8-25-2009

Conscience and Citizenship: The Primacy of Conscience for Catholics in Public Life

Gregory A. Kalscheur S.J.
Boston College Law School, kalscheu@bc.edu

Recommended Citation
Gregory A. Kalscheur S.J.. "Conscience and Citizenship: The Primacy of Conscience for Catholics in Public Life." *Journal of Catholic Social Thought* 6, (2009): 319-336.

Conscience and Citizenship: The Primacy of Conscience for Catholics in Public Life

Gregory Kalscheur, S.J.

In their statement, *Forming Consciences for Faithful Citizenship*,[1] the U.S. bishops acknowledge that "the responsibility to make choices in political life rests with each individual in light of a properly formed conscience."[2] The bishops go on to acknowledge, quoting the *Catechism of the Catholic Church*, that in all an individual says and does, he is obliged to follow faithfully what he knows to be just and right.[3] The *Catechism* itself further explains that "[a] human being must always obey the certain judgment of his conscience. If he were deliberately to act against it, he would condemn himself." Similarly, in his 1993 encyclical, *Veritatis Splendor*, John Paul II stated that a human being "must act in accordance with [the judgment of conscience]. If man acts against this judgment or, in a case where he lacks certainty about the rightness and goodness of a determined act, still performs that act, he stands condemned by his own conscience, *the proximate norm of personal morality*."[4] These principles taken together are an expression of the idea known for centuries in the Catholic tradition as the primacy of conscience.[5]

Before going any further, however, it is important to acknowledge that "'[c]onscience' is [a] word ... often used but little understood."[6]

Gregory Kalscheur, S.J. is Associate Professor of Law at Boston College Law School.

[1] *Forming Consciences for Faithful Citizenship: The U.S. Bishops' Reflection on Catholic Teaching and Political Life*, 37 ORIGINS 389 (Nov. 29, 2007) [hereinafter *FCFC*].

[2] *Id.* at 390, ¶7.

[3] *Id.* at 392, ¶17 (quoting CCC #1778).

[4] John Paul II, VERITATIS SPLENDOR ¶60.

[5] *See* Brian Lewis, *The Primacy of Conscience in the Roman Catholic Tradition*, 13 PACIFICA 299, at 307 (2000). *See also* Joseph Koterski, S.J., *Conscience and Catholic Politicians* (Part 1) (Zenit interview, April 11, 2006), *available at* http://www.zenit.org/article-15772?l=english ("[T]he Church has long recognized the primacy of conscience, so long as one understands the term properly. It is not just that one may obey one's conscience, but that one must do so – but, first, one must form one's conscience correctly.").

[6] RICHARD M. GULA, S.S., REASON INFORMED BY FAITH: FOUNDATIONS OF CATHOLIC MORALITY 123 (1989).

JOURNAL OF CATHOLIC SOCIAL THOUGHT – 6:2, 2009, 319-336.

For this reason, I want at the outset to emphasize what conscience and the primacy of conscience do *not* mean in the Catholic tradition. As the bishops note in their *Forming Consciences* statement, "[c]onscience is not something that allows us to justify doing whatever we want nor is it a mere 'feeling' about what we should or should not do."[7] In a 1991 address entitled "Conscience and Truth," Cardinal Joseph Ratzinger (now Pope Benedict XVI) explained that conscience is degraded into a mechanism for rationalization if it is understood simply as one's subjective certainty and lack of doubt about a moral question.[8] Similarly, when we talk about the primacy of conscience, we do *not* mean that people have a right to do whatever they want, or that there are no objective norms of morality.

Any proper understanding of the primacy of conscience needs to be rooted in an authentically Catholic understanding of conscience itself. The Catholic tradition insists that both conscience and the primacy of conscience must be understood in relationship to truth: there is objective moral truth and the human person is capable of apprehending that truth. As Cardinal Ratzinger explained in his 1991 address, to reduce conscience to subjective certitude is to retreat from truth.[9]

In section 17 of the *Forming Consciences* statement, the bishops give us a brief statement explaining what conscience is. They begin by drawing on Vatican II's *Pastoral Constitution on the Church in the Modern World* to describe conscience as "the voice of God resounding in the human heart, revealing the truth to us and calling us to do what is good while shunning what is evil." They then go on to explain that "conscience is a judgment of reason whereby the human person recognizes the moral quality of a concrete act that he is going to perform, is in the process of performing, or has already completed."

This summary description shows that conscience is a concept with several different dimensions. Most fundamentally, conscience is a basic characteristic of the Catholic understanding of what it is to be a human person: to be human is to possess a basic orientation to know and to do the true and the good. To be human is to possess a basic capacity to recognize the true and the good and to recognize that one must act in accordance with the true and the good. At the same time, the Catholic understanding of conscience also includes the process of discernment

---

[7] *FCFC* ¶17.

[8] Joseph Ratzinger, *Conscience and Truth*, *in* ON CONSCIENCE at 17, 21-22 (National Catholic Bioethics Center, 2007).

