

M. Cathleen Kaveny

How Views of Law Influence the Pro-Life Movement

"The fundamental challenge facing the pro-life movement is to help the American people expand beyond rights talk and move toward the virtue of solidarity — solidarity with the unborn, solidarity with others who are vulnerable, solidarity with those upon whom these most vulnerable persons depend," M. Cathleen Kaveny, John P. Murphy Foundation Professor of Law and professor of theology at the University of Notre Dame in South Bend, Ind., said in a talk Jan. 20 at Villanova University in Philadelphia. The talk was sponsored by the Villanova University Office for Mission Effectiveness and Villanovans for Life. Kaveny suggested that the 1973 "Roe v. Wade" decision legalizing abortion in the United States "and most of its progeny embody a particular view of law which is well established within the Anglo-American legal tradition: law as a marshal in the Old West." However, she argued, "the pro-life movement might more helpfully draw upon a different (and older) view of law, which has its roots in the thought of Plato, Aristotle and Aquinas: law as a teacher, particularly a teacher of virtue." She said, "The main challenge facing the pro-life movement during (and after) the 'Roe' regime is to begin discerning how the law can inculcate a different set of values from that commonly inculcated by the 'law as a marshal in the Old West' approach." Kaveny said pro-life and pro-choice activists often "have far more in common than they believe. Both groups believe that the law is essentially like a marshal in the Old West. Both groups believe that the main purpose of law is restraint. ... From both their perspectives, the only disputed question is whether abortion involves one person or two." It is possible, she said, to view 'Roe' not so much as "a legal anomaly as the logical end of a view of law which does not recognize a requirement to provide positive aid to the weak and vulnerable." Among other things, Kaveny said, "viewing the law as a teacher of virtue, particularly the virtue of solidarity, ... forces us to ask what general patterns of response must be nurtured if our society is to cultivate an ethos that supports a high regard for unborn life." This does not suggest that overturning "Roe" is unimportant, Kaveny

said. But in her view, she said, "it is important as much for pedagogical reasons as practical reasons." Kaveny's text follows.

*Roe v. Wade¹ has been the law of the land for a little over 30 years now. Thirty years: about the length of an average woman's reproductive span; longer than many of you have been alive. I've been thinking a lot about this time period lately. The sociologists now tell us that it takes a little over 30 years for an individual to attain adulthood in our society. Maybe that's true about movements as well: Maybe the pro-life movement is just now reaching adulthood, coming into its own, ready to take responsibility not only for itself but for the broader community which it is trying to teach and trying to serve. In order to take responsibility for one's future, one needs to come to terms with our past. And for the pro-life movement that means coming to terms with *Roe* — not just with the legal decision itself, but with its broader meaning within American law and culture.*

*When *Roe* was handed down in 1973, it hit many people like a bolt from the blue. Legal scholars focused on the radical nature of *Roe* as a matter of constitutional law. In *A Private Choice*, a powerful and eloquent examination of the decision's presuppositions and ramifications, John T. Noonan Jr. considered how a surprised Martian might evaluate *Roe*'s holding that the Constitution protects a woman's right to abortion. "[O]ur Martian might reason: What the framers knew to be a crime at common law in the states when they made the Constitution, they did not intend to legalize."²*

*And many ordinary, previously apolitical citizens viewed *Roe* as simply incredible; in fact, the decision galvanized some into pro-life activism. In *Abortion and the Politics of Motherhood*, sociologist Kristin Luker captures the reaction of one such woman to the decision: "Well, I think just about like everyone else in the [Support Life] League, we felt as though the bottom had been pulled out from under us. It was an incredible thing, I couldn't believe it. In fact, I didn't. For a couple of months I kept thinking, 'It can't be*

right, I'm not hearing what I'm hearing."³ Largely unaware of movements to liberalize abortion on the state level that had been operating in the late 1960s and early 1970s, these newly formed pro-life activists just couldn't believe that any so-called responsible, right-thinking person (like a Supreme Court justice) could hold that the unborn were not "persons" deserving equal protection under the law.

