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# Curran: How bishops challenge abortion laws is 'flawed'

Tom Roberts | Oct. 29, 2010

A man holds an anti-abortion sign outside the U.S. Supreme Court during the 37th annual March for Life in Washington Jan. 22. (CNS photo/Molly Riley, Reuters)

The approach currently taken by the U.S. bishops to changing the law on abortion -- giving it a preeminence above all other issues that Catholic voters might consider -- is flawed on four counts, argued Fr. Charles Curran during a lecture Oct. 28 in the Maguire Center for Ethics and Public Responsibility at Southern Methodist University, Dallas, where he teaches.

Curran, a controversial theologian who ran into trouble with church authorities earlier in his career for challenging church teaching on artificial birth control and other social issues, did not dispute church teaching about abortion in his talk. Instead he argued that various approaches to the law are acceptable under Catholic teaching.

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Editor's Note: See our earlier story: **Fr. Charles Curran draws fire for SMU lecture-** [1]
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Curran said that uncertainty about when life begins, which has been consistently acknowledged in church teaching from ancient to modern times, as well as the bishops? acceptance of legislative compromise on other issues and ?the weakness of the intrinsic evil argument? undermines the bishops? position that abortion should take precedence over every other issue in the public realm.

?In my judgment, the U.S. bishops claim too great a certitude for their position on abortion law and fail to recognize that their own position logically entails prudential judgment so that they cannot logically distinguish it from most of the other issues such as the death penalty, health care, nuclear deterrence, housing,? Curran said.

That judgment came about halfway through a lecture that first traced the narrowing of the bishops? approach to abortion since the mid-1970s when, in the wake of Roe vs Wade, the Supreme Court decision legalizing abortion, the bishops resisted a single issue approach to political involvement. A document on political responsibility before the 1976 election, wrote Curran, ?insisted the bishops did not want to form a voting bloc or tell Catholics how to vote. Voters should examine the candidates on a full range of issues, and with a

consideration for the candidates? integrity, philosophy and performance. The document lists eight issues in alphabetical order, beginning with abortion, but does not give priority to any of these issues.?

In contrast, today the bishops ?now clearly state abortion is *the* primary issue.? Their rationale for doing so, he said, rests on their conviction that other issues of public policy and law ?involve prudential judgments,? but that abortion laws ?deal with something that is intrinsically evil and does not involve prudential judgments. Catholics have certitude on the abortion law issue.?

However, Curran states, the bishops? thesis is wrong for four reasons:

- ?The speculative doubt about when human life begins;
- ?the fact that possibility and feasibility are necessary aspects involved in discussions about abortion law;
- ?the understanding and role of civil law;
- ?and the weakness of the intrinsic evil argument.?

Catholic tradition, from Thomas Aquinas to today, ?recognizes speculative doubt about when the soul is infused or when the human person comes into existence,? said Curran. Aquinas is often cited as someone who, while opposing abortion, ?held for delayed animation.? Critics often argue that Aquinas?s thinking on the matter suffered from the faulty biology of the day.

?But an opposing view sees Aquinas?s position of delayed animation as based on his philosophical understanding of hylomorphism, which sees matter and form as the constitutive causes of a being. The matter has to be suitable and capable of receiving the form.? Curran argues that ?from the beginning, the matter of what we now call the fetus is not apt or suitable for receiving the human soul. Some growth and development are necessary before the human soul can be infused.?

Doubt about exactly when infusion of ?the spiritual soul? occurs is acknowledged, he said, in several modern Vatican and papal documents, including the 1974 Declaration on Procured Abortion from the Congregation for the Doctrine of the Faith. That document notes ?There is not a unanimous tradition on this point and authors are as yet in disagreement.? Still, said Curran, while recognizing the philosophical problem, the document calls for erring on the side of caution. It states that it is sufficient ?that the presence of the soul is probable because one cannot take the risk of killing a human person.?

Pope John Paul II?s 1995 encyclical *Evangelium Vitae* ?also recognized the speculative doubt. However, from the standpoint of moral obligation, the mere probability that a human person is involved would suffice to justify an absolutely clear prohibition of an attack aimed at killing the embryo,? said Curran.

