



Homily

4th Sunday of Easter

Fr Frank Brennan SJ
Rector

8 May 2022

Acts 13:14, 43-52; Psalm 100; Revelation 7:9, 14b-17; John 10:27-30

Listen at <https://soundcloud.com/frank-brennan-6/homily-8522>

Have you noticed during these Sundays after Easter that the first reading from the Acts of the Apostles often contains an account of conflict between the disciples and the religious authorities or between the disciples and the authorities of the state? There are even conflicts between the disciples themselves. The disciples were out there proclaiming the good news of Jesus' resurrection, with varying understandings of what that meant and how best it was done in different social and cultural situations. For many of the hearers, the disciples' proclamation of the Easter message was not good news at all. This was a threat to the status quo and a threat to the prevailing religious or state authority. In today's reading from the Acts of the Apostles, we hear: 'The Jews worked upon some of the devout women of the upper classes and the leading men of the city and persuaded them to turn against Paul and Barnabas and expel them from their territory.'

There were times when Paul and Barnabas decided to cut their losses, and to try their evangelisation further afield. 'So they shook the dust from their feet in protest against them, and went to Iconium. The disciples were filled with joy and the Holy Spirit.'

During the week we have heard much about the ongoing abortion controversy in the USA. Some, from both sides of the debate, have even been suggesting that the US development will impact on the debate here in Australia. The US Supreme Court finally is poised to overrule the 1973 decision in *Roe v Wade*, and the later 1992 decision in *Planned Parenthood v Casey*.

Justice Alito's draft judgment in *Dobbs v Jackson Women's Health Organisation* was leaked this week, adding fuel to the fire in the lead up to the 2022 mid-term congressional elections.

Justice Alito, presumably writing for the majority including President Trump's nominees to the court, commences his draft judgment: 'Abortion presents a profound moral issue on which Americans hold sharply conflicting views. Some believe fervently that a human person comes into being at conception and that abortion ends an innocent life. Others feel just as strongly that any regulation of abortion invades a woman's right to control her own body and prevents women from achieving full equality. Still others in a third group think that abortion should be allowed under some but not all circumstances, and those within this group hold a variety of views about the particular restrictions that should be imposed.'

Though some of our bishops think it wrong to say so, there are conscientious Catholics of good will in all three groups in the USA and similar Catholics in all three groups in Australia. Most right thinking people, even those who are most pro-choice, would admit that abortion is to be classified as a moral wrong rather than as a moral good. Most women having an abortion, no matter how justified or necessary they decide it to be, and no matter how pressing their circumstances, know it to be a matter of regret or sadness. No right thinking person advocates that it is a good thing to get pregnant and then abort one's foetus, especially if the foetus be at a stage of being viable outside the womb.

The conflict on abortion is not so much about its morality but about determining what is the most appropriate law and policy to govern it in our pluralistic democratic society. In part that depends on determining what law and policy is most workable, and what law and policy is most supportive of a woman as she makes the difficult decision. It also depends on who decides that law or policy. Catholics can, do and are entitled to hold differing views on these questions.

In 1995 I was privileged to travel to the USA on a Fulbright Scholarship to study the US Supreme Court. I returned to Australia and published a book entitled *Legislating Liberty: A Bill of Rights for Australia?* Back then, I wrote: 'Between 1965 and 1992 the United States Supreme Court virtually tore itself apart over the question of abortion. It remains one of the most divisive political issues in American Society. The court has been seeking a constitutional resolution to the limits of a woman's right to abortion. No persuasive answer has been found. Meanwhile in Australia, abortion is still in some circumstances a criminal offence. But the courts have played little role in determining the limits. The public debate in Australia has been much less vehement. Abortion rates in the two countries are similar.' The most recent statistics show that the annual abortion rate in Australia is 19.7 per 1,000 women, while in the USA it is slightly higher at 20.8. Both countries have higher rates than the UK, Canada and France. But our figures are much better than Russia which tops the global average at 53.7 and Vietnam at 35.2.

The controversy in the USA has not been so much about the morality of abortion nor about the appropriate law and policy. It has been about who decides that law and policy – the Supreme Court or the state legislatures. The problem with the US constitutional system is that all great

moral questions get decided not by elected politicians but by unelected judges. Justice Blackmun writing the flawed judgment in *Roe v Wade* said: 'Our task, of course, is to resolve the issue by constitutional measurement, free of emotion and predilection'. The lie to this arrogant statement, or at least the error in this earnest hope, was laid bare in Justice Blackmun's last utterance on the question just prior to his retirement. He said: 'A woman's right to reproductive choice is one of those fundamental liberties. Accordingly that liberty need not seek refuge at the ballot box...I am 83 years old. I cannot remain on the court forever, and when I do step down the confirmation process of my successor may well focus on the issue before us today.' The abortion issue has skewed the US judicial nomination process ever since.

Dissenting in *Roe*, Justice Rhenquist had said the matter was 'far more appropriate to a legislative judgment than to a judicial one'. In 1992, the majority of the Supreme Court admitted that Justice Blackmun's three trimester framework for the regulation of abortion was incoherent. In *Planned Parenthood v Casey*, the middle votes of the court thought they were consolidating the court's task by calling upon 'the contending sides of a national controversy to end their national division by accepting a common mandate rooted in the Constitution'. By this stage, Chief Justice Rhenquist said, '*Roe* continues to exist but only in the way a storefront on a western movie set exists: a mere facade to give the illusion of reality.' Justice Alito has now belled the cat observing: 'As has become increasingly apparent in the intervening years, *Casey* did not achieve (its) goal. Americans continue to hold passionate and widely divergent views on abortion, and state legislatures have acted accordingly.'

The majority in *Planned Parenthood v Casey* rather pompously had asserted: 'Our law affords constitutional protection to personal decisions relating to marriage, procreation, contraception family relationships, childbearing, and education. These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the 14th amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the state.' The judges had set themselves up as philosopher kings.

There is no right legal answer to the moral mess of abortion on demand. Only by distinguishing morality, law and social policy will it be possible to determine appropriate limits on state action for the protection of the unborn, acknowledging the mother's prerogative to choose especially during the early stages of pregnancy.

Justice Alito has concluded his draft opinion in *Dobbs v Jackson Women's Health Organisation* saying: 'Abortion presents a profound moral question. The [US] Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. *Roe* and *Casey* arrogated that authority. We now overrule those decisions and return that authority to the people and their elected representatives.'

Here in Australia, that authority has always rested with our elected representatives in the states and territories. The law and policy are basically settled, leaving a wide discretion to the woman and her doctor. I am one citizen who thinks that discretion too wide in jurisdictions like Victoria which permit late term abortions even at 31 weeks. But generally the matter has been resolved in Australia. Many of us have wiped the dust from our feet, while hoping, praying and working for social conditions which make the dreadful choice of abortion less necessary for women. Some will continue to assert that we who have wiped the dust from our feet are not good Catholics, or not as good as others might be. So be it. Let's all commit ourselves to life and the dignity of all, especially the poorest and most marginalised.

Wherever any of us line up on the question of the preferable law and policy on abortion, let's take to heart Jesus' words in today's gospel: 'My sheep hear my voice; I know them, and they follow me.' This Mother's Day, let's pray especially for those mothers who have had abortions and those mothers presently contemplating that they have no option other than abortion.

*Know that the LORD is God;
he made us, his we are;
his people, the flock he tends.*

We are his people, the sheep of his flock.

The LORD is good:

