

The Catholic University of America, Columbus School of Law  
**CUA Law Scholarship Repository**

---

Scholarly Articles and Other Contributions

---

1997

# Abortion, Issue Balancing, and the 'Catholic' Vote

Raymond B. Marcin

*The Catholic University of America, Columbus School of Law*

Follow this and additional works at: <http://scholarship.law.edu/scholar>

 Part of the [Constitutional Law Commons](#)

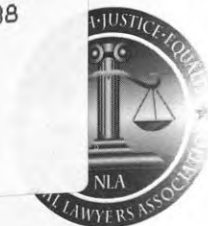
---

## Recommended Citation

Raymond B. Marcin, Abortion, Issue Balancing, and the 'Catholic' Vote, 1 NAT'L LAW. ASS'N REV. 25 (Spring 1997).

This Article is brought to you for free and open access by CUA Law Scholarship Repository. It has been accepted for inclusion in Scholarly Articles and Other Contributions by an authorized administrator of CUA Law Scholarship Repository. For more information, please contact [edinger@law.edu](mailto:edinger@law.edu).

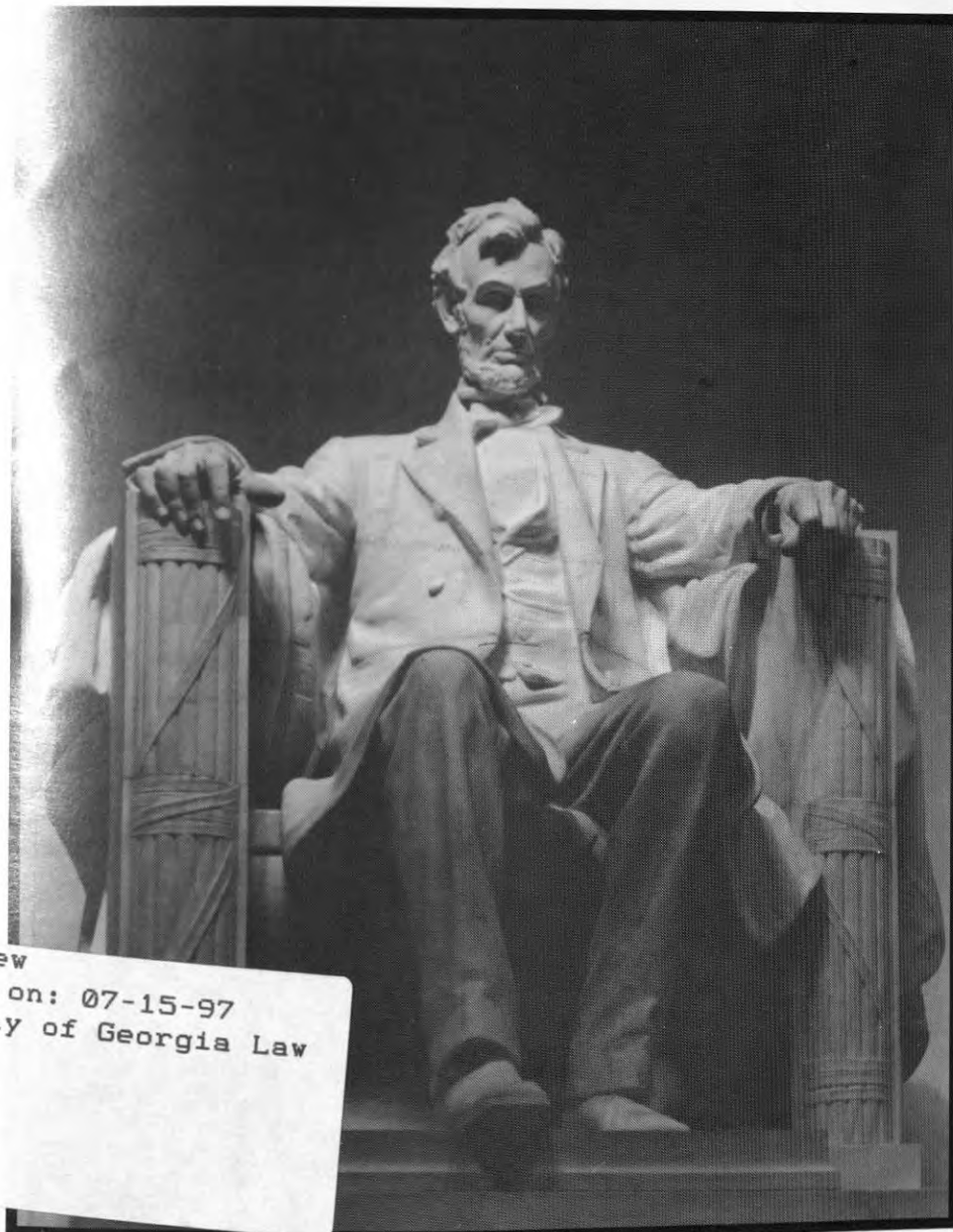
BABERMEN  
KF200  
.N38



SPRING 1997

# NLA *REVIEW*

NATIONAL LAWYERS ASSOCIATION



NLA review  
Received on: 07-15-97  
University of Georgia Law  
Library

## 1997 ANNUAL CONVENTION

*"Growing Stronger"*

October 2-4, 1997 • Washington, DC



## LIFE ISSUES UPDATE

The Life Issues Section directory of pro-life legal contacts is progressing, through the efforts of dedicated members of the section. There are a few states where we are having difficulty making contacts. If you know of pro-life lawyers or groups in Alaska, Hawaii, Vermont, Maine, Delaware or Rhode Island, please send the information to the Life Issues Section, 3239 Knollwood Lane, Homewood, IL 60430.

The section is also very excited that Theodore Amshoff, Jr., who recently won a \$10 million verdict against an abortionist in Alabama, has agreed to present a CLE on "Abortion Malpractice Litigation" during the Friday afternoon schedule at the National Lawyers Association Convention, to be held from October 2-4 in Washington, DC.

The Winter, 1997 "Life Issues" newsletter was recently sent to members of the section. If any other members of the National Lawyers Association would like to receive a copy of the newsletter or join the Life Issues section, please contact the section at the above address. ☪

## ABORTION, ISSUE BALANCING, AND THE "CATHOLIC" VOTE



Opposition to abortion is not an exclusively "Catholic" position. Many other Christians, Jews, Islamics, and other religionists, nonreligionists, and even antireligionists also oppose abortion. The perhaps unique thing about Catholics and the abortion issue, however, is that opposition to abortion is the official, formal teaching of the Church to which they belong. How then can the "Catholic" vote in the recent presidential election be explained? President Clinton is unarguably the most consistently pro-abortion president in our nation's history. He vetoed the Congressionally enacted ban on partial-birth abortion/infanticide. Yet, believe it or not, Catholics voted for him by a larger margin (54%) than American voters generally.

There is an explanation. In every presidential election year there is a spate of a certain kind of voter-information column that appears in many of the various Catholic diocesan newspapers, the quadrennial (and sometimes annual) "We're opposed

