

The Relationship of Morality and Civil Law Within a Christian Perspective

In an effort to sort out the relationship of morality and civil law, we shall take a brief look at the nature of morality and the function of law and then proceed with an attempt to describe their relationship within a democratic, pluralistic society from a Christian perspective.

At the outset, it is well to note that there is no definitive answer to the question of exactly how law and morality relate. John Courtney Murray in his classic book, *We Hold These Truths*, also made this observation: “the American mind has never been clear about the relation between morals and law” (P. 156). With these cautions in mind, we shall proceed.

Morality

The Goal of Morality

Most Christians would agree that the ultimate goal of our moral choices is to become the kind of human beings and the kind of human society that God calls us to be. Jesus said he wanted us to have life in abundance (Jn 10:10). God does not give us a set of arbitrary rules to obey so that we might “earn” eternal life beyond the grave. Rather, God shows us how to live in this life, so that we might have life in abundance both now and beyond the grave.

Therefore, most moral directives found in the Scriptures, especially those in the teachings of Jesus, are meant to be guides for a truly human life. To ignore these directives is like ignoring our physician’s directives for the maintenance of our health. Thus, “thou shalt not kill” is not wrong because it is in the Ten Commandments, rather “thou shalt not kill” is in the Ten Commandments precisely because it is wrong, i.e., destructive of individual and communal life.

This is what we mean when we say some choices are wrong (sinful). Certain moral choices, like killing and stealing, are wrong because by definition they diminish or destroy that “life in abundance”, which God created us to have. Paul equated sin with death - death to the life we are called to by God.

The ancient Greeks and Romans also hit on this idea when they developed their concept of “natural law”. They started with the observation that all human beings desire happiness and self-realization -- the life in abundance of which Jesus would later speak. Based on a rational view of reality, it was assumed that through observation and rational investigation certain “natural laws” of human nature could be discovered that, when observed, would aid in the attainment of mankind’s final end: happiness or, as they said, “flourishing”.

Based in part on this Greek concept of natural law, St. Thomas Aquinas in the 13th century taught that morality and all human law can be derived from the natural law. For Thomas, this natural law is understood as participating in the eternal law by which God governs the universe, but could be known by human reason.

Following St. Thomas, Pamela Hall, gives her concise outline of the process and the basis of a natural law approach:

Our discovery of the natural law occurs by way of reflection upon our natures and then by discovery of the necessary means for achieving or constituting the good of our natures. These means include the formation of rules (law) to help secure and constitute the good for us. We both give the law to ourselves and discover it. (*Narrative of the Natural Law*, p.37)

Thus, since the 13th century, certain strands of the Christian moral tradition have developed and employed this notion of the natural law to make judgments about what is morally right and wrong based on the concept that the goal of morality is the flourishing of human beings and human society. This “flourishing” is directly related to God’s creative plan for us.

This rational approach to morality is necessary because some directives in the OT exhibit a primitive understanding of the “will of God”, e.g., total war, the *herem*, the stoning of rebellious children, etc. which are hardly conducive to the flourishing of human life. And while Jesus preaches and lives a morality based on the love of God, self and others, it is obvious that the specific ways that this love is to be expressed when treating modern moral issues, such as cloning, euthanasia, environmental issues, the death penalty, abortion and immigration policies are not mentioned by Jesus.

In summary, to act morally is to live as God created us to live and to act immorally (to sin) is to directly attack our humanity and human society and, from a Christian perspective, to ignore God’s creative plan for us. Because human moral choices have unavoidable and serious consequences, we need to examine these consequences.

The Consequences of Moral Choices

The consequences of moral choices can be viewed from two different perspectives:

1. Objective (external) Moral Consequences

For example, suppose someone chooses to steal fifty dollars from the next door neighbor. First, there is the objective fact that the neighbor is out fifty dollars. Objectively or externally this neighbor has been harmed and in a lesser, but real sense, the human community has also been injured. Because of this act of stealing, the human community is a little less perfect. Certainly, human communities work best when citizens can trust that other citizens will respect their property. Stealing breeds fear and mistrust thereby weakening the ties that enable communities to live in peace and security - to flourish.