*I do not mean to deny the truth in Judge Noonan's comments about the extremeness of *Roe* as a matter of constitutional law. Nor do I mean to denigrate the perceptiveness of the first-wave pro-life activist interviewed by Professor Luker about the shocking nature of *Roe*'s denial of personhood to the unborn. But I think we need to probe a little deeper. In my view, the pro-life movement needs to look not only at the way in which *Roe* is a startling departure from long-standing values in American law, but also at the ways it is a tragic reflection of them.*

*In this talk I would like to do three things. First, I will suggest that *Roe* and most of its progeny embody a particular view of law which is well established within the Anglo-American legal tradition: law as a marshal in the Old West. Unfortunately, most of the debate over *Roe* has been carried out — by pro-lifers as well as by pro-choicers — without serious examination of this view of law and its inadequacies. Second, I will argue that as it comes more fully into its own, the pro-life movement might more helpfully draw upon a different (and older) view of law, which has its roots in the thought of Plato, Aristotle and Aquinas: law as a teacher, particularly a teacher of virtue. Third, I will suggest that the main challenge facing the pro-life movement during (and after) the *Roe* regime is to begin discerning how the law can inculcate a different set of values from that commonly inculcated by the "law as a marshal in the Old West" approach. In particular, I will argue that we need to think about how the law can begin teaching the virtue of solidarity.*

Law as a Marshal in the Old West

One view of the purpose of law is essentially like that of marshals in the old West. To understand this view, picture

the vast open spaces of the West populated by strong, tough, independent cowboys. Each cowboy controls his own piece of property; he can do what he likes within its confines, but he cannot trespass upon the property of anyone else. Think of the law as akin to the fences that keep these cowboys from treading on each other's land. It is a crude instrument of restraint, which places protective barriers around persons and their property to keep them from being impinged upon by others.

This way of viewing the law presupposes a certain view of human persons. It sees persons as fundamentally disconnected from each other, as atomistic individuals who above all prize the ability to pursue their own plans without interference from anyone else. It also presupposes a certain view of morality. According to this view morality is sharply divided into two sets of obligations: what you owe to other people and what you owe to yourself.

What you owe to yourself is largely to figure out what it is that you owe to yourself. The fundamental task for each person in life is self-creation: to define one's identity as an individual, to come to one's own personal understanding of what the meaning of life is. By its very nature this task is something which must be worked out alone, free from the undue influence of others. Each cowboy has to make the best of his own ranch. (For those of you familiar with the relevant Supreme Court opinions, this is the view expressed in the famous "mystery passage" in *Planned Parenthood v. Casey*.⁴)

What you owe to other people is compliance with a list of don'ts. "Don't murder." "Don't rape." "Don't assault." "Don't steal." According to this view the reason such actions are wrong is not that they radically disrupt the fundamental relationship of care and respect that one person owes another by reason of their common humanity. Instead, the reason that such actions are wrong is that by engaging in them one person is grossly interfering with the ability of the other person to pursue an individual life plan. Metaphorically speaking, by engaging in such actions you break down the fence between your land and your neighbor's and trespass on his property.

This view of the relationship of individuals to each other supports a particular view of the purpose of law. According to this view, the law, and in particular the criminal law, should not be used for any other purpose than preventing one person from harming another. If someone's private behavior isn't harmful to another person, it should not be interfered with, no matter

how morally wrong it might be or how harmful it might be to the agent. It is "a private choice."

Now we are all familiar with how the abortion debate looks when framed in this theory of law. In essence, it is the terms of the debate set by *Roe v. Wade*, and more particularly, by the decisions that followed in its wake. Against this legal background, the sole question becomes whether the fetus is a person or not. Following the logic of *Roe*, pro-choice advocates see the abortion issue as involving only one such person: a woman who must decide whether or not to bear a child. Once pro-choice advocates have concluded that a fetus does not count as a person, it is easy for them to argue that abortion is a purely private matter of no concern to the state one way or the other. In contrast, pro-life advocates see an unborn child who should count as a person — as a human being fully capable of bearing rights. Since the core purpose of the law is to harness the power of the state to protect one person against the harm another person might do, the pro-life advocate believes it is imperative to use the law to protect an unborn child against the assault of abortion.

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The persistent intensity of this well-worn argument between some pro-life and some pro-choice activists blinds them to the fact that they have far more in common than they believe. Both groups believe that the law is essentially like a marshal in the Old West. Both groups believe that the main purpose of law is restraint. Law is to be used to prevent one person from harming another person. The disagreement I have just described between pro-life and a pro-choice advocates is not jurisprudential, it is factual. From both their perspectives, the only disputed question is whether abortion involves one person or two.