[9] *Id.* at 22.

and moral reasoning by which we recognize what acting in accord with the true and the good demands of us in particular concrete situations. Finally, conscience refers to the judgment of what "I must do" in the particular situation.[10] When our conscience determines that a particular action is in accord with the true and the good, which is another way of saying that the action is a response to God's objective call, then this action is morally required of us.[11] In the words of Thomas Aquinas, when a person's reason proposes something as being God's command, slighting the dictate of reason amounts to slighting the law of God.[12]

This understanding of conscience is a central part of the teaching of Vatican II on the dignity of the human person. One of the key texts is section 16 of the *Pastoral Constitution on the Church in the Modern World*. Here is how that conciliar text describes the dignity of the moral conscience:

> In the depths of his conscience, man detects a law which he does not impose upon himself, but which holds him to obedience. Always summoning him to love good and avoid evil, the voice of conscience can when necessary speak to his heart more specifically: do this, shun that. For man has in his heart a law written by God. To obey it is the very dignity of man; according to it he will be judged.

The Catholic understanding of conscience also plays a decisive role in Vatican II's *Declaration on Religious Freedom*. The Council there emphasized the relationship between conscience and truth:

> It is in accordance with their dignity as persons – that is, as beings endowed with reason and free will and therefore privileged to bear personal responsibility – that all men should be at once impelled by nature and also bound by a moral obligation to seek the truth. . . . They are also bound to adhere to the truth, once it is known, and to order their whole lives in accord with the demands of truth.[13] . . . Wherefore man has the duty, and therefore the right, to seek the truth . . . in order that he may with prudence *form for himself* right and true judgments of conscience, under use of all suitable means. . . . [A]s the truth is discovered, it is by a personal assent that men are to adhere to it.
>
> On his part, man perceives and acknowledges the imperatives of the divine law through the mediation of conscience. *In all his activity a man is bound to follow his conscience in order that he may come to God, the end and purpose of his life.* It follows that he is not to be forced to act in a manner contrary to his conscience.

---

[10] For a discussion of the various dimensions of conscience, *see* GULA, REASON INFORMED BY FAITH, 131-33; Ratzinger, *Conscience and Truth*, at 32-37; Anthony Fisher, *Conscience and Authority*, Zenit ZE07030301, *available at* http://www.zenit.org/article-19058?l=english.

[11] GULA, *supra* note 6, at *133*.

[12] THOMAS AQUINAS, SUMMA THEOLOGICA I-II, Q. 19, Art. 5.

[13] Documents of Vatican II, DECLARATION ON RELIGIOUS FREEDOM ¶2.

> Nor, on the other hand, is he to be restrained from acting in accordance with his conscience, especially in matters religious.[14]

I've quoted these documents of Vatican II at some length for two reasons: First, to show how crucial maintaining the connection between conscience and truth is to any authentically Catholic understanding of conscience. Second, to show how prominent a place the tradition gives to primacy of conscience properly understood.

The *Declaration on Religious Freedom* clearly states that to be a human person is to have a moral obligation to seek the truth. Moreover, to be a human person is to have a duty to seek the truth in order that one can *form for oneself* right and true judgments of conscience. As one seeks the truth, one is bound to adhere to the truth as it is known and one is bound to order one's life in accord with the demands of truth. In all our activity we are bound to follow our conscience. This is what it means to speak of the primacy of conscience. This affirmation of the primacy of conscience should not be lightly disregarded. Pay attention to these words from Cardinal Ratzinger's 1969 commentary on section 16 of Vatican II's *Pastoral Constitution on the Church in the Modern World*:

> Over the pope as the expression of the binding claim of ecclesiastical authority there still stands one's own conscience, which must be obeyed before all else, if necessary even against the requirement of ecclesiastical authority. [The conscience of the individual] confronts him with a supreme and ultimate tribunal[,] which in the last resort is beyond the claim of external social groups, even of the official church.[15]

Cardinal John Henry Newman expressed much the same idea in a frequently quoted line from his *Letter to the Duke of Norfolk*: "Certainly, if I am obliged to bring religion into after-dinner toasts... I shall drink – to the Pope, if you please, – still to Conscience first, and to the Pope afterwards."[16] For Newman, conscience comes first; conscience has primacy. But, properly understood, the authority of the pope and the primacy of conscience are not in opposition to one another, because both the pope and the individual's conscience are striving to know the truth. We cannot affirm the primacy of conscience apart from this affirmation of the centrality of truth.[17]

---

[14] DECLARATION ON RELIGIOUS FREEDOM ¶3 (emphasis added).

[15] Joseph Ratzinger, *Commentary on the Pastoral Constitution on the Church in the Modern World*, *in* vol. 5 Commentary on the Documents of Vatican II, at 134 (Herbert Vorgrimler, ed., 1969).

[16] Quoted in Ratzinger, *Conscience and Truth*, at 23.

[17] *Id.* at 24; *see also* GULA, REASON INFORMED BY FAITH, at 153 (both conscience and authority seek the truth).

Within the tradition, the obligation to follow one's conscience means that one must follow the certain judgment of one's conscience, even though that judgment might turn out objectively to be in error. As I noted earlier, St. Thomas taught that a person who ignores the judgment of his conscience is slighting the judgment of God. Thomas came to that conclusion in the course of answering the following question: is a mistaken conscience binding? Thomas answered, "Yes," a mistaken conscience is binding, although the person might in fact be culpable for making a mistake as a result of failing properly to have formed his conscience.[18] The *Pastoral Constitution on the Church in the Modern World* put St. Thomas's idea into these words: "Conscience frequently errs from invincible ignorance without losing its dignity. The same cannot be said of a man who cares but little for truth and goodness, or of a conscience which by degrees grows practically sightless as a result of habitual sin."[19]