Admittedly, it is difficult to get a feel for the fact that the human community could be injured by one act of theft. However, every act of kindness makes the world a better place and every act of cruelty or injustice diminishes the entire human community. Also, it has been rightly observed that when the human rights of a single individual are violated by unjust laws, the rights of all individuals are, in principle, put in jeopardy. Furthermore, good and evil ripple out into the human community and, over time, individuals lose the ability to control their effects.

2. Subjective (internal) Moral Consequences

In the above example, when someone steals fifty dollars, in addition to the objective, external consequences noted above, there is also a major subjective consequence i.e., one has become a thief. This is a serious, often overlooked consequence.

We are all in the process of becoming - becoming someone. Our actions reflect our moral choices and our moral choices play a significant role in determining what kind of a person we are becoming. In the first act of theft, a person is on their way to becoming a thief. If you have ever stolen something you may remember that this “first time” was somewhat traumatic - what if I get caught, etc. Through repeated acts of theft, however, one can become fairly nonchalant about the matter. For some high school students ripping off the convenience store becomes more of a game or an art rather than a vice. Finally, some people reach the stage where they have no remorse and we can truly say that a person has lost his or her conscience.

Summary -- We cannot escape the consequences of our moral choices. So the stakes are high. If we want to flourish as individuals and as a human community we must choose to act morally and refrain from acting immorally. To do otherwise is to destroy ourselves and our human community.

However the question remains: whose morality? Or more importantly what morality? How do we come to know which moral choices do indeed help us flourish as individuals and a society?

Our Individual Search for Moral Norms

First of all, we do not come into any situation with a blank slate. We already have some set of values. We have been raised in a community - family, friends, church - and most communities have some sort of “moral tradition” that works and this tradition has been transmitted to us. Given this “training” in many of the daily moral decisions we make, we do so instinctively.

However, in difficult cases where many conflicting and complex values are involved and/or those that relate to our unique individual circumstances, often we need help. Where can we find help? Here are some sources:

Our own sense of right and wrong - This is our first and sometimes our best source because it includes not only the values of our “moral community” (mentioned above) and our own moral wisdom, but also our unique understanding of the special circumstances in which we must make this particular moral judgment. However, in times of crisis we must be careful, because our good moral sense can be clouded or distorted by fear, ignorance, propaganda, addiction, psychological distress, or the universal tendency we have to “rationalize” our actions as opposed to facing the truth. We often hear it said: “I knew better, but I did it anyway.”

A good listener - friend or counselor - Whether this person be a relative, good friend, our minister or professional counselor, a good listener can help us sort out some of the possible distortions of our decision making, which we just mentioned. It is not so much that we need someone to tell us what to do, we need someone to lead us in a process of making a good decision.

The Scriptures - This is not simply consulting the Old Testament for a list of the Ten Commandments or reviewing the command of Jesus to love God and our neighbor as ourselves. This we already know. Nor is it reasonable to expect to find concrete answers to many of our specific questions in the Scriptures.

However, in reading the New Testament we can get a “sense” of how Jesus lived and what he taught by word and example. This is not something that can be accomplish by simply rushing to the Scriptures in times of need searching for pertinent texts, but rather it is a life long process making the reading of Scripture, especially the New Testament, a part of our life. Through this process we can begin to take on the “mind” of Jesus as St. Paul spoke about. This is what scholars call virtue ethics. In other words, we become just, we become faithful, honest, forgiving, peacemakers, etc. and we “automatically” apply these virtues in the circumstances of our ordinary lives.

Our Faith Community - Certainly the collective wisdom of our faith communities provides an invaluable, if not infallible, guide. It is part of the teaching mission of our ministers, theologians and church leaders to examine the moral issues that face us which are often not directly addressed by the Scriptures - paying a just wage, participation in a war, issues of death and dying, our responsibilities as citizens, the death penalty, etc..

Personal prayer - When we are faced with difficult moral decisions, making time for personal prayer and meditation can give the opportunity for the Holy Spirit to work within us. All the baptized are promised the gift of the Holy Spirit. We cannot expect some “voice from heaven” or a personal revelation, but by placing ourselves in the presence of the Spirit, we can allow the Spirit to work within us so that we might make the best decisions possible. This wisdom of the Spirit helps to see life “in depth” or through the eyes of faith. Some scholars label this as a “process of discernment”.