Law as a Teacher of Virtue

But there is another way to look at the purpose of law. Instead of viewing it as a marshal, a police officer, one can view law as a teacher. More specifically, one can construe the fundamental purpose of law as helping people to become respected and flourishing members of the community in which they live. According to this view law is not fundamentally a fence which separates persons from one another. It is an integral part of the moral framework of the society that binds us all together. In articulating that framework, the law not only builds up the common good but fosters the ability of individuals to participate in it.⁵

Just as the first view of law that I described assumed a particular picture of human beings, so does this view. In order to see law as a teacher of virtue, one has to assume that persons are not by nature isolated, atomistic individuals. Instead, one assumes that persons are essentially social and that a key part of one's good as a person is participating in the community in which one lives. In the same fashion, while the importance of making one's own choices is recognized, it is also seen that these choices are made in response to and have an effect upon the broader community. No person is an island. According to the first view of law I described, law's function is essentially restraint of wrongdoers. According to this second view, all good law must open toward education. The law cannot be satisfied with restraining a wrongdoer. It must seek to educate him or her. Law does include elements of coercion and restraint. Yet these functions are not ends in themselves, but subordinated to the goal of inculcating virtue and concern for the common good in all citizens. Taken as a whole, the law tells a story about what counts toward — and against — being a virtuous person in a particular society that extends far beyond the specific prohibitions and requirements that it enacts.

According to this second view, law is always and inevitably a moral teacher; the second view would say that a major problem with the first view is that it does not recognize and take responsibility for this fact. So what should those of us committed to a pro-life vision say that the law should teach? Let me first explain what I mean by a pro-life vision, which in my view can be articulated in a broader way and in a way more specifically focused on the unborn. More broadly, we can say that to be pro-life is to say that the dignity of a human being — the

"personhood" of a human being — does not depend upon any achievement on their part; it does not depend on physical independence, mental acuity, "normalcy" or any ability to contribute in a tangible way to our society. To be pro-life means to hold that the measure of a society is its willingness to care for the most vulnerable in its midst — the elderly, the chronically ill, the disabled, the immigrant — and the unborn.

What of the unborn in particular? In my view, for a society committed to honoring the dignity of all human beings, no matter what their degree of dependence, honoring the dignity of the unborn should be the "easy case," for two reasons. First, and in general, unborn life is full of promise: a long life, untold possibilities, boundless potential. It should be the easiest type of dependent life for society to support because it has the prospect of outgrowing dependency. If our society cannot support dependent life full of promise of independence, how can we find it within our hearts to support dependent life that has no hope of one day becoming independent and making an active contribution to our economic and social life? Second, the bond of support at stake here — the bond between mother and child — is commonly understood to be the strongest of all bonds between human beings. If our society cannot promote and protect the shelter offered by this bond of blood and bone and flesh, how can we possibly hope to create and nurture bonds of commitment and protection that extend to vulnerable strangers and even to vulnerable enemies? I think here of the atrocities committed by American soldiers at Abu Ghraib prison.

A Pro-Life Vision and American Law

So the center of a pro-life vision in my view is a commitment to the equal dignity of all human beings, no matter how weak, dependent or vulnerable they are. But a moment's reflection suggests how very inadequate the values taught by law as marshal in the Old West view are to protecting the weak and the vulnerable. The marshal in the Old West view works very well for life's haves. If you are young and strong and vibrant, the basic thing you need in order to flourish is for other people to leave you alone. The don'ts are sufficient protection. I am OK, provided nobody robs me, beats me, rapes me or kills me. I can get around, and I can take care of myself — I can provide for my own basic needs.

But that's not the case for life's have-nots — the weak and the vulnerable. Consider first a

very elderly person or a severely handicapped person. It's only a first step — an important first step but only a first step — not to kill such a person. How long are they going to last if no one brings them food, bathes them, keeps them warm, makes sure they get their medicine? They need positive assistance, not just to be left alone. Consider children. A baby or even a toddler will soon die if no one feeds it, keeps it warm and actively protects it. What about the unborn? Well, the fetus requires not just to be left alone by the woman who carries it; it requires bodily life support and care. Where would the unborn child be if the woman were somehow able to clamp off the nutrition she provides to it? What if she said, "I'm not going to abort you, but I'm not going to nourish you, either"?

