

Reply to Clarke Forsythe

William Mathie

MAY OPPONENTS OF ABORTION—as citizens and voters, as legislators or lobbyists or lawyers—support laws that only partly restrict the practice of abortion, or does this make us moral accomplices in the abortions that are permitted under those laws? When we support or vote for laws like this, do we wrongly cooperate in the evil of abortion? Clarke Forsythe, who has devoted his considerable talents and efforts as a lawyer to various efforts to restrict abortion within the situation created by the Court's decision in *Roe v. Wade*, sets out to defend efforts like his own and others against that charge.

Elsewhere in this volume I have written of the lack of serious political efforts to restrict abortion in Canada since our Supreme Court ruled the existing law on abortion unconstitutional in 1988. As I report in my essay, the last time a Canadian government tried to pass a law on the subject in 1990, its proposed law was defeated in Canada's Senate by the combined vote of those happy with a *status quo* that left abortion unregulated in any way by our Criminal Code and of pro-lifers unwilling to vote for a law that they regarded as unsatisfactory. To be sure, the law that this strange alliance defeated was radically unsatisfactory: while declaring abortion wrong, the only restriction it imposed—a declaration by the doctor who was going to perform the abortion that the abortion was medically necessary—was unlikely to stop many (if any) abortions. Yet, there were those then, and more fifteen years later, who would argue that a law calling abortion wrong but failing to restrict it was better than no law at all. The disagreement then and now in Canada could be seen as a disagreement between those who thought that a very bad law would be more likely to give rise to further political efforts to enact an effective law than would no law at all and those who thought so imperfect a law worse than none.

Forsythe's subject is the same issue as that posed in Canadian politics by the choice between a very bad law and no law at all, and by the disagreement among opponents of abortion surrounding the various

efforts in the U.S. since *Roe v. Wade* to require parental consent or notification, informed consent, the regulation of abortion clinics, and restrictions upon partial-birth abortion. He thinks that we should think about that issue not as a question of individual morality but rather within the context furnished by the traditional Aristotelian understanding of prudence as that tradition has been adapted to the teachings of the Church and the circumstances of modern democracy. When we judge efforts to restrict abortion and ask when legislators and citizens ought to support imperfect laws and policies, what we should be asking ourselves in the first place is this: What can and should statesmen do in the pursuit of justice and the common good in the special circumstances of their societies? The question posed is not the same as the question posed when we ask what a doctor or nurse may or may not do in the various circumstances that may link them to the performance of an abortion.

Is it moral to be prudent? This is the question posed in the title of Forsythe's essay. In fact, it is not—for the most part—the actual subject of his paper. He does not ask whether it is moral to be prudent, but whether it is more prudent to support laws that restrict some abortions but fail to prevent all abortions or to refuse support for anything but a complete ban on abortion. Forsythe is to be excused for failing to argue what he claims to argue since the confusion here is one often perpetuated by foes of any compromise, and the argument that he does make is more interesting and useful than the one that he wrongly claimed he would make. Indeed, an even more interesting question might be whether it is moral to be imprudent.

The Aristotelian account of prudence must, of course, be adjusted to fit the case of democracy. The exercise of prudence by a democratic statesman in a liberal democracy is not the same as its exercise in a monarchy of the sort approved by Aquinas. Forsythe sees this and insists upon it, but I am not sure that he quite recognizes the full implications of this difference. Forsythe claims to find an appropriate model of democratic prudence in Harry Jaffa's "Aristotelian analysis of the Lincoln-Douglas debates." And indeed, just as one could almost summarize Aristotle's understanding of prudence by saying that prudent decisions are the ones that prudent statesmen make, it is impossible to think of a better model of democratic prudence than that furnished by

the actions and decisions of Abraham Lincoln—or of a better guide to understanding those decisions and actions than Harry Jaffa.