This brings us to the question of what proper conscience formation involves. In section 17 of the *Forming Consciences* statement, the bishops make it clear that "Catholics have a serious and life-long obligation to form their consciences in accord with human reason and the teaching of the church."[20] They then go on in section 18 to explain that the process of conscience formation involves several elements. First, and most fundamentally, we must cultivate a desire to embrace goodness and truth. The bishops state that, "[f]or Catholics this [desire to embrace goodness and truth] begins with a willingness and openness to seek the truth and what is right by studying sacred Scripture and the teaching of the church." In addition, the bishops note that it is "important to examine the facts and background information" that are relevant to deciding how we ought to act with respect to the various public policy choices that we face. The bishops also emphasize that "prayerful reflection is essential to discern the will of God." Finally, our process of conscience formation must humbly recognize that the failure to live up to the obligation to form our consciences can lead us to make erroneous judgments. The bishops suggest a number of factors that can lead to errors of judgment about moral conduct, including "[i]gnorance of Christ and his gospel, bad example given by others, enslavement to one's passions, assertion of a mistaken notion of autonomy of conscience, rejection of the church's authority and her teaching, [and] a lack of conversion and charity."[21]

---

[18] SUMMA THEOLOGICA I-II, Q. 19, Art. 5-6.
[19] PASTORAL CONSTITUTION ON THE CHURCH IN THE MODERN WORLD ¶16.
[20] *FCFC* ¶17, at 392.
[21] *Id.* at 400 n. 2 (quoting CCC ¶1792).

Notice that the bishops highlight a "mistaken notion of the autonomy of conscience" as a potential source of error. The problem is not the primacy of conscience, but a mistaken notion of the autonomy of conscience. We each have to commit ourselves to forming *for ourselves* right and true judgments of conscience, but we cannot form our consciences *by ourselves*.[22] It is also important to keep in mind that good conscience formation is rooted in questions of character formation before it ever gets to more particular questions about what one should do in a particular situation.[23] The way in which I approach more particular moral questions will flow out of the way in which I answer foundational questions of character: what sort of a person do I really want to be? Do I have a desire to be open to the truth, no matter where the truth might lead me? Am I open to the ways in which all my various relationships of family and friendship shape me? Am I attentive to the ways in which the culture around me shapes me? Is my sense of who I am rooted in my desire to be a faithful disciple of Jesus? To what extent is the core of my identity shaped by my participation in the life of the church? Do I allow my imagination and way of seeing the world to be shaped by the scriptural and liturgical life of the church? Have I thought about why it is important for me to take seriously what the church teaches about various issues? Do I have a genuine desire to be a person of integrity, and do I understand what integrity demands of me?

Formation on this foundational level of conscience is critical. In *Conscience and Truth*, Cardinal Ratzinger noted that we can allow the foundational moral sense that lies at the heart of our humanity and our capacity for self-criticism to fall silent, which is a dangerous and dehumanizing "sickness of the soul."[24] Cardinal Ratzinger states that "[i]t is never wrong to follow the convictions one has arrived at – in fact, one must do so." But even though the erroneous conscious is binding, Cardinal Ratzinger explained that "it can very well be wrong to have come to such askew convictions in the first place, by having stifled the protest of [conscience]. The guilt lies then in a [deeper place,] in the neglect of my being which made me deaf to the internal promptings of truth."[25]

Conscience formation also demands that we ask hard questions about what is really going on in a situation that calls for decision, what the

---

[22] GULA, *supra* note 6, at 124 ("[A] criterion of a mature conscience is the ability to make up one's mind for oneself about what ought to be done. Note: the criterion says *for* oneself, not *by* oneself. The mature conscience is formed and exercised in community in dialogue with other sources of moral wisdom.").

[23] *Id.* at 137.

[24] Ratzinger, *Conscience and Truth*, 18-19, 20-21.

[25] *Id.* at 38.

consequences in the world might actually be of acting in one way or another, and what the available alternatives for action might really be. Are my eyes open to what is really happening? Am I open to bringing the exercise of reason to bear by asking all the relevant questions about a situation that calls for moral action? "[T]he properly informed conscience sees [reality] rightly. Do we see what is really there? Or do we just see what we want to see?"[26]

The bishops' *Forming Consciences* statement calls Catholics to form their consciences "in accord with human reason and the teaching of the church."[27] Church teaching is thus "a very important, though not exclusive, factor in the formation of conscience and in one's moral judgment."[28] Catholics who take their faith seriously should care deeply about what the church says regarding the moral principles that relate to questions of public policy. We should listen carefully to church teaching, because it is our conviction that Christ will not abandon his church to error in those things that are essential to our salvation. "We believe that the Holy Spirit dwells within the whole church to guide and illumine its actions," and this trust "grounds our expectation that those" given the ministry of authoritative teaching within the church "can discern the Spirit and, when [they are] faithfully following the Spirit, do not lead the church astray."[29]

We also recognize that the Spirit-guided teaching of the church is based on a wealth of moral resources, expertise, and centuries of reflection on human experience which "are too many and too complex for any one person to understand and use well in making a decision."[30] We can have more confidence in our judgment when we draw on the moral wisdom of our community, rather than trusting in our own limited resources, wisdom, and experience.

