A GREAT RESULT FOR THOSE WHO WISH TO CONTINUE KILLING THE INNOCENT

> "Susan Allanson… clinical psychologist… said the judgment was a great result that enshrined respect for women's choices."
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> *The Australian*, April 11, 2019

Australia's High Court has dismissed appeals by a man and a woman, the one in Tasmania the other in Victoria, seeking to overturn convictions for endeavouring to dissuade pregnant women approaching an abortion mill from utilizing their services.[1] Through their counsel the two argued that such convictions were in breach of the freedom of political communication the High Court had, in earlier cases, found to exist. Kiefel CJ, Bell J and Keane J ruled that the actions of the two did not amount to anything political. The purpose of the law outweighed any freedom of speech concerns. Gageler J disagreed, saying that a protest on the subject of abortion was inherently political but, since the behaviour prohibited served to prevent women obtaining access to 'lawful abortion services' in an atmosphere of privacy and dignity, the law should prevail. Nettle J said that while abortion was a subject of political controversy, an individual woman's decision was not political but personal and hence, a communication directed to dissuading a woman from abortion was not political but personal.

The most reasonable decision of a judge of an Australian court in a suit urging the law to countenance a right in a woman to abort her unborn child was the dissenting opinion of Meagher JA in the case *CES & Another v Superclinics (Australia) Pty Ltd & Others* (1995) 38 NSWLR 47. His Honour said this:

> "It seems to me that our law has always proceeded on the premise that human life is sacred. That is so despite an occasional acknowledgement that that existence is a 'vale of tears'. Hence in criminal law, except within closely defined limits, to take another's life is murder; to threaten to do so is a criminal offence. To abort a *child in utero* is a common law misdemeanour. In the law of torts, negligently to shorten someone's life sounds in damages. Negligently to render someone sterile is tortuous. Blackstone's Laws of England Vol. 1, Ch. 1, Section 1 says: "Life is… a right inherent by nature in every individual and it begins in contemplation of law as soon as an infant is able to stir in the mother's womb."
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> "A robust example of what I take to be his fundamental principle is the English Court of Appeal's decision in *McKay v Essex Area Health Authority* (1982) 1 QB 1166. In this case the plaintiff sued health authorities for their negligence in permitting him to be born. Griffiths LJ concluded his reasons (at 1193) with these words: 'Such a claim seems utterly offensive; there should be rejoicing that the hospital's mistake bestowed the gift of life upon the child.'…"

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[1] *Clubb v Edwards & Anor* Case M46/2018: *Preston v Avery & Anor* Case H2/2018

It might be argued that the judges of the High Court in *Clubb* and *Avery* were simply doing their job, applying the law according to current mores and decisions. But the judges, each and all of them, were prevented from asserting a more generous reading of the right to free speech by their subscription willy nilly to an ideology whose tenets derive from Marxism and secular humanism, namely, feminism. This ideology holds that one may not condemn a woman (or those assisting her) for killing her unborn child where she assesses that course to be convenient.[2] This reduces to the view that, regardless of the social desideratum that any State should protect those incapable of protecting themselves, her whim or 'choice' gives her a right to kill her unborn child. The High Court decision has added to the disorder feminism has wrought in society by circumscribing the actions of those who would seek to dissuade a woman from adopting such an appalling course.

What was the purpose of the law in the two cases? It is asserted that it was to prevent anyone from harassing a woman approaching an abortion mill; or forcing her 'to run a gauntlet of abuse'; or being 'publicly attacked': in other words it was to prevent her suffering violence at the hands of others. These assertions serve neatly to hide the fact that a woman attending such a centre is going to suffer violence of the worst kind at the hands of its operatives. The assertions are, in any event, nonsense as any study of records of police attendance on such complaints show. They are almost never upheld because reasonable enquiry demonstrates their falsity. The lies involved are symptomatic of the conduct of those who promote abortion. They are matched by the lie that what is being provided is 'medical care', assisting nature to repair the body, when it involves a radical disruption of the natural order, the killing the woman's unborn infant.

What was the purpose of the law in each case? It was to prevent anyone troubling the conscience of a pregnant woman by urging her to reconsider. In other words the purpose was to prevent such a person performing an act of great charity.

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What is at fault is the jurisprudential theory in which parliamentarians, judges and lawyers have been formed, that of *legal positivism*. It is enough for this theory that a majority of members of society agree to the passing of a law. It matters not that the law may conflict with objective natural morality. The balance of the populace, the right-thinking minority in such a case, must bear the burden imposed. There was no such positive law authority to which the judges in the Nuremburg trials in the 1940s could turn for the crimes against humanity committed by Nazi thugs—crimes, be it noted, *sui generis* with the conduct of abortionists in our own age. The only authority to which appeal could be made was that their actions breached 'laws recognised by all civilized nations', in other words laws conformable to the demands of natural morality. A jurisprudence which denies that human law is grounded in (and is

[2] The Marxist state of the People's Republic of China is notorious for exercising compulsion over its citizens by compelling its women to abortion.

measured by) the natural moral law is fundamentally flawed. Aquinas said of such 'laws' that they are not truly laws at all but species of violence.[3]

Legal positivism is an effect of the revolt against the religion founded by God and whose influence has devolved, with the passage of time, into atheism. What rules our parliaments and a majority of those who elect them—even the avowedly religious—is a practical atheism. In less than a lifetime the majority of men have lapsed from some belief in God via agnosticism and indifference to disbelief. In 1979 one could still hear of a morning in Australia on one of the ABC radio networks 'Readings from the Bible'. The Ten Commandments of the Old Testament were recognized for what they are, a summary of the principles of the natural moral law. Forty years on commentators vie with each other in condemning belief in God. That their position is a fundamentally irrational one does not trouble them.

The usual assertions were made by the ideologically driven that the High Court decision supported a woman's right to choose. Here is another lie. The issue is not a woman's choice but her *going back on her choice* at the expense of the new life her choice has called into being.

Abortion is the killing of an innocent human being and no number of Acts of parliament, Regulations, or decisions of courts *no matter how eminent*, can gainsay that reality. The High Court decision means that consciences that might have been awakened by reasonable argument at the threshold of these appalling centres will continue deadened. The members of the High Court ought to be ashamed for their pusillanimity in deferring to the claims of ideology instead of upholding the demands of right reason and the natural order.

Michael Baker
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[3] *Summa Theologiae* I-II, q. 93, a. 3, ad 2; q. 96, a. 4.