Forsythe spells out four questions that we ought to pose whenever we ask whether a particular statesman has passed the test of prudence. Those questions are adopted or adapted from Jaffa's analysis of Lincoln and are stated in the form of a quotation from Jaffa's book. Three of those questions are the very questions that Jaffa poses; the fourth is revised by the omission of part of what Jaffa had said. Here are Jaffa's words as quoted by Forsythe, with the words that he omits included but bracketed:

first, is the goal a worthy one? second, does the statesman judge wisely as to what is and what is not within his power; third, are the means selected apt to produce the intended results; and fourth, [in "inconsistently" denying any intention to do those things which he could not in any case do,] does he say or do anything to hinder future statesmen from more perfectly attaining his goal when altered conditions bring more of that goal within the range of possibility?"¹

¹ Forsythe's quotation comes from Harry V. Jaffa, *Crisis of the House Divided* (Garden City NY: Doubleday, 1958), p. 370.

In setting out his fourth question, Jaffa supposes that no one will condemn a statesman for failing to acknowledge and even forswearing any intention on his part to abolish the full evil for which the law that he advances is a partial remedy if, as will often be the case, this renunciation is necessary in order to win the agreement of those whose support he needs to pass the partial remedy.² On Forsythe's reading or revision of Jaffa's analysis of prudence, that fourth question could be summarized by saying simply that Jaffa "emphasizes the possibility of future progress." In fact, what Jaffa argues in the passage from which the words that Forsythe quotes are taken is that Lincoln was right to restrict his attack upon slavery to restoring the limits upon its extension into the new territories contained in the Missouri Compromise and even to associate himself with the nearly universal popular feeling among white Americans that objected to complete political and social equality for black Americans. Jaffa argues that Lincoln's foe, Stephen Douglas, knew—and so did Lincoln—that if Douglas could establish that Lincoln's objection to the expansion of slavery entailed—or even derived from—his acceptance of full racial equality, he would defeat and destroy Lincoln as a candidate for political office and derail the effort to limit and ultimately eradicate slavery in America. As Jaffa shows, the contest between Lincoln and Douglas could be won by Lincoln if he could restrict the issue under debate to the territorial expansion of slavery; on the other hand, it would surely be won by Douglas if he could make the question turn on the issue of racial equality.

Whether Forsythe deliberately ignores, or alters, Jaffa's argument on this point, I do not claim to know. What I can say is that it is hard to reconcile Jaffa's account of what Lincoln the statesman was doing in obscuring or even denying his support for ultimate political and social equality for black slaves with the principle to which Forsythe appeals to justify efforts like his own to partially restrict abortion. That principle as stated by John Paul II in *Evangelium Vitae* is this:

[73.3] A particular problem of conscience can arise in cases where a legislative vote would be decisive for the passage of a more restrictive law, aimed at

² Ibid.

limiting the number of authorized abortions, in place of a more permissive law already passed or ready to be voted on.... When it is not possible to overturn or completely abrogate a pro-abortion law, an elected official *whose absolute personal opposition to procured abortion was well known*, could licitly support proposals aimed at *limiting the harm* done by such a law and at lessening its negative consequences at the level of general opinion and public morality.

The words to which I have added emphasis might seem to require Lincoln's condemnation, at least on Jaffa's analysis. Accordingly, Forsythe may be right to deflect our attention from the issue that this poses, and this commentator may be wrong to draw attention to this question. To defend myself against this objection, I would advance the following considerations. In the instance here under examination, Lincoln did not merely associate himself with the all but universal white feeling that opposed racial equality when he spoke against the repeal of the Missouri Compromise ; he simultaneously set in motion an argument within his listeners' minds that might finally undermine that feeling. At the state level in the U.S., those who have fought popular and powerful pro-life political efforts have sometimes succeeded by attributing to the sponsors of those measures the ultimate intention to forbid abortion under all circumstances, including rape. And I would ask two questions about the statement to which Forsythe appeals: Why must the elected official who votes for a law partially restricting abortion make clear his "absolute personal opposition to procured abortion"? And is the question that I have just posed one for prudence to answer? To say and to ask this much is not to say what ought to be done, or even what following the path of Lincoln, if that were acceptable, might mean, in our case.