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Unfortunately, the marshal in the Old West view has long held sway in important aspects of American law. I can only touch briefly upon a few here. Generally speaking, there is no obligation in tort or criminal law to help another person unless you have some well-defined personal or professional relationship with them. So, in the great majority of American states, if I hurry by a 2-year-old tipped over in a puddle, letting her drown rather than being five minutes late for my movie, I commit no legal wrong. Even in the few states where it is penalized, it is lightly penalized. What about the obligations of parents to their children? Well, I do have a legal obligation to fish my own toddler out of the puddle. But I don't have a

legal obligation to give her a blood transfusion even if it is the only way to save her life and even if it is likely to cause only minimal inconvenience to me.

What about the elderly and infirm? The legal obligations I have to my own parents are limited; no duty to support one's elderly parents existed at common law; a comparatively weak financial duty is now imposed by statute only in about half the states.⁶ The relationship between legal and moral obligations is always complicated; nonetheless, I think we can say that our law does a very bad job of inculcating the moral duty to care for one's parents, which Thomas Aquinas believed in dire circumstances to supersede even the moral duty to care for one's children.⁷

What about persons with disabilities? Until recently they were understood as having an obligation not to offend "normal persons" with their presence. On the books of the Chicago Municipal Code was once an ordinance colloquially known as "the ugly law." It provided that:

"No person who is diseased, maimed, mutilated or in any way deformed so as to be an unsightly or disgusting object or improper person to be allowed in or on the public ways or other public places in this city, or shall therein or thereon expose himself to public view, under a penalty of not less than \$1 nor more than \$50 for each offense."⁸

Similar laws could be found on the books in cities such as Columbus, Ohio, and Omaha, Neb.⁹ They were not repealed until the mid-1970s.

Viewed in this light, *Roe* does not seem to be so much a legal anomaly as the logical end of a view of law which does not recognize a requirement to provide positive aid to the weak and vulnerable — a view of law as a marshal in the Old West. As many of you know, a second major strand of the argument in favor of legalized abortion is that even if the fetus is a human being, the woman does not have a positive legal duty to give it bodily life support. Unfortunately, that argument resonates all too well with other strands in American law, which content themselves with the don'ts that suffice for life's haves, rather than moving on to the do's so essential to the flourishing of life's have-nots.

What is the matter with a view of law that assumes that normal human persons are autonomous, independent and self-contained — and therefore protected sufficiently by the don'ts? Well, for a full account, I recommend Alasdair MacIntyre's marvelous book *Dependent Rational Animals*. The basis of his argument is a key conviction of Western

philosophical anthropology: Human beings are both body and soul; we are rational animals. And as animals, we all start out small and helpless. Throughout our lives we remain vulnerable to disease, injury and disability. And if we are fortunate enough live to old age, our lives will be marked by a return to relative helplessness. MacIntyre reminds us that it is only during a portion of our lives, and sometimes only during a small portion, that we are relatively independent — yet we remain the same people over the waxing and waning of function.

“Disability is a matter of more or less, both in respect of degree of disability and in respect of the time periods in which we are disabled. And at different periods of our lives we find ourselves, often unpredictably, at very different points on that scale. When we pass from one such point to another we need others to recognize that we remain the same individuals that we were before making this or that transition.”¹⁰

In other words, for MacIntyre what is “normal” for the species homo sapiens is to be radically vulnerable and to some degree dependent. In my view the entire fabric of the Anglo-American legal system needs to be adjusted to take account of this fact. We need to supplement the rich legal concept of the *reasonable person* with a fuller concept of the *vulnerable person*. Moreover, MacIntyre’s analysis has a further implication for pro-life work that he does not spell out himself. Life does not sort itself out so that weak persons are always matched up with strong persons who can take care of them. Sometimes, many times, the most vulnerable members of the population are virtually entirely dependent upon people only slightly less vulnerable than themselves.

