

Pastoral Responses to Catholic Politicians Within the Context of the Politics of Abortion

In the United States, the official position of the Catholic bishops on the morality of abortion is clear. What remains unclear is exactly what this position demands of the Catholic bishops and Catholic politicians within the political arena. Since the Church has never developed a formal doctrinal position on the question of translating morality into law, the relationship between Catholic politicians and their bishops has often become problematic.

The Goal: Reducing Abortions

Given the moral assessment of abortion, the ultimate or perhaps the utopian goal of the Church is to eliminate all abortions by making abortion unthinkable. However, in a pluralistic society, the practical goal is to limit abortions as much as possible. An overall strategy to achieve this goal would include three major social aims:

- 1) To change hearts and minds through Christian witness and moral persuasion. This is the most effective way to reduce abortions -- by making them unthinkable. This task lies at the heart of the teaching mission of the Church.
- 2) To implement legislation that addresses the social causes of abortion. To effectively address the social problems that can lead to abortion decisions - poverty, health care, housing, day-care - is the next most effective way to reduce abortions. This task lies at the heart of the social mission of the Church. It is played out in the political arena and thus requires the cooperation and skills of politicians.
- 3) To initiate coercive legislation to restrict or prohibit the practice of abortion. As part of the overall strategy, this is the least effective way (historically) to reduce abortions. However, this approach can be made more effective when supported by the teaching and social mission of the Church. It is played out in the political arena and thus requires the cooperation and skills of politicians. Many politicians would judge this approach not only to be ineffective, but to be avoided because any attempts at enforcement would not only be very difficult, but would result in attitudes toward the law and illegal practices that would be detrimental to the common good.

The specific punishment for those convicted of abortion would also be problematic.

While

a maximum punishment of life in prison without parole for the woman, the doctor and anyone directly involved in an abortion would probably be difficult to legislate, anything less would seem to indicate that abortion is not murder after all. And what precisely would the punishment be?

The Focus: Responses to Catholic Politicians

The focus of this paper is on the appropriate response(s) of the United States bishops to Catholic politicians whose public stance and actions in the arena of the “politics of abortion” are formulated on certain moral and political judgments.

The situation is complicated by the fact that the simple labels of “pro-life” or “pro-choice” are not nuanced enough to be satisfactorily descriptive. Most would agree that these labels fail to provide a descriptive framework for meaningful dialogue between bishops and politicians and certainly, in themselves, fail to provide a basis for appropriate pastoral responses.

Ironically, many politicians who are labeled “pro-choice” are not pro-abortion and support social legislation - housing, poverty, health care, day care - that actually reduces the number of abortions. On the other hand, many who carry the label “pro-life” are simply rhetorically anti-abortion and fail to initiate or even support restrictive legislation, while opposing the kinds of social legislation that would actually reduce the numbers of abortions, especially among the poor, and supporting social legislation that actually increases the number of abortions.

Major Positions on the Politics of Abortion Adopted by Catholic Politicians: Restrictive Legislation

Even a brief analysis reveals that the moral/political positions assumed by Catholic politicians fall into a fairly wide range of categories. We shall attempt a descriptive analysis of some of the major positions and possible pastoral responses.

Perspectives for Analysis

What follows is an attempt to outline seven major moral/political positions that focus only on restrictive legislation. Each position will be analyzed from three different perspectives:

- 1) Judgments about the morality of abortion.
- 2) Judgments about the appropriateness of introducing religiously based moral positions into the legislative forum.
- 3) Judgments about supporting abortion legislation that is restrictive; moderate; liberal; or electing legislative silence.

As background to the analysis, the official Catholic judgments within the three perspectives are usually announced as follows:

- 1) Judgments about the morality of abortion -- the official Catholic evaluation of the morality of abortion can be stated as follows: Abortion involves the direct killing of

innocent human life and therefore is objectively evil and absolutely prohibited.

The Catholic position allows for “indirect abortion” in the cases of a cancerous womb and tubal pregnancies, using the principle of double effect. Furthermore, some Catholic moralists and bishops allow for the taking of fetal life in situations where the life of the mother and the child are in at risk.

2) Judgments about the appropriateness of introducing religiously based moral positions into the legislative forum -- the Church rejects the judgment that since the Church’s moral positions stem from a religious perspective, they constitute “sectarian morality” or at best “private religious convictions” and are thereby to be excluded, *ipso facto*, from consideration in the public forum. This judgment is sometimes voiced by those who seek to locate the debate about abortion within the context of religious freedom and then to argue that “we cannot impose our sectarian religious beliefs on others” and/or invoke the principle of separation of church and state.