Of course, questions remain: are my “traditional” moral norms valid, are my counselors correct, have I interpreted the Scriptures correctly, is my faith community on the right track and have I indeed been in touch with the Sprit of Wisdom? Many times the answer

is yes, but sometimes it is no. And the classic example of a long “blind spot” in the Christian moral tradition is the issue of slavery. The ancient world, including the world of the OT and the NT, accepted slavery as a fact of life. Furthermore, with a few notable exceptions, Christians did not object to slavery or condemn it as immoral until the latter part of the 19th century.

Perhaps we could say that it is prudent to assume that the majority of our Christian moral traditions are correct, but that they must always be reexamined and reevaluated.

However, as an individual facing an important moral decision - whether or not to remove the feeding tube - how do I know for sure that my decision is correct? Often we do not know for sure, but we do the best we can. In other words we act in good conscience, making the best ethical judgment we can.

What if we have done our best and yet we make an objectively bad moral judgment? Does it make a difference? Yes it does. Of course, we are morally innocent - we did our best and followed our conscience - nevertheless if an action is truly wrong, then by our definition there will be destructive effects. Again, moral choices have objective consequences. Bad moral decisions cause objective harm even when we think we are doing the right thing.

For example, say you are a soldier in the heat of battle. You are running low on water, but a wounded comrade is near you and crying out for water. In response, you risk your life by running to his aid and in an act of Christian charity you give him the rest of your water. Obviously, a subjectively good moral act.

However, if unknown to you, your comrade is suffering from a stomach wound, your gift of water will greatly intensify his pain and not relieve his thirst - an objective evil.

The obvious moral of the story is that we must be engaged in a constant quest to determine which of our moral choices contribute to the flourishing of individual and community life and which choices are detrimental to the flourishing of individual and community life. Our good intentions are important, but not enough to guarantee moral certainty. Thus, we need all the help we can get. This must be a community effort. How can this take place in a pluralistic society?

(What follows is not “the answer”, but a suggestion.)

Our Communal Search for Moral Norms

The good news is that we citizens of the United States live in a country that guarantees freedom of speech. We represent a plurality of ethnic and religious backgrounds and are governed by elected officials and representatives. The bad news is that we citizens of the United States live in a country that guarantees freedom of speech, that we represent a plurality of ethnic and religious backgrounds and that we are governed by elected officials and representatives.

I say “bad” in that our plurality of ethnic backgrounds and religions (or no religion) makes it difficult to reach consensus on many important moral issues - death penalty, abortion, cloning, end of life issues, torture, just war theories, immigrant rights, etc.

Our freedom of speech allows us to say almost anything, short of obscenities, about those who do not share our particular viewpoint. Whether or not to use logic, politeness or true dialogue is left to our discretion.

Also, the fact that we are a representative democracy means that the outcome of our elections may determine what moral values may be included or excluded from state or federal legislation. And the political link to Supreme Court appointments may also affect which legislated values are deemed constitutional.

Given this situation, how shall we proceed? Somehow we have to get together, share viewpoints, perhaps learn for each other and come up with a consensus or at least a satisfactory compromise. This view is expressed in a recent article by Bruce Jennings, “Possibilities of Consensus: Toward Democratic Moral Discourse”, *Journal of Medicine and Philosophy*:

Some of us (and perhaps all of us sometimes) believe that we already know what constitutes the best resolution of a moral conflict without deliberating with our fellow citizens. Assuming that we know the right resolution before we hear from others who will also be affected by our decisions is not only arrogant but also unjustified in light of the complexity of issues and interests at stake. If we refuse to give deliberation a chance, we forsake not only the possibility of arriving at a genuine moral compromise but we also give up the most defensible ground for maintaining an uncompromising position: that we have tested our views against those of others. (16, no. 4:447-63, p. 458)

The Need for Common Ground

In order to make real progress on complex ethical issues, we desperately need an ethical approach or method that will enable us to establish of some type of common ground. Without common ground, the prospect of reaching consensus or a workable compromise on pressing ethical issues is unlikely, if not impossible. Without some form of common ground we are left with the spectacle of advocates of diverse ethical positions exchanging set ideas in an intellectual atmosphere that, to say the least, is non-conducive to learning.