At the same time, in thinking about the role that church teaching plays in formation of conscience, we need to recognize that the church teaches with different levels of definitiveness.[31] Some church teaching is understood to be infallible, definitive, and unchanging. This sort of

---

[26] GULA, *supra* note 6, at 147.
[27] *FCFC* ¶17.
[28] GULA, *supra* note 6, at 153.
[29] *Id.* at 158.
[30] *Ibid.*
[31] *See FCFC* ¶33 ("The judgments and recommendations that we make as bishops on specific issues do not carry the same moral authority as statements of universal moral teachings.").

teaching expresses the fundamentals of Catholic belief and calls for an assent of faith. Examples of this sort of teaching would include the articles of faith expressed in the Creed and foundational moral teachings like the affirmation of God's unconditional love and the command that we love God and love our neighbor.[32] There are also good reasons to think that the teaching of John Paul II in his encyclical *Evangelium Vitae* confirming the grave immorality of the direct and voluntary killing of human beings, abortion, and euthanasia was intended to invoke the infallibility attributed to the teaching of the ordinary universal magisterium.[33]

But most of the moral teaching of the Church isn't presented as infallible in this way. How, then, should we think about the role to be played in our formation of conscience by the authoritative but non-infallible teaching of the church? This question was addressed at Vatican II in section 25 of *Lumen Gentium*, the Council's *Dogmatic Constitution on the Church*:

---

[32] GULA, *supra* note 6, at 158.

[33] *See* FRANCIS A. SULLIVAN, S.J., CREATIVE FIDELITY: WEIGHING AND INTERPRETING DOCUMENTS OF THE MAGISTERIUM 159-60 (1996). *See also* John Paul II, *Evangelium Vitae* ¶¶57, 62, 65. Each of these sections of *Evangelium Vitae* includes reference to the teaching of the ordinary and universal magisterium, followed by a footnote citation to *Lumen Gentium* ¶25. Fr. Sullivan explains that "[i]t is obvious that the reference is to the following sentence" in *Lumen Gentium*:

> Although individual bishops do not enjoy the prerogative of infallibility, they do nevertheless proclaim Christ's doctrine infallibly even when dispersed around the world, provided that while maintaining the bond of communion among themselves and with Peter's successor, and teaching authoritatively on a matter of faith and morals, they are in agreement that a particular judgment is to be held definitively.

SULLIVAN, *supra* note 33, at 155 (quoting *Lumen Gentium* ¶25). Fr. Sullivan concludes that it is too soon to know whether the immorality of murder, abortion, and euthanasia has been infallibly taught:

> [A] doctrine is not to be understood as infallibly taught, unless this fact is clearly established, and such a fact can hardly be said to be "clearly established" unless there is a consensus of Catholic theologians about it. It is too soon to know whether there will be the consensus that would show that it is "clearly established" that the immorality of murder, abortion, and euthanasia has been infallibly taught. What this would mean is that the church had taken an irreversible stand on these issues. But that would apply only to the three propositions which the encyclical declares are taught by the ordinary universal magisterium. ...To say that the three principles affirmed in this encyclical have been infallibly taught would not mean that infallible answers had now been given to the many questions that concern their application.

Id. at 160.

> In matters of faith and morals, the bishops speak in the name of Christ and the faithful are to accept their teaching and adhere to it with a religious assent of the soul. This religious submission of will and mind must be shown in a special way to the authentic teaching authority of the Roman Pontiff, even when he is not speaking ex cathedra.[34]

What does the Council mean when it calls us to "religious submission of will and mind" to the authoritative but non-infallible teaching of the church? Francis Sullivan, S.J., an expert in the study of the teaching authority of the church, has explained that "religious submission of will and mind" calls us to renounce any attitude of obstinacy in our own opinions and to adopt an attitude of docility toward the teaching of the church. To renounce obstinacy is to reject any tendency that we might have to close our minds to church teaching by refusing to give it a fair hearing. Obstinacy is an attitude that simply says "I've made up my own mind, don't bother me."[35]

In contrast to this improper attitude of obstinacy, docility refers to "a willingness to be taught, a willingness to prefer another's judgment to one's own when it is reasonable to do so." Fr. Sullivan explains that "[d]ocility calls for an open attitude toward the official teaching, giving it a fair hearing, doing one's best to appreciate the reasons in its favor, so as to convince oneself of its truth, and thus facilitate one's intellectual assent to it." In sum, "religious submission of will and mind" means making "an honest and sustained effort to overcome any contrary opinion I might have, and to achieve a sincere assent of my mind to th[e] teaching."[36] In the realm of non-infallible teaching, the church cannot impose on conscience any further obligation than this.[37]

Vatican II also addressed the role of authoritative teaching in conscience formation in section 14 of the *Declaration on Religious Freedom*. The *Declaration* explains that, "[i]n the formation of their consciences, the Christian faithful *ought carefully to attend* to the sacred and certain doctrine of the Church." The words "ought carefully to attend" are crucial here. During the Council's debate on the *Declaration*, a proposal was made to change this particular text. Instead of saying, "ought carefully to attend to," the suggestion was made that the text should say that the faithful "ought to form their consciences according to" the teaching of the church. In response, the commission

---

[34] Documents of Vatican II, DOGMATIC CONSTITUTION ON THE CHURCH ¶25.
[35] SULLIVAN, *supra* note 33, at 164.
[36] *Ibid.*
[37] GULA, *supra* note 6, at 158.