For example, in her book *Last Rights*, Barbara Logue describes the significant burdens that many caregivers of the elderly bear. Her statistics demonstrate that over one-third of those caregivers are themselves elderly, almost one-third are poor and one-third themselves suffer from precarious health.¹¹ She notes that one study of caregivers for Alzheimer’s victims showed that 42 percent of those under 65 and over half of those over 65 showed clinically significant depression.¹² Moreover, the vast majority of caregivers of the elderly are women, who are likely to quit their jobs to provide eldercare.¹³ Logue notes that in our system early departure from the workforce often means sacrificing pension benefits, group health benefits and wage benefits — and therefore one’s own security into old age. Conse-

quently, she cites statistics showing that women constitute 58.7 percent of the elderly population but a full 72.4 percent of the elderly poor.¹⁴

What about the vulnerable depending upon the vulnerable in crisis pregnancies? According to a recent study,¹⁵ women with incomes below 200 percent of poverty made up 30 percent of all women of reproductive age but accounted for 57 percent of the abortions in 2000. Abortion rates decreased as women’s income increased, from 44 per 1,000 pregnancies among poor women to 10 per 1,000 among the highest-income women. Adjusting for different pregnancy rates, it is still the case that high-income women are the least likely to abort their pregnancies (15 percent) and poor and low-income women were the most likely to do so (33 percent). Furthermore, only one in six women who had an abortion was married. Nearly one in five women who had an abortion were teenagers; about half of them were younger than 25.

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What is the basic pedagogical challenge facing the law if we assume that 1) weakness, vulnerability and dependency are in some sense “normal” for human beings; and 2) the weak and vulnerable are frequently dependent upon those only slightly less weak and vulnerable than themselves? In my view, a key virtue that the law has to foster is solidarity, which Pope John Paul II defines not as “a feeling of vague compassion or shallow distress at the misfortunes of so many people, both near and far,” but rather as “a firm and persevering determination to commit oneself to the common good; that is to say the good of all and of each individual because we are all really responsible for all.”¹⁶ The pope recognizes that this virtue is not an individual virtue, although it is possessed by individuals; it requires the commitment of all facets of society. It requires, he says, building a “culture of life.” In *Evangelium Vitae*, the pope writes: “Where life is involved, the service of charity must be profoundly consistent: It cannot tolerate bias and dis-

crimination, for human life is sacred and inviolable at every stage and in every situation; it is an indivisible good. We need then to ‘show care’ for all life and for the life of everyone. Indeed, at an even deeper level, we need to go to the very roots of life and love.”¹⁷

Toward a Legal Pedagogy of Solidarity

Now the relationship of law and morality is complicated; whole books are written about it. But can we at least ask whether there are positive models in American law of what teaching solidarity with the vulnerable might look like? Yes. For example, consider the Americans With Disabilities Act, which was passed in 1990.¹⁸ The act required public services, public accommodations and private services which are open to the public, such as restaurants, to make themselves accessible to those with disabilities. It prohibited employers with 15 or more employees from refusing to hire an otherwise qualified person who is disabled. It required employers to make “reasonable accommodations” which would allow such a person to do the job despite a disability. But the act was about more than imposing a discrete set of requirements and prohibitions; its pedagogical thrust reached far beyond its mandates, toward transforming the minds and hearts of Americans toward persons with disabilities. In short, the Americans with Disabilities Act was the anti-“ugly law.”

Similarly, we could consider the Family and Medical Leave Act of 1993.¹⁹ Its goal was not only narrowly to confer a three-month unpaid leave of absence upon those with a sick family member, but to encourage us all more broadly to recognize that workers also have legitimate obligations to family members which can at times conflict and take precedence over obligations to be at the workplace. I do not mean to suggest that either piece of legislation is perfectly adequate — as advocates for persons with disabilities and family rights activists will tell us, that is not the case — but they are a start.²⁰

How does viewing the law as a teacher of virtue, particularly the virtue of solidarity, change the perspective of those of us who are pro-life to the problem of abortion? First, it forces us to ask what general patterns of response must be nurtured if our society is to cultivate an ethos that supports a high regard for unborn life. Psychologist Sidney Callahan, who is both a feminist and pro-life, has aptly summarized the necessary patterns of response in women who will carry a crisis pregnancy to term and in a society

that supports such women.