The Church rightly rejects the validity of this argumentation. Abortion is a moral issue. It is not inherently private or religious. *It is erroneous simply to equate morals with religion.* For example, we can grant that one has the right to be “irreligious”, however, no one has the right to be inhuman, that is immoral. Morality is a wider concept than any specific religious perspective.

As we continue this discussion it is important to remember that, currently, the abortion issue is a juridical issue, not a legislative issue. Since the ruling in *Roe v. Wade*, it is not possible for the Congress or state legislatures to infringe on the fundamental right to have an abortion. However, if *Roe v. Wade* was overturned, and the issue was sent to the Congress or the state legislatures, then some of these considerations discussed here would be of practical importance, rather than theoretical importance.

Given this caveat, certainly all, including the Church, would agree that there is no requirement to attempt to translate all moral positions into secular law, e.g., birth control, adultery and divorce, even when these issues are judged to be critical for society as a whole. On the other hand, many of the Church’s moral positions on such things as murder, child abuse and racial discrimination, are certainly viewed as appropriately translated into law and are not labeled “sectarian morality” by anyone.

Nor is the abortion issue simply a private matter. Certainly the State has an interest in determining whether or not the law of the land is sanctioning the taking of a citizen’s life without due process of law. In any event, the destruction of human life at any stage is a matter of public concern. The Church’s aim is to clear the way for dialogue within the public forum on the moral issues concerning the destruction of human life.

It is important to realize that all attempts to get laws passed are efforts to impose the beliefs of some on everyone. Furthermore, these beliefs are grounded in some religious, philosophic or even atheistic assumptions about human nature and society. They do not

spring out of a void. They are part of a personal or group ideology - a judgment of how “things ought to be”. Whether or not these beliefs have a religious or non-religious base is not a determining question. The question is how they relate to the flourishing of human life which includes the common good and the founding ideals of the secular society.

3) Judgments about supporting abortion legislation that is restrictive; moderate; liberal; or electing legislative silence -- The official Church currently supports legislation that is restrictive and even moderate as part of an overall political strategy to work for legal restrictions on abortions to the “maximum degree possible” or even on the expediency principle of “get what you can get”.

If the option of totally restrictive legislation ever became a reality for legislators, many question the value of such legislation and would judge its enactment to be against the common good and therefore should not be enacted. Such a judgment could be based on a number of factors, the most prominent being difficulty in enforcement and the question of appropriate legal punishment for all involved.

Any active support of liberal laws or any laws that would extend the legalization of abortions would not be officially supported. “Legislative silence” is a position taken even by those who judge abortion to be immoral, as in the 1976 proposal of Robert Drinan S. J., then Dean of the Law School at Boston College. The merits of this proposal have been largely discounted by most moralists and members of the hierarchy.

Seven Major Positions Taken by Catholic Politicians

We turn now to a consideration of seven of the most common positions concerning the politics of abortion. There may be others, but these are the most representative.

As Catholic politicians adopt or modify the official judgments in the three areas mentioned above, they come to establish a position relative to abortion legislation. They are often forced to establish a position in the face of proposed legislation, even when they confess intellectual uncertainty about many of the issues involved. While each Catholic politician may craft a very personal position on the politics of abortion, most would end up with a position that reflects one of the seven outlined below:

Position I -- (1) Personally accepts the official Catholic moral position; (2) agrees that it is appropriate to introduce religiously based moral positions into the legislative forum; (3) willing to support compromise legislation that will restrict the legal availability of some abortions and support further restrictions within the “politics of the possible”, with a focus on public order relative to enforcement.

Position II -- (1) Personally accepts the official Catholic moral position; (2) agrees that it is appropriate to introduce religiously based moral positions into the legislative forum; (3) willing to support *only* legislation that will absolutely prohibit all abortions, ignoring

or discounting issues concerning public order relative to enforcement.

Position III -- (1) Personally accepts the official Catholic moral position; (2) agrees that it is appropriate to introduce religiously based moral positions into the legislative forum; (3) willing to support restrictive legislation concerning abortion that is liberal to moderate and unwilling to support most highly restrictive legislation (esp. in cases of rape, incest and fetal deformity) and/or absolutely restrictive legislation.

