

# Abortion and the Constitution

By holding the Hyde Amendment constitutional, the Supreme Court has reestablished the Federal and state legislatures as the primary arenas for debate over public funding of abortions for the poor. Congress and the state legislatures no longer need to guess about the extent of their constitutional discretion in this area. The court has left them free to fund or not to fund abortions for the poor.

In upholding this legal freedom of the legislature, the Court has not in any way diminished the legal freedom of poor women to choose to have an abortion. They still cannot be punished or penalized for having an abortion. To some, their freedom may seem empty because they have no resources of their own to exercise it. But, quite apart from the possibility of funding from private pro-abortion sources, it has never been part of our constitutional law that once you have a right to do something, you have a right to make the public pay for it.

In evaluating the Court's decision, it is essential not to confuse constitutional law with religious or humanitarian imperatives about alleviating the plight of the poor. Where the Constitution has lodged the right to make funding decisions is a question altogether different from what decisions Congress ought to make.

In the division of powers among the executive, the legislature and the courts, the framers of the Constitution intentionally gave almost total power over the public purse to the Congress. Subsequent amendments to the Constitution have not altered that fundamental allocation of power.

These propositions are not challenged directly by the four justices who dissented from the Court's decision upholding the Hyde Amendment. Instead, the dissenting justices argue that Congress acted in a totally irrational way, and therefore unconstitutionally, in excluding most "medically necessary" abortions from the range of medical services that Medicaid helps provide for the poor.

In particular, they argue that it was absurd for Congress to help pay for the expenses of childbirth and not pay for the expense of an abortion. The only explanation they deemed possible for this Congressional decision was an intention to deter abortions. That intention, they concluded, was unconstitutional because women have a right to be free from governmental interference in making their decisions whether to bear a child or to have an abortion.

A majority of the Court, however, disagreed—and rightly so. Congress does not have the right to punish women for having an abortion, but it does have the right to encour-

age childbearing. Providing funds for childbirth and denying them for abortions is a rational way to encourage childbirth. To force Congress, once it has selected one constitutionally permissible objective, to fund all other constitutionally permissible choices, would depart from well-settled principles of constitutional law and would deprive Congress of an important means of accomplishing legitimate social objectives.

Moreover, said the majority, there was an entirely rational reason for Congress to distinguish between funding childbirth and funding abortions: "Abortion is inherently different from other medical procedures, because no other procedure involves the purposeful termination of a potential life."

The dissenting justices would strip Congress of the right to weigh this fact in allocating funds for childbirth and abortions. As Justice William J. Brennan writes for himself and three other justices: "Abortion and childbirth, when stripped of the sensitive moral arguments surrounding the abortion controversy, are simply two alternative medical methods of dealing with pregnancy."

Moreover, the dissenters never attempt to reply to one of the majority's most telling arguments: If the government must pay for abortions for the poor, it must also help poor parents to send their children to parochial schools. In both cases, the poor have a constitutional right to freedom of choice. In both cases, the government has entered the field with massive spending to encourage one particular choice.

Abortion is not just another medical procedure—for rich or poor. It terminates a human life. No legislature, state or Federal, should treat it like an appendectomy. Fortunately, the Supreme Court has left the issue of public funding where it ought to be: in the legislature, and on the highest grounds of social policy and public morality. On those grounds, the Hyde Amendment should become a permanent part of Federal and state law.

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## The Pope in Brazil—II

As an editorial in these pages pointed out two weeks ago, the pilgrimage of Pope John Paul II to Brazil presented special challenges. The divisions among the Brazilian hierarchy were well-publicized. They reflected different visions of the role of the church in a country of vast social and

