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Fides et Iustitia

ARTICLE

CAN THE SEAMLESS GARMENT BE SEWN? THE FUTURE OF PRO-LIFE PROGRESSIVISM

KEVIN DOYLE*

Thank you very much. It's a pleasure to be here. I'll be honest and tell you that initially I had some concern that this would be an exclusively Catholic affair—sometimes I think we can be a little bit ingrown. I was therefore greatly relieved to see at lunch that the pasta and chicken dish was polished. (I hope my charitable assumptions, this Lenten Friday, are well-founded.)

I want to give you six tactical and strategic imperatives for advancing a consistent pro-life agenda. It's more than a laundry list, but not quite a seamless garment. I aim to be practical, and, perhaps, a little culturally critical, at the same time.

1. Don't burn your bridges, but make damn sure you char them.

It's easy to tell people what they want to hear, right? To tell them that they are right, to repeat to them what you are agreed on, so they can feel good about themselves and their convictions. It's a harder thing to challenge people—one-on-one or in larger conversations—and contradict their beliefs, provoke them, and make them actually think (not always a pleasant exercise). But nothing is going to change if we are always nice and never provocative. As Sondheim says, "Nice is different than good." There certainly won't be any major cultural or political realignments if we will not risk straining existing channels of communication.

I think we can look back to see people who didn't burn their bridges in communication, but certainly scorched them. A most striking example of

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this is Mother Teresa, who at a Washington prayer breakfast, with Bill and Hillary Clinton sitting there, had the courage to talk in the starkest terms about what it means for a country when parents are allowed to kill their children through the first six months of pregnancy. Surely, the discomfort quotient was high at that moment, but not as high as the courage quotient.

When I was on Wall Street in the 1980s, taking my “financial sabbatical” from public interest law, I went to a Christmas lunch where Cardinal O’Connor spoke. Basically, the crowd was a bunch of fat-fanned white people who wanted to hear about Santa Claus and poinsettias. O’Connor got up there, much to his credit, and talked about caring for AIDS patients. That was not something people wanted to hear much about back then.

O’Connor went on to defend his having gone to bat for a group of young men of color who were accused of what was, at the time, portrayed as the crime of the century: the Central Park Jogger case, in which some innocent young white women had been set upon and terribly injured. The case caused Donald Trump to take out a full-page ad, demanding the death penalty’s restoration. O’Connor defended his reaching out to those defendant families and being supportive of them. (A little footnote here: all of those young men were eventually convicted, and more recently all of them were exonerated. It turns out the Cardinal had backed the right horses.)

So, the point is to say what others might not want to hear. When that’s not happening, it’s more than just an omission; I think it creates a sad and palpable void.

Several years ago I was out in California and Sister Helen Prejean—and, let me be clear about this, she is a fabulous Catholic voice, a woman of tremendous courage, and a heck of a storyteller—but she, Sr. Helen, was addressing a group of defense lawyers. Big audience; five times the number here. And for those who don’t know much about defense lawyers, let me tell you they are (we are) a pretty secular, raw bunch—there aren’t a great deal of them getting up early in the morning to squeeze in a Rosary or make it to shul.

Anyway, Sr. Helen was talking about capital punishment and went into a litany on the consistent life ethic. She rang many bells: the need for more health insurance, our obligations toward immigrants, mercy for the imprisoned . . . bam, bam, bam. But she left out the unborn. And, I mean, this crowd needed to hear about abortion’s ethical dimensions, even if without reference to a particular approach to the law.

I don’t think it was a deliberate exclusion on Sr. Helen’s part. In fact, she had to leave the conference early because a very close member of her community was ill and coming to the last days of her life. I think Sr. Helen just dropped a stitch in her remarks. But I tell you that if you see the need to advance the consistent life ethic, a missed opportunity like that has a lamentable echo.

With that said, in my remaining fifteen minutes, I promise you I am going to displease, alienate, and provoke every one of you at some point.

2. *Don't make the best of the enemy the good.*

There are some defense lawyers who refuse to participate in the death penalty at all. They refuse to dirty their hands; they believe that by participating they may lend some legitimacy to it. One law professor at Vermont Law School has written from this perspective, even though he has done capital defense work himself. But those people are a minority. There is a much, much larger group of people who are very inspiring—Michael O'Connor and Celia Rumman among them—and they will go into appellate courts and trial courts, and they will save lives. And, yes, they practice the virtue of justice, but they also practice temperance, fortitude, and prudence; they engage in prudential judgments. They get down to the nitty-gritty, sacrifice financially, and save defendants from the immoral practice of the death penalty.