So the contention by bishops today that ?from the moment of conception, each member of the human species must be given the full respect due to a human person,? said Curran, ?is accurate but not totally forthcoming.

?The most accurate way to state the Catholic moral teaching is that direct abortion even of a fertilized ovum is always wrong, but you cannot say it is murder. There is doubt about the reality of the early embryo,? said Curran.

Consequently, the teaching o n the morality of abortion ?is not as certain? as the church?s teaching on such other issues as murder, torture or adultery, he said. ?In making the moral case against abortion, there is need for a further argument based on the principle that in doubt one must give the benefit of the doubt to the existence of a truly human being,? said Curran.

**Feasibility and possibility**

One way of explaining the role of ?feasibility and possibility? in lawmaking is to understand that politicians in the United States, ?from the president on down have to recognize this reality and often have to be willing to settle for half a loaf rather than none.?

The bishops have recognized such a political contingency in the past, argues Curran, citing earlier documents where bishops call for ?protection for the unborn child to the maximum degree possible? and in supporting legislative efforts in the past that would have provided a less-than-perfect solution.

Measuring the feasibility and possibility of passing a law ?is without doubt a prudential judgment, and as the bishops themselves have recognized, Catholics can and do differ over such prudential judgments. There is no certitude or even agreement about where to draw the line about what is feasible and possible.?

The Catholic tradition approaches the role and function of civil law in two ways, said Curran: through natural law, an approach heavily influenced by Aquinas, and through the [illegible] approach developed in the documents of Vatican II.
Curran said in the abortion issue, he prefers the religious freedom [illegible] the criteria for ?determining the proper intervention of coercive law? -- justice, public peace and public morality.

Such an approach, said Curran, ?can be used to accept the present legal situation of abortion in this country or could also justify working to change the existing law.?

?Even those who hold that abortion involves the killing of a human being could argue that there is no consensus on the issue in our society today. As a result one could give the benefit of the doubt to the freedom of the woman. The prudential recognition that it is impossible to change the present law today makes the argument for accepting the present law on the basis of the religious freedom approach even more cogent.?

On the other hand, argues Curran, the same religious freedom approach can be used to change existing law based on the justice component, the function of which ?is to protect basic human rights including the right to life.?

**No claim of certitude**

?For our present purposes, the fact that the religious freedom approach could justify either position regarding abortion law means that in light of the Catholic understanding, neither the bishops nor anyone else can claim certitude as to how Catholics should decide about abortion legislation,? he said.

In the current context of U.S. politics, Curran said, while the natural law approach would maintain that the pro-choice position goes against natural law teaching condemning abortion, the religious freedom approach ?recognizes the freedom and choice of the individual. Precisely in the area of religious liberty and the discussions in Roman Catholic theology in the centuries preceding Vatican II, the opposition to religious freedom arose because it meant protecting, promoting and accepting false religions.? Vatican II changed that outlook, he said, recognizing a requirement to respect the freedom of the person to choose in the matter of religion. In the case of abortion, said Curran, ?one is not supporting a false religion, but rather the freedom of the person to choose.?

Finally, argued Curran, the use of the term intrinsic moral evil as a rationale for giving abortion preeminence among all other political issues is a faulty argument.

?The primary problem is that intrinsic evil is a moral term and not a legal term. The fact that something is an intrinsic moral evil has nothing to do with law or legality. Aquinas himself following Augustine, was willing to

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accept no law against prostitution, which according to Catholic teaching is a morally intrinsic evil.?

Today, he said, many U.S. states do not have criminal laws against adultery, even though ?Catholic teaching insists that adultery is an intrinsic moral evil.?

No Catholic bishops, he said, have campaigned for anti-adultery laws. Because something is intrinsically evil according to Catholic teaching ?does not mean there should always be a law against it,? he said.

The weakness of the argument based on intrinsic evil, said Curran, ?once again undermines the position of the bishops wanting to see the public policy position on abortion as differing from public policies on most other issues.

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