western Europe. The United States of America gives less protection to the unborn child than almost any civilized society in the world. You have got to tell people what this decision really does. Because the truth—and I keep coming back to that—the truth can cause vast shifts in public attitude on this question. The fact is, those that really understand the implications of the *Roe* decision reject it.

I think this consensus I am talking about in favor of protecting the child requires two things. It has got to find its voice. And it needs to find the courage of its convictions. In short, it requires advocates who are not

46. 410 U.S. 179 (1973).

afraid to use the full force of their intellect and their power to take on the hostile elite culture—and it *is* hostile—that will surely be arrayed against them.

There is a new intolerance abroad in this land. And law schools ought to be concerned about it. This intolerance will not abide doubt or dissent on this issue. It claims to stand for freedom of choice, but stifles freedom of speech. This absolutism, which treats the right to life as an idea beyond even the pale of discussion, has precedent in our national history. In 1860, at Cooper Union, just before he declared his candidacy for the presidency, Abraham Lincoln warned us of an established opinion which would tolerate nothing short of saying that slavery is right, which will, in his words, "grant a hearing to pirates or murderers"[47] but not to opponents of slavery.

Let me ask you a question in this temple of debate and diversity and freedom of expression. Are we now to tolerate, in the United States of America, in whole segments of our society, on campuses, in many mainstream journals, in a great political party, only those who agree to say that abortion is right? And if you say it is wrong, they turn off the microphone. That is what is going on out there, and you might as well understand it.

This auditorium, we dedicate today in honor of Father Byron, is a training ground for advocates. They are going to be heard in the courtrooms and the boardrooms and the legislatures and the Congress of this nation. You are advocates, trained not for silence, but for vigorous, courageous advocacy. Lawyers do not do silence. That is not our bag. We do advocacy. We take a point of view, we believe in it, and we fight for it. We advocate. And that is what is needed on this issue. We need advocates, not afraid to take a position and stick with it.

So for the advocates out there, and those that are to come, your responsibility, I would suggest, in light of all the confusion and smoke and misinformation about this basic issue of American life, if you come from this institution, with that mission statement, is to live up to that calling to advocacy—in both private discussions and the debate raging in the public square. And it is raging, every day.

You know, abortion is an issue like few others in our history. Other causes demand commitment. Abortion demands complicity. Other causes survive by virtue of energy and attention. The survival of the abortion industry depends on avoidance and, most of all, silence. Well,

47. II EDWARD J. KEMPF, ABRAHAM LINCOLN'S PHILOSOPHY OF COMMON SENSE 789 (1965).

do you know something? Lawyers do not do silence. We are trained for advocacy, and I say it is high time we began to use it.

We have got to continue to speak out or I would not be here today, and I would not be talking about this subject if I was not convinced that it is *the* issue of our time, an issue which affects directly the future of this country, who we are as Americans, who we claim to be, what America's really all about in its essence. It is involved in everything that is talked about here today.

Take to heart, I say, the words of Saint Ambrose. He said we would be held accountable, in his words, "[for] every idle word, so we must of our idle silence."[48] So be advocates. In my judgment, this issue is the most important social justice question, the most far reaching and compelling civil rights issue, if you will. It is never put in those terms, but this is a civil rights issue. This is a quintessential civil rights issue. That is why my party ought to be in the forefront of fighting for it, instead of propagating the opposite around this country. If ever there was a time for The Catholic University of America to live up to its unique responsibilities, in the words of the mission statement, by being faithful to the Christian message as it comes through the Church and faithful to the traditions of America—the secular traditions of America—this is the time, this is the issue, and the time is right now.

There is a man at the University of Notre Dame, whom I have met, who has written very eloquently on this subject. His name is Father Wilson D. Miscamble, C.S.C., Associate Professor of History and Chair of the Department of History of Notre Dame. He has talked about the unique potential for a distinctively Catholic answer in the form of political action to the problems of American life in society, which he defines to be "the decline of the family and community, alienation and spiritual emptiness, unrestrained individualism at the expense of notions of the common good, rampant relativism in values."[49] He closes with a challenge, which resonates with the mission statement of this university. It is a challenge, in his words, to "those Catholics who believe that their church's teaching—on respect for human life, on concern for the common good, on responsibilities as well as individual rights, on the utility of the principle of subsidiarity, and on the importance of family and community—have something important to contribute to American political life."[50] His challenge is very explicit. It is "to call forth and support

48. TRYON EDWARDS, THE NEW DICTIONARY OF THOUGHTS 592 (C.N. Catrevas & Jonathon Edwards Revision 1936).

49. Wilson D. Miscamble, C.S.C., *The Tragedy of Mario Cuomo*, NOTRE DAME MAG., Autumn 1993, at 43.

50. *Id.*

political leaders who appreciate that religious and moral convictions are not private possessions and do not depend upon the existence of a consensus in order to be exercised."[51] He says, "needed *desperately* are leaders who will face squarely the relationship of their moral convictions and political actions."[52]

If those leaders are not to be found in the men and women who will pass through the halls of this magnificent building we dedicate today, where will they be found?

This is a challenge worthy of this great institution, The Catholic University of America.

This is also a challenge worthy of a great nation.

51. *Id.*
52. *Id.* (emphasis added).