I think there is a similar challenge for all those concerned about the unborn. We too are called to be “innocent as doves but cunning as serpents,” to borrow a phrase. Some of the implications of this are obvious: We have to advance positive agendas, such as pre-natal care, adoption, etc. We have to do that. Such things are ends in themselves and means to reduce the number of abortions.

More controversially, I think those concerned about the unborn have to begin to discuss—I use that word, “discuss”—whether or not our law should incorporate distinctions based on gestational stages. I doubt very much that I am the only pro-lifer who is far, far more troubled by surgical abortion occurring in the first, second, or third month than I am when an abortifacient prevents implantation or causes detachment from the uterus. I don't think that I am. I think we need to discuss and explore the implications of this reaction.

If you're repulsed by that, I would hope that you might do three things. First, read the *Gospel of Life Encyclical*, particularly if you're coming from a Roman Catholic perspective. Read what it says about legislative compromise to lessen the evils of abortion.

Secondly, read several times its discussion of the conceptus at the earliest stage. It clearly sets out the ideal of legal protections from fertilization on. But it also acknowledges a long tradition of philosophical discourse over the moment of ensoulment. So, meditate on that. Meditate on what is said and what is not said in the encyclical.

Above all, ask yourself, if you're shy about making these distinctions and translating them into law, ask yourself whether or not maybe you're wrong. Think about the possibility that a person is not present early on in the gestational process, but only comes into being later on, for instance,

with the advent of brain structure or brain activity. Imagine, for a second, that being a moral fact. And then ask whether, by compromising on early-stage, nonhomicidal abortions, we might not greatly reduce the number of later-term abortions—abortions that more certainly represent the death of a human person. Think about that.

I don't say any of this lightly. I think these are very difficult questions, but questions with which we must wrestle.

3. *Seize the moral high ground on the question of women's autonomy.*

The pro-choice camp has gotten a lot of mileage out of the slogans and mantras about women controlling their own bodies. The truth is that the greatest threat to women's control over their own bodies today is not parental notification; it's not less public funding for abortions; it's not conservative nominees to the bench. The greatest threat to women's autonomy is our culture and the way it has debased and hollowed sexuality. The way it has—to draw from Andrea Dworkin through Maggie Gallagher—made sex something that occurs among bodies, not between persons. The way it has compromised, rather than reinforced, choice and consent.

We are way beyond the saturation point with images and messages of titillation and provocation. I do not say this prudishly. There is really no literature I won't read, no film or cable program I won't watch, if it is fundamentally worthwhile. As far as I am concerned, Paul Thomas Anderson's film *Boogie Nights* powerfully rebutted a purely consent-based morality, and a *Sopranos* plot that was centered on Uncle Junior's sexual practices provided a great window into odd macho sensibilities. But let's step back: Out-and-out pornography is now a multibillion-dollar industry. A computer geek friend tells me it constitutes a huge portion of the total Internet traffic. And it's not just the rawest, most explicit stuff.

Beginning at least as far back as the 1970s, the women's movement, very commendably, condemned the use of women's body images to sell products. But the truth is that now—more than thirty years later—it's cheesecake, tits and ass, boobs and booty that serve, to an unprecedented degree, to lubricate the wheels of commerce. Of course, we are all acclimated to it. But go back on microfilm and look at the images in newspapers and magazines then and now. We are in an upside-down world, one that spouts feminist pretensions but panders to male voyeuristic sensibilities with a constant stream of visual Viagra.

This has all contributed to create a Hostile Life Environment—a distorting coercive atmosphere akin to the Hostile Work Environment, except that a woman cannot clock out of it.

In the *Times* a while ago, there was an article exploring social clubs from the perspective of the young women who check the coats. One told the reporter that sometimes people came to her for advice. There was a

woman who came to her and said she had just met a man in the bar. She was going to go home with him, but she was embarrassed because she hadn't shaved her legs very recently. That's what she was embarrassed about!

Don't judge her (or her new friend). And certainly don't yearn for the days when women who fell beneath a mechanical standard of virtue were branded as sluts, while we boys were pre-forgiven our randiness.

But do ask whether our brave new porntopia, our sex-on-tap world is really a freer place for women. Is there really more genuine choice for women in our current pressurized ethos, a conscriptive ethos keyed overwhelmingly to men's sexual rhythms, expectations, and entitlements?

