



The Morality and Wisdom of Incremental Legislation

"Many commentators have observed how dramatic progress has occurred in changing public opinion on abortion in the United States in recent years because of this incremental approach."



People with strong pro-life, pro-family convictions will sometimes disagree among themselves about whether they should support a particular piece of legislation being debated in the halls of their state legislature or in Congress. Their disagreement will often center on whether it is morally permissible and politically prudent to support a bill that is a step in the right direction, but that still permits other objectionable practices. Is it good and wise to take an "incremental" approach to reversing an unjust law, confronting the offensive practices "piece by piece," rather than all at once?

In general, when it is not feasible to push back an unjust law in its entirety (for example, when insufficient votes exist to overturn an unjust law), it can be morally acceptable for a lawmaker to support a piece of legislation that aims to lessen a portion of the evils or harmful effects of that standing unjust law.

The pro-life community in recent years has seen various divisions and fractures over this question.

For example, some have argued that since abortion is a grave evil, a Catholic lawmaker can never vote for a piece of legislation that allows for *any* abortions to occur. Thus, if a vote were being taken on

a proposal that allowed abortions in cases of rape and incest but enacted new restrictions against abortion in many other situations, some take a hard line and insist the lawmaker could not morally support the legislation, but could vote only for a law that outlawed all abortions, in *every* situation.

Blessed John Paul II, however, in a well-known passage from his beautiful encyclical "On the Gospel of Life" (*Evangelium Vitae*), reminds us of the wisdom and morality of supporting incremental legislation in certain circumstances:

"A particular problem of conscience can arise," he noted, "in cases where a legislative vote would be decisive for the passage of a more restrictive law, aimed at limiting the number of authorized abortions, in place of a more permissive law already passed or ready to be voted on. Such cases are not infrequent. It is a fact that while in some parts of the world there continue to be campaigns to introduce laws favoring abortion, often supported by powerful international organizations, in other nations - particularly

Making Sense of Bioethics

The Morality and Wisdom of Incremental Legislation

those which have already experienced the bitter fruits of such permissive legislation - there are growing signs of a rethinking in this matter. In a case like the one just mentioned, 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. This does not in fact represent an illicit cooperation with an unjust law, but rather a legitimate and proper attempt to limit its evil aspects.”

Many commentators have observed how dramatic progress has occurred in changing public opinion on abortion in the United States in recent years because of this incremental approach: eliminating partial-birth and late-term abortions, establishing waiting periods, mandating ultrasounds, regulating abortion facilities, and the like.

Incremental legislation may

likewise be needed to respond to certain unethical practices regarding end of life care. In Texas, for example, the law allows a physician to unilaterally establish Do Not Resuscitate (DNR) orders for a patient, with no process for review or appeal, when the physician is convinced that resuscitation attempts for that patient would be futile. This means that even in the absence of a patient's or family's consent or even input, a doctor can decree a DNR order for that patient.

Because this practice has become accepted in Texas, and because stronger corrective legislation was judged unable to garner sufficient votes, the Texas Catholic Conference crafted a form of incremental legislation in 2013 to address this obviously unethical circumstance that violates a patient's right to consent.

The proposed legislation seeks to assure that patients and their families receive written notice of their rights regarding DNR orders. It also requires hospitals to assign a liaison to work with the patient to provide clear and compassionate communication about their rights once a conflict between the doctor and the patient/family has been identified. It works out important details regarding

ethics committee reviews to assure that appropriate medical judgments are applied to the case, and it establishes an expanded timeframe for hospital transfers in more complex situations of disagreement between the doctor and the patient or the family.

Passing incremental legislation often represents the most sensible approach to dealing with poorly crafted or morally problematic pieces of legislation. In the absence of needed votes to overturn harmful legislation altogether, it is still possible to make significant progress in limiting the damage that these laws can do through the patient spade-work of incremental legislative revision. This is done with an eye towards one day being able to rescind or abrogate the unjust law altogether.

Rev. Tadeusz Pacholczyk, Ph.D. earned his doctorate in neuroscience from Yale and did post-doctoral work at Harvard. He is a priest of the diocese of Fall River, MA, and serves as the Director of Education at The National Catholic Bioethics Center in Philadelphia. Father Tad writes a monthly column on timely life issues. From stem cell research to organ donation, abortion to euthanasia, he offers a clear and compelling analysis of modern bioethical questions, addressing issues we may confront at one time or another in our daily living. His column, entitled "Making Sense of Bioethics" is nationally syndicated in the U.S. to numerous diocesan newspapers, and has been reprinted by newspapers in England, Canada, Poland and Australia.