to abortion, but..." columns. They usually come fairly late in the game, just before the election, and they contain a variant of what, in high Church circles, is known as the "seamless garment" argument. The columns usually begin by announcing a firm, orthodoxly Catholic opposition to abortion, and then go on to list several (often exactly ten) other issues that are likely to be of interest to Catholic (and non-Catholic) voters, dealing with social and environmental concerns. The columns end with the suggestion that one ought not to be a single-issue voter, but should instead take all those very important issues into account when casting one's vote.

The subtle and somewhat subliminal message of the columns, at least in the mind of the casual reader, is that the pro-life sensitivity loses, ten to one. And doubtless some good, otherwise pro-life Catholic readers thereupon go out and vote, perhaps with a slight twinge of discomfort but nonetheless in good conscience, for the pro-abortion candidate who takes the supposedly more enlightened stance on the other issues.

The tactic works. The Catholic vote is split, and the pro-abortion candidate more often than not wins. Pro-abortion candidates continue to be elected, with the help and

the votes of many otherwise pro-life Catholics, and abortion continues, unchallenged in any serious way. The tactic works probably because there is a germ of truth behind it. Voting on moral, social, and environmental matters does involve issue-balancing. What the columns don't do, however, is get beyond the superficial.

It may help to view the issue-balancing from a slightly different and less superficial vantage point—to truly examine what sits on both sides of the issue-balancing scale. On one side of the balance—the pro-life issue side—there is a fact: Thirty-five million dead human babies and counting. On the other side of the scale—the cumulative social and environmental issue side—there is—what? If we bother to think beyond the superficial, essentially there's an opinion balance against the lives of those pre-birth babies. The opinion that, to put it in simplistic terms, socially liberal solutions to our domestic problems are better than socially conservative solutions. The debatable belief that taxing heavily and throwing big money at big government bureaucracies and trusting that it will trickle down to the benefit of poor people is a better solution to our social problems than not taxing heavily and letting big business make big money and



trusting that it will trickle down to the benefit of poor people. One surmises that most people, if pressed, would be equally dubious of both opinions, but the former opinion, for whatever reason, has the superficial allure of seeming to be the more sensitive and caring one. And people don't like to seem insensitive or uncaring.

To some, it is enough to frame the issue-balancing in this way: a death toll of thirty-five million human babies and counting as against an opinion that one political philosophy is better than another. Media influence over social values is such, however, that a closer examination of the pro-life side of the balance may be needed.

In the context of the abortion debate, the world's set of values has for some time now, and for unfathomable reasons, awarded "sensitivity" to those who favor abortion, and denied it to those who favor protection of the lives of pre-birth children. It is only recently, and principally in the context of the national debate over partial-birth abortion/infanticide, that even worldly sensitivity is being recognized on the pro-life side of the ledger. Partial-birth abortions are not only horrible to contemplate, we are beginning to sense that they are very likely horribly painful to the all-but-completely-born child.