Mark O'Connell of the Harvard Medical School recently wrote an article for the *Boston Globe* about what he called "the epidemic of meaningless teen sex," an epidemic born of a culture in which ubiquitous "images convey a sexuality that is more virtual than real, more impersonal than personal, more available on demand than negotiated by consent . . . emphasizing superficial pleasure over the deeper and more enduring meanings of intimacy, tenderness, connection, and even procreation."¹ He said, among teens, this

new sexuality is deeply symptomatic. Emotional deadness, disengagement, and constriction are increasingly the norm. (Oral sex is, after all, "just something to do.") "Sexual addiction," our term for moving from sexual experience to sexual experience without ever being satisfied, is prevalent. Meanwhile, for many kids, precocious sexuality represents not freedom and experimentation but is a byproduct [sic] frequently seen with sexual trauma: compulsively driven activity that both expresses and aims to manage the effects of chronic intrusion and overstimulation. . . . To speak of "consent" under these circumstances is at best naive.²

Equally naive, to be clear, is any belief that this casual sex is not overwhelmingly centered on gratification of the boy, not the girl. My wife and I have two friends who are school nurses in diverse settings; they could not be clearer about this.

Roughly a hundred and fifty years ago, Elizabeth Cady Stanton, in a letter to Susan B. Anthony, asserted, "Man in his lust has regulated long enough this whole question of sexual intercourse. Now let the mother of mankind, whose prerogative it is to set bounds to his indulgence, rouse up and give this whole matter a thorough, fearless examination." That is not what has happened. We as pro-lifers—as parents, aunts, uncles, and grandparents, as friends, as citizens—have to face up to that.

1. Mark O'Connell, *The Epidemic of Meaningless Teen Sex*, *Boston Globe* A19 (Mar. 9, 2005).

2. *Id.*

4. *Press the international perspective.*

With the death penalty, as should be obvious to anyone, the pro-life side has gained a lot of ground by placing America's practices in international perspective. I think it's heavily owing to such perspective that we no longer execute the retarded.³

It's owing to such perspective that we will no longer execute juveniles: persons whose crimes were committed when they were under the age of eighteen.⁴ I think we must exploit this worldwide perspective in defense of the unborn.

We have to point out that America's abortion laws are among the most lax in the world. We have to point out the history of a place like Germany, where the courts rolled back permissive abortion laws, owing both to "the fundamental inviolability and indisposability of human life" under the constitution and to the horrors Germany perpetrated when, for twelve years, it pretended life was a state-dispensed privilege rather than God-granted gift.

We should recall the 1959 UN Declaration of the Rights of Children. We should remember the insistence on the specific safeguards that were required, including legal protections, before as well as after birth.

5. *Defend the Catholic Church.*

We also, I think, have to defend the most important institutional pro-life voice in the country: the Catholic Church. Now, when I say defend it, I don't mean shield it from its well-deserved outside criticism. I am a parent of three children, each of whom attends Catholic school and regularly serves Mass. Thanks to my wife's genes, furthermore, none of them is completely hideous. So I'm grateful for the attention being paid to sexual abusers, ordained or otherwise. I'm grateful for the media. (Yes, maybe they should feel a little bit bad for paying so little attention to scandal in the public schools along the same lines; scandal exposed, for instance, in the work of Hofstra University professor Carol Shakeshaft. But that's for another time.)

When I say defend the Church, and defend its pro-life voice, I really mean defend it largely from within. There are two things I think terribly handicap the Church's pro-life voice. One is the needless sexism in our Church. Put aside the question of Holy Orders and women—though I remain curious as to how women, who get the stigmata more often than men, cannot stand in for Christ during Mass. There is no reason theologically why women should not have more power and visibility in our Church. That they don't hobbles us in standing up for the unborn as a Church. It's remarkable Catholicism has done as well as it has in the public square, given how much of an "all-boys club" it appears to be.

3. *Atkins v. Virginia*, 536 U.S. 304 (2002).

4. *Roper v. Simmons*, ___ U.S. ___, 125 S. Ct. 1183 (2005).

The second thing hindering our pro-life witness is our fixation on our own intramural conflicts. A few years ago I was on a panel with Jesuit Robert Drinan. He spoke about Church teaching and the death penalty. But, more than emphasizing the great pro-life truth regarding the immorality of execution in the absence of “absolute necessity,” he kept coming back to the death penalty as proof that teachings of the Church indeed change. He seemed almost more excited about that than saving condemned inmates. I don’t mean to sound harsh. I admire a lot about Drinan’s public career; I recall his mighty opposition to our air war in Indochina. But playing theological gotcha on pro-life issues is just counterproductive.