Lack of common ground also causes a great deal of wasted time and talent. Good, talented people on each side of a controversial ethical issue spend most of their time defending their position rather than joining with others in a common search for truth. Without a common ground - common focus, common method, common goals - true communication (*cum* -with, *unio*-union) is most difficult, because participants are speaking in a foreign intellectual language.

Establishing Common Ground -- An Ancient Option: Natural Law

Throughout history there have been attempts to ground morality in such things as pure reason (Kant), feelings (Hume), consequences for the majority (Bentham and Mill) and contractual theories (Hobbes and Rawles). Unlike these approaches, natural law theory is based on the presumption that human nature is in some sense normative for human action.

Natural law is understood as knowable to the unassisted human mind, that is, to the human mind which does not reference divine revelation as its source of moral wisdom. Thus, in a religiously pluralistic society it offers two secular components which can serve as a basis to establish a common ground for discussion in the search for an objective, universal human ethic. These components are: 1) human nature and 2) human reason.

Those committed to a natural law tradition assume the possibility that reasonable people can discover together what it means to be human and what ethical principles need to be adopted and what civil laws need to be enacted in a society so that human life can flourish. This assumes that we share a common human nature and that through a rational process we can discover what constitutes our nature and what are some of the necessary social circumstances, (ethical consensus and laws), that will enable our natures to grow and flower.

People, regardless of their religious affiliation or lack thereof, seek to live in a society and a State where they can fulfill their human desire for order, peace, justice, kindness, love and any other values that most of us can agree are desirable apart from any specific religious base or context. This is what natural law theory strives to accomplish and thus provide the necessary common ground.

Method : The method begins by establishing the common focus for discussion: human nature and its flourishing. Next, it is agreed that the investigation will proceed using human reason. The overreaching question is: What human actions contribute to or hinder the flourishing of human beings?

Some issues are easy. For example, it is clear that child abuse harms the human nature of the abused and the abuser. In a recent article there was a parallel article about Hitler and Stalin. It stated that each had been beaten to the point of death by their parents. While their life experiences were complex, their abuse as children could well help to explain some of their vile behavior. Thus the natural law approach would judge that child abuse is a crime against humanity and thus not allowable ethical behavior.

(We shall discuss more complex moral issues when we consider the function of law in relation to morality.)

Technique: To make the natural law approach effective and to allow for new individual and communal insights into the nature of certain moral decisions, human reasoning must not be aimed at making our view the only rational view and opposing views irrational. Rather, those around the table of deliberation must first express how they, through their

unique process of reasoning, came to hold a certain moral position.

As each participant shares their rational journey to a judgment about the morality or immorality of certain human acts, others are to listen and try to understand how others came to their views.

The next step is to identify any commonalities in the various views and enter into a process of determining points of consensus or opportunities for compromise. Even if deliberations end without consensus or even compromise, each participant will be able to see how others came to their views in good conscience. This breeds respect for all who are engaged in this common effort to discover what is good for humanity.

The process may go on over time, with periods set aside for research and thoughtful reconsideration. In the end there will probably be some consensus, some compromise, and some continuing differences. But this process should limit such deplorable tactics as “put downs”, ridicule, labeling and the off-hand condemnation of those who disagree with others. The natural law process should limit these reactions because each participant to the discussion will be able to see that even by focusing on human nature and using human reason it is still possible to reach different moral conclusions in good conscience.

In the final analysis, it is always possible to gain new insights into the morality of our human acts. It is possible to learn from one another and it is no crime to change our minds in the light of new understanding. Let us remember, that for nearly two thousand years Christian moral theologians, using natural law methods, saw nothing intrinsically wrong with slavery.

(Our next lecture will investigate when and how to incorporate our morality into law.)

The Function of Civil Law in Promoting Morality

We mentioned on our last lecture that we cannot escape the consequences of our moral choices. So the stakes are high. If we want to flourish as individuals and as a human community we must choose to act morally and refrain from acting immorally. To do

otherwise is to destroy ourselves and our human community.