in charge of preparing the text said this: "The proposed formula seems excessively restrictive. The obligation binding on the faithful is sufficiently expressed in the text as it stands."[38] The final text approved by the Council simply calls on the faithful, in the formation of their consciences, to carefully attend to church teaching. Fr. Sullivan offers this interpretation of the decision of the Council: "It seems to me that this way of expressing the obligation of the faithful in the face of the moral teaching of the magisterium leaves a certain amount of room for them to exercise their personal judgment in the formation of their consciences. This, I take it, is an expression of respect for the moral sense of the faithful."[39]

Read in this way, section 14 of the *Declaration on Religious Freedom* is a significant affirmation of the primacy of conscience. There are, however, some voices in the church today who assert that we should stop talking about the primacy of conscience. Cardinal George Pell, the archbishop of Sydney, Australia, has repeatedly spoken out against what he describes as "the so-called doctrine of the primacy of conscience." He argues that this idea is incompatible with traditional Catholic teaching.[40] His objection to talk of the primacy of conscience is intended to make two points. First, it is an effort to respond to his sense that invocation of the primacy of conscience increasingly is being used to justify whatever we would like to do, rather than to discern what God wants us to do. Second, it is an attempt to make clear that the truth and God's word have primacy, not conscience. Cardinal Pell argues that the role of conscience is to discern the truth in particular cases, but "[i]ndividual conscience cannot confer the right to reject or distort New Testament morality as affirmed or developed by the Church."[41]

Cardinal Pell also seems to suggest that conscience formation can be reduced to simply following the teaching of the church. He argues,

---

[38] *See* SULLIVAN, *supra* note 33, at 169.

[39] *Id.* at 170. *See also* FRANK BRENNAN, S.J., ACTING ON CONSCIENCE 31 (2007) ("Conscientious Catholics would deviate from church teaching on moral issues only with deep regret and after careful attention to the developing and changing situation, and only on condition that they are satisfied that they have a greater command of the facts or of their situation than the church authority issuing universal declarations faithful to a constant tradition.")

[40] CARDINAL GEORGE PELL, GOD AND CAESAR: SELECTED ESSAYS ON RELIGION, POLITICS & SOCIETY 160 (2007).

[41] *Id.* at 161.

> [w]e cannot rely on our tastes in moral matters because we are all vulnerable to acquiring the taste for immorality and egoism. . . . [W]hile we should follow a well-formed conscience, a well-formed conscience is hard to achieve. And if we suspect – as surely we all sometimes must – that our conscience is under-formed or mal-formed in some area, then we should follow a reliable authority until such time as we can correct our consciences. And for Catholics, the most reliable authority is the Church.[42]

I agree with Cardinal Pell's insistence that we must understand the primacy of conscience in connection with our obligation to seek the truth and adhere to it. But I think it would be a profound mistake to stop talking about the primacy of conscience. As the central Vatican II texts on conscience indicate, affirming the dignity and primacy of conscience says something of real importance about responsible personhood. If we really expect voters and public officials to make responsible, conscientious decisions about matters of public policy, we should not suggest that proper formation of conscience is simply a matter of falling into line with church teaching. Such an approach will not contribute to the ability of Catholics in public life to make conscientious decisions, because church teaching does not generally speak definitively to the concrete questions that voters and public officials face.

Cardinal Pell's approach also seems to be in significant tension with the discussion of conscience formation set forth in section 14 of the *Declaration on Religious Freedom*. The sort of reliance on church authority that Cardinal Pell proposes looks more like the approach to conscience formation rejected by the Council in the text it finally adopted. Catholics are obliged carefully attend to church teaching, not to form their consciences according to church teaching. The method of conscience formation suggested by Cardinal Pell is hard to reconcile with the *Declaration on Religious Freedom*'s insistence that human dignity demands the exercise of responsible freedom: we are called *both* to a respect for the moral order that is appropriately submissive to authority *and* to come to decisions on our own judgment and in the light of truth.[43] We have a duty to seek the truth so that we may with prudence *form for ourselves* right and true judgments of conscience, using all suitable means.[44]

The conscience of Catholic public officials received significant attention in a document issued in November 2002 by the Vatican's Congre-

---

[42] Cardinal George Pell, *The Inconvenient Conscience*, FIRST THINGS (May 2005), at 24.

[43] DECLARATION ON RELIGIOUS FREEDOM ¶8.

[44] DECLARATION ON RELIGIOUS FREEDOM ¶3.

gation for the Doctrine of the Faith. The C.D.F.'s *Doctrinal Note on Some Questions Regarding the Participation of Catholics in Political Life* reminds Catholics involved in public life "that a well-formed Christian conscience does not permit one to vote for a political program or an individual law which contradicts the fundamental contents of faith and morals."

The C.D.F.'s *Doctrinal Note* attempts to respond to public officials who draw a sharp line between their personal moral beliefs as Catholics and their public policy positions. In the face of the threat to moral integrity presented by this sort of compartmentalization, the *Doctrinal Note* provided a timely reminder that law and politics cannot be separated from morality and truth.

This insistence that moral beliefs inform policy choices is, in the end, a matter of integrity. It is, as the *Doctrinal Note* explains, a question of our "duty to be morally coherent," a duty that is "found within one's conscience, which is one and indivisible."[45] We do not lead parallel moral lives that can be compartmentalized into separate spheres, one spiritual and one secular: "Living and acting in conformity with one's own conscience on questions of politics is. . .the way in which Christians offer their concrete contributions so that, through political life, society will become more just and more consistent with the dignity of the human person."[46]

---

[45] CONGREGATION ON THE DOCTRINE OF THE FAITH, DOCTRINAL NOTE ON SOME QUESTIONS REGARDING THE PARTICIPATION OF CATHOLICS IN POLITICAL LIFE ¶6 (2002).

