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America After *Dobbs*

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Judging from the near universal testimony among pro-lifers that they never expected to see the end of *Roe v. Wade* during their lifetime, the *Dobbs* decision overturning *Roe* and *Casey* seems to leave us in the position of the dog who finally caught the car: Now what do we do? I do not think I can add to or improve upon what many have already said about the long guerrilla war that surely lies ahead: about the need to counter a tsunami of disinformation, to fight the battle legislature by legislature and state by state, and ultimately to extend the protections of the 14th amendment to the unborn. And in trying to get some sense of what *Dobbs* means within the broader dynamics of American politics, what I have to say may even be counterproductive with respect to those efforts, insofar as they require a positive and optimistic vision for a future without abortion, in which we can somehow still manage to have it all. Being hopefully pessimistic, this is, sadly, a vision I do not share. So, it's not clear that these reflections have any use except insofar as it may be useful not to be caught unawares by the future.

Roe and *Casey* raised to new levels of efficacy two presuppositions inherent in American liberal order from the beginning, but whose full implications were delayed by the role that the common law tradition continued to play in American jurisprudence and by the persistence of a residually Christian culture, historically and sociologically speaking. The first is that there is no given order, higher than the political, to which political order is responsible and over which it is not the final arbiter and judge. The Burger Court's exercise of raw judicial power in deciding *Roe*, its arbitrary invocation of the viability standard, and the slew of cases which followed codifying the anthropology of the sexual revolution as America's official natural philosophy, all illustrate this point, which is not altered by *Dobbs*'s decision to send the question back to the states. This nihilation is furthered by the primacy of liberty conceived as power or possibility—the second presupposition—the protection of which is the chief end of liberal government and which transforms the given, a priori realities of God, the moral order, and even my own nature, into possible objects of choice.

The absolutization of politics is fatal to the distinction between *auctoritas* and *potestas*, authority and power, on which any properly *political* society ultimately rests. And there is a

case to be made that the crisis of authority that follows from the conflation of authority and power, a crisis that was painfully visible in the summer of 2020 but seems always to be lurking just below the surface, is *the* crisis of modern politics as we pass into a post-political era, the crisis undergirding all the others. Of the innumerable harms inflicted upon the American body politic by *Roe*, which made control of the Supreme Court a life-or-death issue for at least two generations of Americans, its role as an accelerant of this crisis of authority is arguably the most easily overlooked.

Where there is no authority—no recognition of a common reality above and beyond politics to which we all belong and are beholden—there is no longer political society.

The distinction between authority and power merits an essay unto itself. For present purposes, it suffices to touch on just one aspect of this important distinction. In contrast to power, or at least power in the modern sense, which we can liken to a kind of force or the capacity to produce an effect through force, authority is essentially *symbolic*. That is, it derives its nature from the fact that it embodies and represents an order beyond itself that is true and real. But this means in turn that the efficacy of authority *qua* authority, in contrast to the power that acts principally from without, is identical to its capacity to elicit recognition and consent. Whereas power in this modern sense *compels* through the Hobbesian fear of punishment, authority *obliges*. It depends upon the willing acknowledgment of the order it represents. Authority in this sense, and not the Hobbesian fear of punishment, is the true source of law's efficaciousness. In the case of power, the efficacy of the law in compelling obedience extends only as far as the state's power of coercion extends. Whereas the true authority of law derives from its representation of an order that is really true, good, and just, which is why we generally comply with it willingly and without threat of punishment. We can push this further and say that authority, the recognition of a common order of reality to which we all belong and in which we all participate, is the foundation of every properly political community; it is the precondition for a politics that is not civil war conducted by other means. Where there is no authority—no recognition of a common reality above and beyond politics to which we all belong and are beholden, an order that comes to expression not only in law, but more fundamentally in the given order of relations between human beings and in speech and in the ideal form of a culture—there is no longer political society.

Two possibilities then follow, each of which accelerates a process of social disintegration that quickly takes on a life of its own. Both have been painfully obvious in recent years as we have discovered just how fragile the consensus is that undergirds our social order. Absent authority and the given order it represents, either adherence to law and indeed the semblance of basic social cohesion has to be extrinsically and forcibly compelled by legal and extralegal means, or those responsible for administering and enforcing the law simply cease to be *obliged* by it any longer, except insofar as it is a useful instrument in the achievement of ideological ends—the prosecution of one's political enemies, for example, or advancing the sexual revolution. That we now consistently see both suggests that these possibilities are not really alternatives so much as two sides of the same coin.

Seen in this light, one can hardly imagine a more robust declaration of the end of political society than the assertion by the *Casey* court that the right to liberty contains “the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of

human life.” For it effectively negates the common order of nature and truth on which political community depends. The welcome nullification of this absurd claim as a principle of constitutional jurisprudence does not reverse the process of social disintegration catalyzed by the incorporation of this principle into the American social fabric. If the *Roe* court hastened the disintegration which follows from the conflation of authority and power by moving the authority of the Court wholly onto the “power” side of the ledger—and the *Dobbs* decision by the Trump-appointed majority only underscores the power of the Court and the stakes in having political control over it—then the *Casey* court further accelerated the process of disintegration by widening the chasm between law and an antecedent order of nature implicit in *Roe*, thereby confirming the latter’s tacit re-conception of the order of nature as a field of biotechnical possibilities. There is much to be said about the latent anthropology of these decisions, how they realize the metaphysical presuppositions of liberalism and catalyze the biotechnical conquest of nature. Suffice to say that among the many poisonous and far-reaching effects of *Griswold*, *Roe*, *Casey* and other cases codifying the sexual revolution, the most intractable and enduring, the one that transcends the narrow confines of constitutional jurisprudence, is their elevation of a bifurcated conception of the human being to the status of a social and anthropological archetype. The normalization of contraception and abortion not only fundamentally transformed the archetypal relation between men and women, and parents and children, transforming marriage and procreation from a fundamental inclination of nature and the telos of responsible adulthood into one of many possible lifestyle choices, it transformed the archetypal relation of every human being, conceived principally as a self-defining act of will to his or her own body, now regarded as a field of biotechnical possibilities. This view of human nature, and the myriad social transformations that follow from it, are the conditions upon which *Obergefell* and *Bostock* could have even become possibilities. And their arrival heralds the arrival of a post-human and post-political future, an emerging biotechnocracy, impervious to human governance, in which law itself is increasingly the instrument of the extra-political fusion of bureaucratic administration, medicine, and information technologies. As we have seen again and again, the sexual revolution and the technological revolution are inseparable.

Abortion is an intrinsically evil act. The dethronement of this barbarism from its status as a constitutional principle is intrinsically good, and removing its essential falsehood from the pedagogical function of the law would have been the right thing to do even if it did not prevent a single abortion. But those of us who have likened *Roe* to *Dred Scott* should not forget that the price of nullifying *Dred Scott* was civil war, and we should be under no illusion that *Dobbs* will act as anything other than an accelerant to the crisis of authority, and thus the social and political disintegration and totalitarian reaction that is already manifestly underway. *Casey*’s “reliance test” as a ground for upholding *Roe* on the basis of *stare decisis* may be absurd as a matter of constitutional reasoning, but as an empirical and sociological observation, it seems to me profoundly correct, indeed much more profoundly correct than the Court realized. Our prevailing white collar proletarianism, an ideal, atomistic world populated by sexless, genderless, and childless pundits and programmers, depends as surely on abortion (and contraception) being reliable social facts as the cotton economy of the Old South depended on slave labor. One does not dismantle such peculiar institutions without overthrowing the reigning human archetypes, without upending an entire social structure, or without a fight.

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