Therefore it is imperative that we must do our part and pursue the moral life as best we can, but we must also have the cooperation of our fellow citizens. How can we get this cooperation? Our first and best choice is to find ways to convince people to act morally, by good example and persuasive argumentation. If that fails, should we perhaps coerce people under law, with the threat of punishment, to at least refrain from acting immorally?

Of course, this is what our law codes have traditionally attempted to do. However, not all destructive human behavior - greed, lack of forgiveness, adultery - can be controlled by the law. Furthermore, law is not always effective in changing human behavior and even less effective in changing moral perspectives as we have seen in cases such as prohibition, speed limits, drug use, illegal immigration, and even abortion before Roe v Wade. This leaves us with our initial question for these lectures: What is the proper relationship of law and morality as we seek to establish and maintain a healthy human society?

The Function of Law

An understanding of the proper relationship of law and morality is grounded in an understanding of how law functions. In the 13th century, St. Thomas Aquinas understood human law to be “an ordinance of reason for the common good, made by the authority which has care of the community, and promulgated” (ST1-2,q.90,art. 4). The focus here is on the functioning of law in nurturing of the “common good”.

The common good can be described as a condition of justice - social justice - in which a right relationship between individuals is established so that individuals and their community can flourish as human beings. Again, a natural law approach.

These “conditions of social life” that promote individual fulfillment can include protection from outside aggression, the regulation of the exchange of goods and services, the education of children, the protection of individual life, property and rights, the regulation of political power, adequate nutrition, available health care, etc.. In other words, the civil law is directed toward promoting safety, justice and peace within a particular society -- the common good. Certainly many, if not most, of the ideal conditions necessary to promote human life are based on ethical issues, especially those involved in human rights.

In the 13th century it was the king or prince who was the authority that should make these ordinances of reason to promote the common good. Today, in our country, this task is generally given to various legislative bodies. However, whatever the specific political structure, it is still the promotion of the common good that is a major focus of civil law. The various rights and duties of individual citizens are clearly to be taken into account, but always within the context of the common good. And, again, the promotion of individual flourishing and the promotion of the common good clearly involve moral

issues.

Given the fact that our moral choices either enhance or destroy individual and community life, it seems clear that morality can have a direct and very important relationship to civil law. But how do we define that relationship?

Relating Morality to Civil Law

As we mentioned above, the exact relationship between law and morality has not been definitively spelled out. It is an ongoing process. However, there are some general observations we can make and some general moral principles that will help us in our deliberations.

First, as mentioned, it is clear that not everything that is immoral can or should be made illegal. In short, law and morality cannot be coextensive. For example, from a Christian perspective, it is a moral imperative to “honor your father and mother”, however it is impossible for the law to spell out exactly what “honor” entails or how to enforce it. It is also immoral to be greedy and to neglect the needs of the poor, but the law cannot force you to become a benevolent person. Also we have an obligation to worship God, but no civil law should or could dictate how this should take place. Religious liberty is an essential element in a free society.

On the other hand, there are some things that are immoral that civil law can and should legislate against. For example, we obviously need civil laws against murder, stealing, child abuse, destruction of personal property, breaking contracts, torture, etc..

The tricky part, of course, is first reach consensus concerning those human acts that are judged immoral, as we attempted in our first lecture, and secondly, to reach consensus on which of these should and/or could also be illegal under civil law. Reaching a consensus on these points can often be difficult in our pluralistic society for some obvious reasons that we discussed earlier.

Some Issues Related to the Enactment of Coercive Legislation

Initial Considerations -- There is a great deal of discussion in our society about promoting the common good by changing the law that currently addresses such controversial issues as the death penalty, abortion, and the treatment of immigrants. Naturally there are various opinions concerning the present state of the federal legal code that permits the various states to permit the use of the death penalty, permits abortion on demand, and makes legal citizenship for immigrants rather difficult.

For purposes of analysis, let us assume that we are a Christian group that believes that it is morally imperative and in support of the common good to: 1) eliminate the death penalty, 2) make abortion illegal, and 3) protect the human rights of immigrants and make citizenship a simpler process.