[46] *Doctrinal Note* ¶6. For further discussion of the separation of personal conscience from public policy decisions, see Archbishop William J. Levada, *Reflections on Catholics in Political Life and the Reception of Holy Communion*, 34 ORIGINS 101, 101-02 (July 1, 2004) ("Over the years since the 1973 *Roe v. Wade* Supreme Court decision, the frustration of many Catholics, bishops among them, about Catholic politicians who not only ignore church teaching on abortion but actively espouse a contrary position has continued to grow."). Bryan Massingale describes two frustrations on the part of the bishops. First, the bishops are frustrated by what they see as inconsistency between the expressed personal opposition to abortion by many Catholic politicians and their failure to engage in public advocacy against abortion. The second source of frustration is the assumption of many Catholic politicians (and members of the wider public) that opposition to abortion amounts to the imposition of a sectarian moral code on a pluralistic society. The bishops maintain that the church's opposition to abortion is based on the natural moral law – "a common moral truth that spans religious affiliations" – that can be recognized and embraced "by all reasonable people of good will." For the bishops, it is difficult to understand why a politician would hesitate to act on a conviction that "is an obvious conclusion of common morality," rather than a sectarian position rooted in revelation. *See* Bryan Massingale, *Catholic Participation in Political Life*, 35 ORIGINS 469, 472 (2005); *see also* Laurie Goodstein, *Guiliani's Views on Abortion Upset Catholic Leaders*, N.Y. TIMES, June 25, 2007, at A14 ("[C]hurch leaders say they

This understanding of the unity of conscience guides the *Doctrinal Note*'s teaching on the public official's grave and clear obligation to oppose any law that attacks human life. Let's assume that a legislator has reached the conscientious conclusion that abortion is a grave moral evil because it constitutes an attack on the inviolable dignity of human life. This conscientious conclusion is not simply a matter of personal morality with no public import; it is a conviction of conscience that should influence the way in which the legislator thinks about public policy. As an attack on the fundamental right to life, abortion is contrary to justice and the common good. If a legislator wishes to live a life of integrity and moral coherence, his or her participation in politics should not be cut off from the conscientious judgment he or she has made about the morality of abortion. Since a legislator's role is to craft positive law that will best promote the common good, a legislator who holds the conscientious conviction that abortion is a grave moral evil has a corresponding duty to craft laws aimed at reducing the incidence of abortion.

Pope Benedict has identified a broad set of fundamental values as "not negotiable" in making public policy decisions. These values that are "not negotiable" include "respect for human life, its defense from conception to natural death, the family built upon marriage between a man and a woman, the freedom to educate one's children," and, most broadly, "the promotion of the common good in all its forms."[47] While these fundamental moral values are non-negotiable, translating those values into specific public policy or voting decisions will inevitably involve complex decision making. *How,* for example, a policy maker should go about striving to reduce the incidence of abortion in contemporary American culture, under existing constitutional constraints, and in the face of significant social disagreement with regard to the underlying moral issue, is an exceptionally complicated question.

Good lawmaking is never simply a matter of directly transposing moral principles into rules of civil law. Drawing on a jurisprudential tradition rooted in the thought of Thomas Aquinas, the Jesuit theolo-

---

are frustrated by prominent Catholic politicians like Mr. Guiliani who argue that while they are personally opposed to abortion, they do not want to impose their beliefs on others."); *id.* ("Archbishop John J. Meyers of Newark said ... 'To violate human life is always and everywhere wrong. In fact, we don't think it's a matter of church teaching, but a matter of the way God made the world, and it applies to everyone.'").

[47] *Sacramentum Caritatis* ¶83.

gian John Courtney Murray explained that moral law and civil law are essentially related, but necessarily differentiated:

> Both the science and art of jurisprudence and also the statesman's craft rest on the differential character of law and morals, of legal experience and religious or moral experience, of political unity and religious unity. *The jurist's work proceeds from the axiom that the principles of religion or morality cannot be transgressed, but neither can they be immediately translated into civilized human law.* There is an intermediate step, the inspection of circumstances and the consideration of ... the public advantage to be found, or not found, in transforming a moral or religious principle into a compulsory rule for general enforcement upon society.[48]

This intermediate step – the careful inspection of circumstances – is the work of the virtue of prudence. While Catholics must not support policies that compromise or undermine a fundamental ethical value or constitute formal cooperation with evil,[49] the *Doctrinal Note* recognized

