

PROTECTING THOSE MOST IN NEED

Watching the John Roberts' hearing stirs many political passions and old feelings about the role of government in society. As one deluged with e-mail, there are those who believe that Roberts is the devil in carnal ready to pounce upon abortion rights, to relegate women behind veils and to turn the clock back on segregation. Those on the other side of the fence believe that Roberts is their modern savior; he will restore virtue and value to the family, clean up disruptive schools and take our nation back to a time when the Federalist and the Whigs debated the role of agrarian culture as opposed to city life. Neither side knows what they are talking about.

Roberts is a modern rejecter of those values and standards which he believes have made government more intrusive and less responsive. Roberts belongs to a party who used to be for less government, little spending and no federal taxation. As people as far right as Pat Buchanan have stated that the Republican Party has become the party of bigger taxers and spenders than most liberal Democrats ever were. Whether it is the assumption of power that changes people's priorities or whether the new Republican conservatives truly have come to understand the need for government to run every aspect of our lives is impossible to tell.

What we do know about Roberts and modern Republicans is that they have a most peculiar notion about who in society needs to be protected. The most fundamental role that government plays, if we must have a government at all, is to protect its citizens from outside threats and sometimes from one another. Almost everything else could be privatized. Even the militia, at one time in our country was considered more or less a private enterprise with government armies a necessity of last resort. The real question for Roberts is whether, when he gets on the bench, he will consider his job to be protecting those who are least able to protect themselves.

The answer to this question will ultimately decide the greatest issues of our day. Should a nonviable fetus commonly in the first two trimesters, be entitled to protection and whose jurisdiction should that potential baby fall under? Is the fetus under the protection of the mother who may choose to terminate that protection? Should the fetus be under the protection of the state which may demand that the fetus be entitled to develop to the point of viability? Should the fetus be under the protection of father, mother, or other relatives who might have a say in determining whether the fetus reaches viability? Should the law permit a claim for money damages when a fetus is injured in the womb? Today, the courts answered that last question by saying that there is no protection for the fetus until it becomes viable even when the parents want to bring the fetus to term and that opportunity is ended by the neglectful act of another. In other words, we do not protect the fetus in tort.

If a person is seriously injured through the neglect of another, they will recover the damages including the loss of life's pleasures due to the injuries. However, if that same person is killed, loss of the pleasure's of life die with the victim. In a death case, have we chosen to protect those who cannot protect themselves? I was recently in a pretrial where a judge turned to the defense lawyer and said, "You better tell your doctors to kill their patients rather than just injuring them; it will cost a lot less."

If we decide to protect a fetus so that it may grow into a child, what would we do to protect the child after it is born? Will we subject that child to classroom situations that are so large that the children cannot learn? Will we relegate the children to a life of poverty and crime rather than providing for daycare? Will we protect all the newborn children with proper healthcare if their parents do not have coverage?

The question of who to protect and how is not just a question for Judge Roberts but rather the hearings are a microcosm for all of us. The hearings of Judge Roberts and the other vacancy created on the United States Supreme Court by the death of Justice Rehnquist give the people an opportunity to think about whose interests they want to protect and why.

Roberts and those of his ilk seem to think it is very important to protect the interests of the largest wealthiest members of the corporate community. After all, it is the rich who are important because they run the country and generate steam for the economic engine. But how about all of those consumers earning minimum wage who cannot save and spend 100% of their money on economic pursuits? Are they entitled to more or less protection than the rich and powerful? Some great economists (including conservative ones) have said that it is more important that we protect the poor since the effect of their spending is multiplied and there are many more of them, rather than to protect the wealthy, who on a relative basis, save most of their money and they are fewer in number.

Ultimately these are all questions that the voting public will have to answer.

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