It is obvious that there must be an preliminary assessment of the political possibility of getting such legislation passed (and in what form) and the enforceability of such legislation as it relates to the common good.

Consensus: Enforceability and the Common Good -- Consensus is a key element in making assessments about 1) the political likelihood of enacting laws to support certain moral stances, 2) the issues surrounding enforcement and punishment and 3) the effect on the common good. Not only those who govern, but also those who are governed must reach some level of consensus concerning the moral issues involved in order that law can be enacted and then obeyed.

Here are some words of caution for those activists who feel that the law should reflect their normative view of social morals and anything less is a period of compromise to be overcome later by the political process. These cautions come from two important scholars in the natural law tradition, Thomas Aquinas (13th century) and Jacques Maritain (20th century):

Thomas Aquinas:

The purpose of human law is to lead men to virtue, not suddenly, but gradually. Wherefore it does not lay upon the *multitude of imperfect men* the burdens of those who are already virtuous, viz. that they should abstain from all evil. Otherwise these imperfect ones, being unable to bear such precepts, would break out into yet greater evils. (ST 1a2ae, q.96)

Human government is derived from the divine and should imitate it. God, although he is omnipotent and perfectly good, permits some evils to occur in the universe, evils which he could prohibit. He does this because if these evils were removed, greater evils would ensue. Therefore, thus also in human governance, those who rule properly should tolerate certain evils lest other good things are lost and even worse evils come about. (ST 2a2ae q. 10)

If “the multitude of imperfect men ” (above) could be understood as a measure of “consensus”, then Thomas would seem to support a practical, prudential, political judgment that a law enacted without a substantial consensus of the citizens would run the risk of creating even greater evils within society than it sought to eliminate. This would be detrimental to the common good and thus contrary to what good law, by definition, seeks to accomplish. For example, the Prohibition Law was enacted without sufficient consensus and it resulted in a massive disrespect of the law and widespread criminal activity generated by enforcement issues.

A modern disciple of St. Thomas, Jacques Maritain, also wrote about morals in a religiously diverse society in *Humanisme Integral* (1936) where he argued:

It is evident that for a sound philosophy only one morality is the true

morality. But for a legislator, who has to keep in view the common good and the peace of a given populace, is it not necessary to take into account the state of this people and the moral ideals of the diverse spiritual families which make it up -- ideals which are more or less deficient but which nevertheless exist -- and therefore to bring into play the principle of the lesser evil?

Here he introduced an ethical principle, that of choosing the lesser evil. He went on to offer a “pluralistic solution”:

To me this solution means that, in order to avoid greater evils (that is, the ruin of society’s peace and the petrification or disintegration of consciences), the body politic could and should tolerate within it -- to tolerate is not to approve --...different ways of worship and also ways of conceiving the meaning of life and modes of behavior (morals).

Here we have room for political compromise based on the ethical principle of “choosing the lesser evil” and thus avoiding the charge of mere expediency or moral relativism. This is an act of practical, prudential wisdom. He notes in *Freedom in the Modern World*:

It is proper to this wisdom to direct civilization, not by imposing its conceptions authoritatively from above because they are Catholic (or Christian), but by demonstrating experimentally as it were from below that they are conformable to right reason and to the common good. (p. 71)

Here Maritain invokes the use of reason (natural law) and persuasion as a more effective method to lead people to virtue than coercive civil law, especially in a pluralistic society. Not only is discourse based on the natural law a more effective teacher than civil law, Maritain argues that this method also can avoid other evils surrounding enforceability that can result when moral consensus is lacking

Both authors agree that civil law cannot address all moral issues, even important ones. They also stress that where consensus is lacking, there can be a shift from strict moral reasoning - this is right so make it a law - to a prudent, practical, political decision not to introduce coercive legislation where the moral values contained within do not have enough consensus within the community. For example, a good case can be made for the claim that cigarettes are harmful to individuals and the community -- individual health, health care costs, secondhand smoke. Regulating smoking in public places has often been effective, however, any attempt to enforce a total ban the sale of tobacco would be doomed to failure. Thus, they argue that to enact such legislation without proper consensus would actually do even more harm to the common good than maintaining its legality.