"Feelings of sacrificial love and gifts of self to others are called for. Empathy and nurturing feelings are focused on the fetus, which is fiercely identified with either as a family member or as a powerless, helpless being in need of protection. Communal memberships and the giving and receiving of love are seen as the highest emotional fulfillments and attractions to achievement and independent autonomy are secondary. Life is with people, and being a good person is the all-important good. Creative receptivity to unplanned events is admired as a display of basic trust in the goodness of life and the universe. One has a duty to meet new personal demands with love and sacrificial work, even if they entail suffering, for relief of suffering is not the most important human goal. To suffer is preferable to doing harm or choosing evil because trust in the order of the universe delivers the individual from the lonely exercise of control and from a final autonomous responsibility for the future."²¹

Second, we must not forget that the most vulnerable — the unborn — are entirely dependent upon those only slightly less vulnerable than themselves — women facing crisis pregnancies. We must provide them with substantial assistance in meeting the challenge of their pregnancies, including the assistance (if they want it) of the baby's father. In discussing *Roe*, pro-life advocates frequently quote St. Thomas Aquinas' claim that an unjust law is not properly speaking an act of law but rather an act of violence.²² We need to remember that Aquinas said precisely the same thing of laws in which "burdens are imposed unequally on the community, although with a view to the common good." He also labels them unjust and hence "acts of violence rather than laws."²³

Third, in our effort to educate persons, we must broaden our focus beyond the criminal law, which is only one of many types of law in our complex, postindustrial society. As Mary Ann Glendon noted in her groundbreaking book *Abortion and Divorce in Western Law*, reducing the number of abortions requires taking a long, hard look at far more than criminal law: Describing the protection for unborn life mandated by the West German basic law, she noted that "what is important is that the totality of abortion regulations — that is, all criminal, public health and social welfare laws related to abortion — be in proportion to the importance of the legal value of life, and that as a whole they work for the continuation of

the pregnancy."²⁴

The Fate of *Roe*

In my view, the pro-life movement needs to keep these factors in mind even as it contemplates overturning *Roe* — perhaps especially as it contemplates overturning *Roe*. Why? Well, even if *Roe* is overturned (an event whose likelihood in the next four years is highly debatable), it doesn't mean that abortion will be unconstitutional or even illegal. It means that the states will be free to do as they did before *Roe* — legislate about abortion. Abortion, in other words, will be in the same constitutional status as assisted suicide: not prohibited, not protected — leaving the 50 states free to function as "laboratories" (to use Justice O'Connor's term)²⁵ experimenting with different ways of dealing with controversial social problems.

How will the states experiment? Well, the Center for Reproductive Rights says 21 states are at "high risk" of banning abortion, nine states at "medium risk" and in 20 states abortion rates are secure.²⁶ It is in the interest of pro-choice groups, in my view, to overestimate the number of states who will restrict abortion as well as the severity of the restrictions that will be adopted. I am not so sure that if push comes to shove, an entire generation that has grown up with the right to abortion will vote to ban it, or at least to ban it without substantial exceptions. But even so, women who seek abortions can travel to get them. So if we want to reduce the abortion rate, we also need, in my view, to heed Glendon's call to attend to the totality of laws that affect abortion.

Does this mean that overturning *Roe* isn't important? No. In my view, however, it is important as much for pedagogical reasons as practical reasons. *Roe* and most of the Supreme Court cases that followed it did not merely legalize abortion in "hard cases"; they did not present abortion as a drastic option to be considered only "in necessity and sorrow." Instead, they effectively denied it was morally problematic, for years striking down legislative effort after legislative effort to encourage women to choose childbirth over abortion. The apex of this deeply mistaken pedagogy can be found in Justice William Brennan's claim that "[A]bortion and childbirth, when stripped of the sensitive moral arguments surrounding the abortion controversy, are simply two alternative medical methods of dealing with pregnancy."²⁷

The fundamental task facing the pro-life movement now as it reaches maturity is to demonstrate how deeply

mistaken Justice Brennan's view is. The law can't strip out "sensitive moral arguments" for either the woman or the unborn child. And we can't strip out consideration of moral virtues either. The fundamental challenge facing the pro-life movement is to help the American people expand beyond rights talk and move toward the virtue of solidarity — solidarity with the unborn, solidarity with others who are vulnerable, solidarity with those upon whom these most vulnerable persons depend.

Notes

¹ 410 U.S. 113 (1973).