---

[48] John Courtney Murray, S.J., *Leo XIII and Pius XII: Government and the Order of Religion*, *in* RELIGIOUS LIBERTY: CATHOLIC STRUGGLES WITH PLURALISM 59-60 (Leon Hooper, S.J., ed., 1993) (emphasis added); *see* CONGREGATION FOR THE DOCTRINE OF THE FAITH, DONUM VITAE, PART III, *supra* note 32, Part III ("The intervention of the public authority must be inspired by the rational principles which regulate the relationships between civil law and moral law. [The civil law] must sometimes tolerate, for the sake of public order, things which it cannot forbid without a greater evil resulting."); R. Mary Hayden Lemmons, *Juridical Prudence and the Toleration of Evil: Aquinas and John Paul II*, 4 U. ST. THOMAS L.J. 24, 28-29 (2006) ("A certain degree of harm must be tolerated, otherwise the burden on those not yet virtuous would be so unbearable that they 'would break out into yet greater evils.'") (quoting Thomas Aquinas, SUMMA THEOLOGICA I-II, Q. 96 Art. 2, reply to objection 2); Gregory A. Kalscheur, S.J., *John Paul II, John Courtney Murray, and the Relationship between Civil Law and Moral Law: A Constructive Proposal for Contemporary American Pluralism*, 1 J. CATHOLIC SOCIAL THOUGHT 231, 253-58, 263-64, 266-67 (2004); M. Cathleen Kaveny, *The Limits of Ordinary Virtue: The Limits of the Criminal Law in Implementing Evangelium Vitae*, in CHOOSING LIFE: A DIALOGUE ON EVANGELIUM VITAE 132-49 (K. Wildes & A. Mitchell, eds., 1997); *see also* James L. Heft, S.M., *Religion and Politics: The Catholic Contribution*, 32 U. DAYTON L. REV. 29, 42 (2006) ("[I]t is necessary for all Catholics, and for Catholic legislators, to agree with the Church's moral teaching on abortion. But I also find it not so clear when it comes to how best to translate that moral teaching into civil law in a society where only one-fourth of the population is Catholic, and when Catholics are not all of one mind on how to deal with *Roe v. Wade*. ... [T]he bishops should be more helpful to legislators by acknowledging the complexities of the decisions they need to make on legislative matters related to moral issues."); John Langan, S.J., *Observations on Abortion and Politics*, 191 AMERICA, 9, 11 (Oct. 25, 2004) ("[T]he enactment of any prohibition of abortion is not simply the enunciation of a moral truth; it is a political and legal act which is to be carried out in an arena where there are many conflicting points of view and interests and where there is widespread hostility to the pro-life position.").

[49] *See FCFC* ¶¶22 & 34; Gregory A. Kalscheur, S.J., *Catholics in Public Life: Judges, Legislators, and Voters* 46 JOURNAL OF CATHOLIC LEGAL STUDIES 211, 230-38 (2007) (discussing cooperation analysis).

that there can be "a variety of strategies available for accomplishing or guaranteeing the same fundamental value." Indeed, the note specifically states that the church's efforts to educate the consciences of the faithful do not reflect a desire on the part of the church "to exercise political power or eliminate freedom of opinion of Catholics regarding contingent questions."[50]

Deciding how best to promote fundamental moral values through civil legislation that will truly function as good law promoting the common good in all its forms under the concrete conditions of a given society is always a contingent question that calls upon those in public life to exercise the virtue of prudence.[51] Deciding whom to vote for in an election calls upon all citizens to exercise the virtue of prudence. In section 19 of their *Forming Consciences* statement, the bishops remind us that prudence "enables us 'to discern our true good in every circumstance and to choose the right means of achieving it.' Prudence shapes and informs our ability to deliberate over available alternatives, to determine what is most fitting to a specific context and to act decisively."[52] "It is prudence that immediately guides the judgment of conscience" and helps us to "apply moral principles to particular cases."[53]

---

[50] *Doctrinal Note*, ¶6 (emphasis added).

[51] *See* Gregory A. Kalscheur, S.J., *American Catholics and the State*, AMERICA (August 2-9, 2004), at 17. *See also* Lemmons, *supra* note 48 (discussing the principles of juridical prudence that inform conscientious legislating); Kalscheur, *Relationship between Civil Law and Moral Law*, *supra* note 48, at 255-57; John Langan, S.J., *Homily for Fr. Robert Drinan's Funeral*, 36 ORIGINS 556, 557 (February 15, 2007) ("The shape of legislation can be a matter for prudential disagreement, not an issue of faithfulness."); Anthony Fisher, O.P., *The Duties of a Catholic Politician with Respect to Bio-Lawmaking*, 20 NOTRE DAME J.L., ETHICS & PUBLIC POL'Y 89, 118-19 (2006) (discussing the virtue of political prudence); *id.* at 121 ("We must ...be loathe to judge our confreres who differ from us on prudential matters in the battle against abortion and euthanasia); Archbishop John Quinn, *The Virtue of Prudence and the Spectrum of Issues Affecting Human Dignity*, 34 ORIGINS 334, 335 (Nov. 4, 2004) ("It is fitting to bring into our Catholic consciousness the tradition of prudence in the church's teaching, with its probing question, What will make the situation better rather than worse for the protection of life in the full array of its claims? To lose sight of the full spectrum of issues which affect human dignity runs the grave risk of playing into the hands of those who are eager to allege that the pro-life stance is a sectarian issue."). For a helpful discussion of the nuanced, contextual operation of the virtue of prudence, see Robert K. Vischer, *Professional Identity and the Contours of Prudence*, 4 U. ST. THOMAS L.J. 46, 50-52 (2007).

[52] *FCFC* ¶19 (quoting CCC ¶1806).

[53] CCC ¶1806. Prudence is a moral virtue "acquired by human effort. [It is] the fruit and seed of morally good acts." CCC #1804. As the fruit of good acts, its acquisition may in part grow through a process of trial and error which helps us to learn through experience the difference between good and bad acts.