Having made this argument for the need for consensus, it is possible to envision circumstances when coercive legislation ought to be enacted even though consensus is

woefully lacking? Perhaps this happened in the case of slavery or even in the case of civil rights legislation. In these cases the law must simply stand for the rights of the minority and hope that the law will be effective as a teacher to help build necessary consensus for the law to be effective. Certainly, part of the cause of the Civil War was this lack of moral consensus, which, over time was rectified.

In sum, enforceability is part of the consensus argument and consensus is qualified by pluralism. These are fundamental issues in efforts to relate morality to civil law, which as we know is no small task and for which we have no pat answers.

The Law as a Teacher of Morals

If the goal of law is to create a just society where human life can flourish, then it must be admitted that the law, of itself, cannot achieve its goal. As we have just argued, the law can only be truly effective when it reflects the moral consensus of society. However, we do not define “moral consensus of society” as a condition of complete moral agreement, but only sufficient agreement to make the law enforceable and thus effective.

Given that most laws are enacted without total consensus, what about those who do not agree with the moral principles found in the law? One possibility is that the law may function as a teacher. As Thomas Aquinas said, the “purpose of the law is to lead men to virtue”. The law can and does educate citizens about morality.

The existence of a good law can reflect the consensual values of a society and can challenge an individual’s moral convictions. For example, the civil rights legislation of the last century gave witness that we are a society that respects the individual rights of citizens regardless of their color. The success of this legislation gives witness to the public consensus that did exist at the time the laws were enacted and gives further witness to the fact that over time the majority of citizens accepted these moral convictions.

In the final analysis, if we want the law to be effective, there must be a concerted effort to convert the hearts and minds of all citizens. To that end there must be true dialogue, both before and after the enactment of the law. This dialogue can make clear the reasons for enacting the law and give a respectful attention to those who disagree. In fact, if those who disagree make a good case, unjust or unworkable laws may be repealed.

The Death Penalty, Immigration Law, and Abortion

Perhaps it will be helpful to apply our observations about how morality, consensus and law apply in specific cases. The moral principles involved are: 1) personal protection from criminals and the taking of innocent life, 2) fundamental rights of individuals to food

and shelter vs the right of a nation to defend its borders, and 3) protection of the life of innocent human persons.

1) The Death Penalty -- In recent years, many Christians have come to the conclusion that capital punishment is to be allowed only when it is the only way to protect the public. Given our prison system, those circumstances in our present society would be rare. Furthermore, given the imperfections in our legal system, many innocent people have been convicted for capital crimes and some have been executed. Proof of these injustices has come from examinations of improper legal procedures and DNA testing which have proven the innocence of many of those convicted and killed.

One of the legitimate concerns of those favoring the death penalty is fear of repeat offenders. They fear that if convicted murders eventually get parole, they may well kill again. It is highly probable that if such advocates were assured of life sentences without parole, they could accept not using the death penalty. Therefore, a federal law banning the death penalty and substituting life without parole would probably meet with little public resistance, because it offers protection and does not interfere with any choices of citizens.

Conclusion: It seems that a majority of citizens would be against executing innocent people, which has happened under the present system. Also, those who fear that potential repeat offenders could be granted parole might well be satisfied that their safety is insured by a life sentence without the possibility of parole. Thus, there would seem to be enough public consensus to facilitate enough political support to pass a law, based on the ethical principle of protecting lives of the innocent, that would eliminate the death penalty, as long as a life sentence without parole was imposed on those convicted of a capital crime.

2) Immigration Law - Currently there is a movement calling for legislation to protect the human rights of immigrants, especially legal and illegal Mexican immigrants. Some argue that people have a fundamental right to earn a living to support their families and may have to migrate to accomplish that goal. And while granting the right of a country to protect its borders, they say that this right is not absolute and may have to yield to fundamental human rights and the needs of desperate people.