Research published in the prestigious British medical journal, *The Lancet*, in 1994 concluded that at some time during the second trimester human fetuses exhibit all the physiological indications which would justify a finding of pain in a newborn baby. The article ends with a humane but somewhat startling suggestion: "Just as physicians now provide neonates with adequate analgesia, our findings suggest that those dealing with the fetus should consider making similar modifications to their practice. This applies not just to diagnostic and therapeutic procedures on the fetus, but possible also to termination of pregnancy, especially by surgical techniques involving dismemberment." The technical language of science sometimes masks the horror of a reality: Fetal children in the womb feel pain (surely one must be alive in order to feel pain), and physicians should consider anaesthetizing them whenever they dismember them, alive, in the womb.

Pro-abortion advocates often argue that fetuses are not human beings. It often surprises the public to learn that the Supreme Court, in its infamous *Roe v. Wade* decision back in 1973, did not rule that fetuses are not human beings. It merely recognized

that the proposition was debatable, declared its own inability to resolve the debate, and ruled that, human or not, fetuses are not "persons" within the meaning of the protections afforded "persons" under the Constitution. Some have considered this to be the great moral flaw in the *Roe* opinion—the failure to adhere to the basic moral notion that if there is honest doubt as to whether a given entity is a human being (and the Supreme Court has admitted as much in *Roe*), any truly humane and civilized society would and should resolve that doubt in favor of humanness rather than against it.

A similar moral position applies to the issue of fetal pain. Even if there is only an honest doubt as to whether a child in the womb feels pain (and the *Lancet* findings certainly place the issue in at least the area of honest doubt), any truly humane and civilized society ought to resolve that doubt in favor of the thesis that fetuses do feel pain.

It is difficult to argue that the abortion techniques currently in use do not involve pain—unspeakable pain if the child indeed feels it. Even pro-abortion advocates seem to be recognizing it, albeit grudgingly. Pro-choice activist Naomi Wolf wrote in a recent issue of *The New Republic*, "feminism at its best is based on what is simply true.... While images of violent fetal death work magnificently for pro-lifers as political polemic, the pictures are not polemical in themselves: they are biological facts. We know this.... To insist that the truth is in poor taste is the very height of hypocrisy."

Abortion methods may be distasteful to our sensibilities, but they are biological facts, and they must be examined if the morally important questions of fetal pain and fetal personhood are to be looked into seriously and not polemically. From the suction-aspiration technique commonly used in early pregnancies (which involves violent tearing and dismemberment), to the dilation-and-curettage method (which involves cutting the baby's body into pieces and scraping the body parts into a basin), to the dilation-and-evacuation method commonly used after twelve weeks (which involves twisting and tearing the baby's body parts off, snapping the baby's spine, and crushing her skull for easier evacuation), to the saline-injection method commonly used after sixteen weeks (which involves the insertion into the baby's sac of a poisonous, burning solution and is accompanied by violent fetal kicks and jerks as the baby is burned alive), to the hysterectomy and

postglandin chemical methods (which essentially involve the premature delivery and subsequent neglect of fetal babies and which are in some disfavor because not infrequently the babies survive), to the now infamous partial-birth abortion technique used in late-term abortions (which involves delivery of all but the head of the baby in the breach position, the stabbing of the points of surgical scissors into the base of the skull of the all-but-delivered child, the suction removal of the child's brain, the crushing of the emptied skull, and then the completion of the delivery of the corpse of the baby), the business of aborting fetal children cries out for moral review and analysis.

Mother Teresa once said, with obvious reference to the United States: "Any country that accepts abortion is not teaching its people to love, but to use any violence to get what they want. This is why the greatest destroyer of love and peace is abortion." The then Surgeon General of the United States, Joycelyn Elders, verbalized one of the pro-abortion movement's responses to Mother Teresa: "We would like for the right-to-life and anti-choice groups to really get over their love affair with the fetus." It is perhaps the single greatest moral judgment on our society that it seems to have adopted Joycelyn Elders' sensitivity in the abortion debate, rather than Mother Teresa's.

On the one side of the balance, thirty-five million and counting dead human babies (and, very likely, unimaginable pain). On the other side, an opinion about which competing political philosophy is thought to be more sensitive. There's a contest? Even leaving aside the ghoulish horror of the recent presidential decision to tolerate the perpetuation of partial-birth abortions, abortion itself is the defining social issue, the defining moral problem, and the defining ethical challenge of our age. Our society and each of us are destined some day to be called to account for our response to that challenge, and it may not be a sufficient answer to tell the Creator of those slain and dismembered babies that we tolerated the prolonging of the slaughter and dismemberment of His children because we preferred one political philosophy to another. ☩

#### ABOUT THE AUTHOR

Raymond B. Marcin is a Professor of Law at The Catholic University of America, Washington, D.C. Professor Marcin is a member and Honorary Trustee of National Lawyers Association.