² John T. Noonan Jr., *A Private Choice* (New York: The Free Press, 1979) 6.

³ Kristin Luker, *Abortion and the Politics of Motherhood* (Berkeley: University of California Press, 1984) 141.

⁴ *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), at 851: "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 human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the state."

⁵ For elaboration of this idea, see my "The Limits of Ordinary Virtue: The Limits of the Criminal Law in Implementing *Evangelium Vitae*," in Kevin Wm. Wildes, SJ, and Allan Mitchell, eds., *Choosing Life: A Dialogue on Evangelium Vitae*, (Washington, D.C.: Georgetown University Press, 1997) 132-49.

⁶ See Joshua Maker, "The Duty of Care Adult Children Owe Their Elderly Parents," (a KELN.org bibliography), available online at <http://www.neln.org/bibs/maker.html>.

⁷ Thomas Aquinas, *Summa Theologiae*, II-II, q. 31, art. 3, rep. ob. 4: "Nevertheless in a case of extreme urgency it would be lawful to abandon one's children rather than one's parents, to abandon whom it is by no means lawful on account of the obligation we lie under toward them for the benefits we have received from them, as the philosopher states (Ethic. iii, 14)."

⁸ Chicago Municipal Code, Sec. 36034 (repealed 1974).

⁹ Columbus, Ohio General Offense Code, Sec. 2387.04 (1972), Unsightly Beggar Ordinance, Omaha, Nebraska Municipal Code of 1941, Sec. 25 (1967).

¹⁰ Alasdair MacIntyre, *Dependent Rational Animals* (Chicago and LaSalle, Ill.: Open Court, 1999) 73-74.

¹¹ Barbara J. Logue, *Last Rights: Death Control and the Elderly in America* (New York: Lexington Books, 1993) 141-142. Although Logue's statistics are somewhat dated now, there is no reason to think that they give an inaccurate picture of our general situation today.

¹² Logue, 197.

¹³ Logue, 201.

¹⁴ Logue, 205-206.

¹⁵ Rachel K. Jones, Jacqueline E. Darroch and Stanley K. Henshaw, "Patterns in the Socio-economic Characteristics of Women Obtaining Abortions in 2000-2001," *Perspectives on Sexual and Reproductive Health* 34:5 (2002): 226-35. The investigators are associated with the Alan Guttmacher Institute, a research center affiliated with Planned Parenthood Federation of America.

¹⁶ Pope John Paul II, *Sollicitudo Rei Socialis* (On Social Concern) (Boston: St. Paul Books and Media, 1988), 38.

¹⁷ *Ibid.*, *Evangelium Vitae* (The Gospel of Life) (Boston: St. Paul Books and Media, 1995),

87.

¹⁸ Americans with Disabilities Act, Pub. L. No. 101-336, 104 Stat. 328 (1990) (as amended in scattered sections of 42, 47 and 29 U.S.C.). Several Supreme Court decisions have narrowed the protections offered by the ADA.

¹⁹ Family and Medical Leave Act of 1993, Pub. L. No. 103-3, 107 Stat. 6 (codified as amended in scattered sections of 5 and 29 U.S.C.; 3 U.S.C. Secs. 2601, 2631, 2651 [1994]).

²⁰ I make these points more fully in M. Cathleen Kaveny, "Autonomy, Solidarity and

Law's Pedagogy," *Louvain Studies* 27:4 (winter 2002), 339-58.

²¹ Sidney Callahan, "Value Choices in Abortion," in Sidney and Daniel Callahan, eds., *Abortion: Understanding Differences* (New York: Plenum Press, 1984), 300.

²² *Summa Theologiae*, I-II, q. 93, art. 3, rep. ob. 2.

²³ *Ibid.*, I-II, q. 96, art. 4.

²⁴ Mary Ann Glendon, *Abortion and Divorce in Western Law* (Cambridge: Harvard University Press, 1987), 28.

²⁵ See, e.g., Justice O'Connor's concurring opinion in *Washington v. Glucksberg*, 521 U.S. 702 (1997) at 737.

²⁶ Center for Reproductive Rights, "What if *Roe* Fell?" Available online at http://www.crlp.org/crt_Roe.html.

²⁷ *Beal v. Doe*, 432 U.S. 438 at 449 (1977) (Brennan, J., dissenting).