Reflections on Cuomo: The Secret Consensus

Theodore M. Hesburg
Many thoughts have been running through my mind since listening to Governor Mario Cuomo’s brilliant talk at Notre Dame on religion and politics. But first a little background.

When the Roman emperors were feeding Christians to the lions, there was little church-state controversy. After Constantine’s conversion in 312, the church-state issue took on a new life, and there followed fourteen centuries of various state churches. The First Amendment to the U.S. Constitution happily flew in the face of that situation, even though those who had immigrated to America to escape persecution by various state churches in Europe had already established their own state churches in ten of the thirteen colonies when Madison penned that amendment.

Because of the First Amendment, religion became a matter of personal conviction in America and gave us in the intervening years the strongest and most diverse group of religious citizens on earth, and the most free. While we are locked together in argument, as at present, that is better than being locked together in violence, as in Lebanon or Northern Ireland or Iraq-Iran. The greatest civic virtues in America are tolerance and civility. Despite the recent election-year clamor, no religion really wants to become established by the state in America. Likewise, no religion really wants to impose its religious tenets on others in America. These allegations only cloud the discussion.

What then of religion and politics? Unlike church-state questions which are institutional, religion and politics are personal. If politicians are religious — and most are in one way or another, like most Americans — it is inconceivable that their religiously founded moral convictions will not affect their political lives. Moral convictions touch many public

* President, University of Notre Dame.
1. “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .” U.S. Const. amend. I.
concerns in America: the nuclear threat, human rights, problems of poverty, housing, education, the Third World, drugs, environment, and abortion, too.

Let me try an analogy. I grew up and was educated during the thirties and forties and learned to despise prejudice of all kinds, especially our treatment of blacks in America. Certainly this basic moral conviction was of religious origin, but it was also philosophical and experiential, and was shared by many non-religious people throughout the nation.

We were, at that time, under a law of the land with which I was in thorough moral disagreement: Plessy v. Ferguson, which condoned separate but equal treatment for blacks. Many worked against that law in every way possible, but within the law and within the democratic and pluralistic structure of our country. Plessy v. Ferguson, after fifty-eight years, was finally overruled by the Supreme Court in 1954, but there was still much yet to be done. Executive action by President Johnson and legislative action by the Congress in 1964, 1965, 1968 changed the face of America. Apartheid, once the law of the land, was dead, and a new American consensus, both religious and non-religious in origin, welcomed its demise. Neither the consensus nor the change just happened; both were made to happen.

Was there anything un-American about that procedure? Was I wrong to spend fifteen years on the U.S. Commission on Civil Rights, trying to build a consensus opposing what I and others, for both religious and non-religious reasons, believed a horrible injustice? Now, is it un-American to be convinced that the frivolous taking of life is unjust? Is it un-American for people so convinced to articulate what they believe to be an existing consensus, or to develop a new one, in order to restrict legal abortions?

Let us consider two basic points.

1) The widespread uneasiness about 1,500,000 abortions a year on demand, overwhelmingly for the convenience of the mother, is not an exclusively Catholic malaise. Since Roe v. Wade, abortions have increased from thousands to millions, and at least seventy percent of Americans polled,

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2. 163 U.S. 537 (1896).
Americans with various religions or none, affirm that they share this malaise.8

2) If given a choice between the present law of abortion-on-demand up to and including viability, or a more restrictive law, such as limitation of abortion to cases of rape, incest, and serious threat to the mother’s life, the majority of Americans polled consistently have supported the more limited option. Why? I keep remembering a message in Chinese on a cemetery wall in Hong Kong, a message from the dead: “What you are, I once was; what I am, you soon enough will be.” At the other end of the spectrum of life, a human fetus, granted speech, might well say to us: “What I am, you once were; what you are, I soon enough will be—if you let me.” One need not be a professional philosopher or theologian to see the point of this argument.

If it was patriotic, just and noble to work for the repeal of *Plessy v. Ferguson* and apartheid, why should it now seem un-American to work for fewer legally sanctioned abortions when there is already a moral consensus in our country that finds our present legal permissiveness on abortion excessive and intolerable?

In fairness, it must be said, as Governor Cuomo and others committed to politics, the art of the possible, have pointed out, there is not a consensus in America for the absolute prohibition of abortion. But there is and was a moral consensus, ignored by the Supreme Court in *Roe v. Wade*, for a stricter abortion law. A remarkably well-kept secret is that a minority is currently imposing its belief on a demonstrable majority. It is difficult to explain how a moral America, so brilliantly successful in confronting racial injustice in the sixties, has the most permissive abortion law of any Western country, a law which recognizes virtually no protection for unborn human beings, as a biologist will describe the fetus, or for the Holy Innocents, as we call those butchered long ago by Herod in Bethlehem. In West Germany, the highest federal court, mindful of the Holocaust, struck down abortion-on-demand as violating right-to-life provisions of the country’s constitution.9 The countries which agree with our

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9. See Jonas & Gorby, *West German Abortion Decision: A Contrast to*
laws are mainly the Communist countries, especially Russia and China.

Is it a Catholic position to make common cause with those who are against totally permissive abortion? The bishops' support of the Hatch Amendment was a move in this direction. But generally, the pro-life movement has been for an absolute prohibition of abortion. If such a total solution is not possible in our pluralistic society, will Catholics cooperate with other Americans of good will and ethical conviction to work for a more restrictive abortion law? One might hope so. This would not compromise our belief in the sanctity of all human life. We should continue to hold ourselves to a higher standard than we can persuade society at large to write into law. If Catholics would help articulate this consensus, favoring a more restrictive abortion law short of an absolute ban, Catholic politicians would no longer be able (or feel compelled) to say, "I'm against abortion, but . . . ." Catholic and other politicians could even relive the civil rights revolution in the ultimate context of life and death.

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