On the flip side, I was at Fordham some time ago and heard Avery Cardinal Dulles, who I think is America’s best theologian, as he writes plain English, is very insightful, and has a great personal history. He gave an address on the death penalty and Catholic teaching, an address in which he never mentioned the language in the Catechism. Never mentioned the standard of “absolute necessity.” You would have left that talk without knowing it is the Church’s teaching that when you can incapacitate the criminal—when you can make society safe from him without resorting to the death penalty—then you may not resort to the death penalty. That’s the Church’s teaching. And Cardinal Dulles is against the death penalty personally. He feels, *inter alia*, it’s bad policy. But so great was his focus on context and continuity that the current teaching was pretty much drowned out.

6. *Know the real enemy.*

The last thing, my sixth point, is that we should all know who our greatest enemy is.

As pro-lifers, our greatest enemy is the mass culture. We are out to change hearts and minds. Yet we live in a mass culture that’s basically eroding our hearts and our minds. We already touched on the distorted sexuality that’s peddled to young people—and to all of us, it’s not like we’re immune—but let’s touch on the levels of media violence that have made us so, so callous.

I recall a story around Thanksgiving on New York’s big news station. I climbed out of the shower, listening to the lead-up to it. It was about a woman who cut the limbs off her baby. The hook was: “Stay tuned and hear the 911 call.” The story was so sensationalized that several people who heard the full report didn’t realize it also said that the baby had died. Because that wasn’t the point. The point was the gore and sensationalism. And that was under the guise of journalism. How much worse is the mayhem we imbibe as entertainment? Just read the reviews of films like *Saw* or *Kill Bill* or *Sin City*.

I’m going to make you an offer (I have made it to thousands of people over the past nine years): Buy the book *On Killing* by Dave Grossman.

Read about how we are conditioning our children by entertainment media and video games, conditioning them for violence very much the way the military does to overcome the inborn human aversion to intra-species killing. Buy it and read it. And if you don't believe the book is worth it, send it to me and I'll give you your money back.

We are in rough, rough shape. Putting aside violence, there is reality TV. It's all about humiliation and manipulation. And you know, catch kids young enough and they realize that. I was explaining to my kids why they shouldn't watch this stuff. I said people on these shows are like dogs in the corner being poked with a stick. My kids instantly knew what I meant.

So, we have to stand up for the human heart. And we have to rescue the human mind.

We are in a mindless time. In 1961, Kurt Vonnegut wrote a short story in which egalitarian excesses had led to an America that maintained an Office of United States Handicapper General, who ensured we were all of equal abilities. If you were very pretty, you wore a mandated mask; if you were too athletic, you wore something that hobbled you; if you were too bright, you wore a contraption that emitted noises to interrupt your thinking.

The good news is that today intelligent people are not singled out in this fashion. The bad news is that our culture subjects us all to such mental handicapping.

We're overloaded with images and noise. You know this when you're sitting in the airport and you can't read because CNN is blaring; you know it when you're in an elevator and there is a small video screen running ads; when you use a pay phone or a cell phone and that little recorded commercial is slipped in before your call goes through; when you are supermarket shopping and you look down on the floor to see giant brand name decals.

We are taking in too much. Our critical faculties are dulled, our powers of discernment numbed. A war of attrition is being waged on human consciousness and human consciousness is losing.

The results are all too plain:

We are more concerned about what happened to Dan Rather this week, as penalty for a misleading news story, than we are over Cheney and Rice's misleading us into a war, a betrayal partly conceded by Bush's CIA director under oath and otherwise obvious from the secretary of state's evasions during her Senate confirmation.

While reconstructive surgery is beyond the reach of hundreds of injured and deformed children in neighboring countries, MTV has hit the nadir of celebrity-worship with *I Want a Famous Face*, a program in which young people undergo plastic surgery to resemble stars.

We talk about equal opportunity while the federal estate tax wanes and wealth becomes ever more concentrated. Listening to Anger Radio one would think that the notion of distributive justice is the exclusive province

of Marx and Mao. Indeed, how many Catholic pro-lifers mistake the market for a god rather than a guide and tool?

Most Americans could tell you more about the conditions of Martha Stewart's house arrest than the prevalence of sexual assault in our prisons. Half-baked anecdotes and historical caricature drive important policy debates in areas such as tort reform and energy conservation.

Our very ability to reason morally has turned to mush. During the Lewinsky-Starr circus, infidelity, which at one time would have been a cultural disqualifier for an official, became a political, if not legal, defense to perjury. I mean you can't expect a guy to tell the truth when he is cheating on his wife.

In the wake of the horrendous scandal at Abu Ghraib—a scandal the most clever enemy propagandist could not have dreamt up—President Bush offers to demolish the site of the horrors, as if the building itself were to blame. Wah?

The pro-lifer thus can aim to win over hearts and minds. But first she may have to restore them to their rightful owners.

Now I trust I've said at least one thing that would offend each of you, and I thank you.