The virtue of prudence demands that we ask, *what is the best that is possible to achieve now*, not what is the best that we might hope to achieve in an ideal world that does not exist?[54] Guided by the virtue of prudence, the process of conscience formation is appropriately attentive to the *limits* of what it might be *possible* for the law to accomplish under existing social, political, and constitutional conditions.[55]

As the bishops note in their statement, the process of framing legislation is "subject to prudential judgment and 'the art of the possible.'"[56] John Paul II provided an example of prudence at work in his encyclical *Evangelium Vitae* where he explained,

> 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.[57]

The work of John Courtney Murray offers a related example of the virtue of prudence at work. Murray explained that the Catholic tradition of jurisprudence recognizes that the law should not be used to prohibit a given moral evil unless that prohibition can be shown to be something that the law is capable of addressing prudently. Following St. Thomas, Murray argued that human law must be framed with a view to the level of virtue that it is actually possible to expect from the people required to comply with the law.

Accordingly, Murray suggested a series of questions that the legislator must consider in assessing the prudence of a proposed law: Will the

---

[54] Massingale, *supra* note 46 ("Prudence ... seeks not the absolute best, but the best that can be attained for now.").

[55] *See* Lemmons, *supra* note 48.

[56] *FCFC* ¶32.

[57] *Evangelium Vitae*, ¶73; *see also* John Finnis, *Restricting Legalised Abortion is Not Intrinsically Unjust*, in COOPERATION, COMPLICITY & CONSCIENCE: PROBLEMS IN HEALTHCARE, SCIENCE, LAW AND PUBLIC POLICY (Helen Watt, ed., 2005), at 109, 209-45 (discussing the meaning of *Evangelim Vitae* ¶73 and the complexity of determining when a law in fact is an intrinsically unjust law permitting abortion). Finnis argues that a provision is "permissive" of abortion and intrinsically unjust "only if it has the legal meaning and effect of *reducing* the state's legal protection of the unborn." *Id.* at 209; *see also id.* at 233 (consideration of the legal and legislative context and circumstances that give rise to a law, as well as a legislator's intent in voting for the law, are relevant to assessing whether the law's meaning and effect are "permissive" as that term is used in *Evangelium Vitae* ¶73).

prohibition be obeyed, at least by most people? Is it enforceable against the disobedient? Is it prudent to enforce this ban, given the possibility of harmful effects in other areas of social life? Is the instrumentality of a coercive law a good means for the eradication of the targeted social evil? And since a law that usually fails is not a good means, what are the lessons of experience with this sort of legal prohibition? If legislation is to be properly crafted from a moral point of view with the goal of promoting the common good of society, these are the questions that a public official exercising the virtue of prudence must answer.[58]

So, what does a commitment to the primacy of conscience mean for Catholics striving to be faithful citizens in today's pluralistic, democratic society? A commitment to the primacy of conscience calls us to strive for moral integrity and an undivided conscience. It demands that we dedicate ourselves to a life-long process of conscience formation, rooted in a commitment to truth, and carefully attending to the teaching of the church and the insights of human reason as we strive to *form for ourselves* right and true judgments of conscience. It recognizes that decisions in public life call for the exercise of the balancing virtue of prudence, always asking what will best promote the common good in all its dimensions through the concrete decision that must be made in the context of the reality that exists right now.[59] It acknowledges that prudence may suggest to different conscientious decision makers a variety of strategies available for accomplishing or guaranteeing the

---

[58] *See* BRENNAN, *supra* note 39, at 73: Simply characterizing something as a grave moral disorder does not help us to determine whether there should be a law against it, especially when there is no moral consensus on the issue in the community. "At election time, we all need to distinguish three discrete questions: Is something a grave moral disorder? Should there be a law against it? Is this the best way to work for a change in public understanding and commitment, providing some prospect for legislative change leading to a change in people's thinking and actions?" Prudent policy making will also be attentive to what Mary Ann Glendon characterizes as the priority of culture over law. Law will be of limited usefulness in protecting human dignity if legal norms don't find support in the underlying culture. *See* Mary Ann Glendon, *Foundations of Human Rights: The Unfinished Business*, *in* RECOVERING SELF-EVIDENT TRUTHS, at 331-32 (Scaperlanda and Collett, Eds., 2007). Cultural renewal may need to precede effective lawmaking. "[P]ersonal formation is essential to cultural formation and . . . no program for advancing the common good is secure unless it rests on firm cultural foundations." In the words of John Paul II, "the dignity of the individual must be safeguarded by custom before the law can do so." Mary Ann Glendon, *Catholic Thought and Dilemmas for Human Rights*, *in* HIGHER LEARNING & CATHOLIC TRADITIONS, at 120 (Robert E. Sullivan, ed., 2001). Without denying the genuine pedagogic function of law, attentiveness in conscience formation to the need for this bottom-up approach may lead prudence to recognize that we shouldn't expect too much from the law too soon.

[59] *See* Archbishop Quinn, *The Virtue of Prudence*, *supra* note 51.

same fundamental value. And in the midst of often deep moral disagreement in our society, respect for the primacy of conscience calls us to engage in the respectful dialogue that is essential if we are to join together with our fellow citizens in an authentic search for truth,[60] forming hearts and minds committed to making choices that will protect human dignity and promote the common good.

[60] *Cf.* PASTORAL CONSTITUTION ON THE CHURCH IN THE MODERN WORLD, ¶16; *see also* BRENNAN, *supra* note 39, at 223 ("Insistence on the primacy of church authority in the public forum has a chilling effect on any humble and open inquiry into truth when the majority of interlocutors are not subject to that church authority.").