Conclusion: Given the need to protect the dignity and human rights of immigrants, legislation enacted to address such needs would probably win public support or at least avoid public disapproval in much the same way that civil rights legislation was finally accepted by a broad majority of the public. This can happen because, like the civil rights of the American Blacks, all citizens can identify with the needs and aspirations of the immigrants, because they themselves have the same human needs and aspirations and trace their lineage back to immigrants. Sufficient consensus would probably follow the enactment of some kind of protective legislation.

3) Abortion - Our final issue is the most difficult and requires much more comment than we can possibly give it here. However, a few points are in order. We will consider

whether a total ban on abortion should be enacted as civil law and in this legislative process how should Christian politicians make legislative decisions.

First, two assumptions. For sake of argument, we will assume that abortion is the destruction of innocent human life and thus morally unpermissible. Exceptions could be made in the case of tubal pregnancies, cancerous wombs and cases involving the life or the mother or the life of the child. We also assume that this moral position has a right to be heard in the public square and open to the legislative process (assume Roe v Wade is overturned).

Would this restrictive position make good civil law? Those who say yes would argue that innocent life must always be protected under the Constitution (given the above assumption) and that the law can be a teacher to those who disagree. Even if the law might not stop all abortions, there would be fewer abortions and that those lives that would be saved would validate the legislation.

Those who would argue that a complete ban would be contrary to the common good would cite St. Thomas and Maritian on the need for consensus to protect the common good and that such necessary consensus does not exist at this time.

This latter position is based on two judgments: First, historically, highly restrictive laws prior to Roe v Wade were ineffective in significantly reducing the number of abortions and resulted in death and other health issues for some women who procured abortions. Second, given the current lack of sufficient public moral consensus required for highly restrictive laws, such laws would result in enforcement problems (illegal abortions would continue), health issues related to illegal abortions, corruption in enforcement officials who did not agree with the law and a general disrespect for the law - all serious challenges to public order and thus contrary to the common good.

A Christian politician who accepts the moral position of abortion being the killing of an innocent human being and agrees that this position deserves a hearing in the public square, but judges a complete ban as contrary to the common good must face opposition from certain elements of the Christian community who do support a complete ban. How can this be resolved? The situation is complicated, but there is some room for negotiation in good conscience.

Here is one opinion. Commenting on the thoughts of John Courtney Murray, Gregory Kalschuer S.J made this observation in his America Magazine (8/2/04) article "American Catholics and the State":

this question of how to promote fundamental moral values through law and policy so as most effectively to benefit the common good is always a contingent question dependent upon the practical wisdom of the legislator. In other words, we cannot move directly from moral principles to legal sanctions without considering whether legal sanctions will truly serve the common good in light of existing social conditions. (p.17)

Given this observation, a Christian politician might argue that the question of how to translate a restrictive moral position on abortion into law is indeed a contingent question and that a politician retains a “freedom of opinion” in such cases. Not only is it a contingent question, but a sincere judgment could be made that it is a question not of morality as such, but one of practical politics - would such legislation achieve its goal and what about the damage to the common good?

A Special Note: Many observers are now saying that for the general public the fundamental question of abortion is not primarily one of morals. The vast majority of citizens agree with that killing the innocent is a crime. However, concerning abortion it is a question of fact, not morality, i.e., is the fetus truly a human *person* with all the rights accorded to innocent human persons? Nevertheless, a Christian politician’s position on this fact is certainly relevant when considering legislation.

Practical politics is certainly the area of expertise and responsibility of the politician. When politicians and their Church communities and leaders disagree in this area, some ground ought to be yielded to the prudence of the politicians. If politicians can learn from their Church community and Church leaders in its area of expertise, perhaps the Church community and its leaders might learn something from politicians in their area of expertise.

In the final analysis, even if a Christian politician is mistaken about the matter and a total ban would accomplish the goal of significantly reducing abortions without severe damage to the common good, this is not a moral fault, rather it is an error of judgment in the area of practical politics about a contingent issue. Such an error incurs no moral guilt -- one must follow one’s conscience.

Summary - There is no easy, set formulae concerning how to implement moral principles in public policy. Thus dialogue must continue. There must always be a balance between attempting to foster morality through coercive civil law and consideration of the common good. Perhaps St. Augustine can help us set the tone:

In faith, unity; in doubtful matters, liberty; in all things, love. (St. Augustine)