This position is based on two judgments: First, historically, highly restrictive laws have been ineffective in significantly reducing the number of abortions. Secondly, given the current lack of public moral consensus for highly restrictive laws, such laws would result in enforcement problems, health issues related to illegal abortions and a general disrespect for the law - all serious challenges to public order and thus contrary to the common good.

Position IV -- (1) Personally accepts the official Catholic moral position only with respect to fetal life after the first 14 days of gestation; (2) agrees that it is appropriate to introduce religiously based moral positions into the legislative forum; (3) willing to support compromise legislation that will restrict the legal availability of some abortions after the first 14 days of gestation and support further restrictions within the “politics of the possible”, with a focus on public order relative to enforcement.

Position V -- (1) Personally accepts the official Catholic moral position; (2) views the morality of abortion as a private religious issue and thus inappropriate to introduce into the legislative forum; (3) willing to support legislation that reflects and accepts the consensual values of a pluralistic society or a legislatively neutral position with a focus on public order relative to enforcement.

Position VI -- (1) Rejects the official Catholic moral position; (2) agrees that it is appropriate to introduce religiously based moral positions into the legislative forum; (3) willing to support only that legislation that maintains the civil rights of a pregnant woman’s right to choose and/or the right of privacy as superior in law to the human rights that might pertain to fetal life at any stage before birth.

Position VII -- (1) Rejects the official Catholic moral position; (2) views the morality of abortion as a private religious issue and thus inappropriate to introduce into the legislative forum; (3) willing to support only that legislation that maintains the civil rights of a pregnant woman’s right to choose and/or the right of privacy as superior in law to the human rights that might pertain to fetal life at any stage before birth.

Evaluation of Congruence with of Official Judgments

Position I -- (1) Personally accepts the official Catholic moral position; (2) agrees that it is appropriate to introduce religiously based moral positions into the legislative forum; (3) willing to support compromise legislation that will restrict the legal availability of some

abortion and support further restrictions within the “politics of the possible”, with a focus on public order relative to enforcement.

Evaluation -- This position is often identified in Catholic circles as the “compromise position” and is usually considered most acceptable because (1) and (2) reflect official Catholic positions and (3) expresses the directives of the 1975 NCCB document entitled “Pastoral Plan for Pro-Life Activities”, which seems to imply the acceptance of compromise:

1. Passage of a constitutional amendment providing protection for the unborn child to the *maximum degree possible*.
2. Passage of federal and state laws and adoption of administrative policies that will restrict the practice of abortion *as much as possible*.

This compromise language is also found in the NCCB’s 1989 “Resolution on Abortion” and the 2004 statement “Faithful Citizenship: A Catholic Call to Political Responsibility.”

Position II -- (1) Personally accepts the official Catholic moral position; (2) agrees that it is appropriate to introduce religiously based moral positions into the legislative forum; (3) willing to support *only* legislation that will absolutely prohibit all abortions, ignoring issues concerning public order relative to enforcement.

Evaluation -- This position is often identified in Catholic circles as the “no compromise position” and is considered acceptable because (1) and (2) reflect official Catholic positions and while (3) does not perfectly reflect the official compromise position of the NCCB, it can be officially accepted in light of a personal judgment of conscience that deems as illicit any positive vote on legislation that fails to totally restrict abortion.

Catholic politicians may conclude, based on a personal judgment of conscience, that they must give public witness to their personal conviction that abortion is immoral and limit their political support to those legislative efforts aimed at the complete prohibition of any kind of abortion. In their judgment, the support of any compromise legislation is personal collusion in the taking of innocent life and thus immoral. It would also be seen as a failure to properly serve the interests of the state by supporting legislation that would permit the destruction of the innocent life of one of its citizens without due process.

Position III -- (1) Personally accepts the official Catholic moral position; (2) agrees that it is appropriate to introduce religiously based moral positions into the legislative forum; (3) willing to support restrictive legislation concerning abortion that is liberal to moderate and unwilling to support most highly restrictive legislation (esp. in cases of rape, incest and fetal deformity) and/or absolutely restrictive legislation.

This position is based on two judgments: First, historically, highly restrictive laws have been ineffective in significantly reducing the number of abortions. Secondly, given the

current lack of public moral consensus for highly restrictive laws, such laws would result in enforcement problems, health issues related to illegal abortions and a general disrespect for the law - all serious challenges to public order and thus contrary to the common good.

Evaluation -- This position would probably be judged officially unacceptable. While (1) and (2) do reflect official Catholic positions, (3) seems to fall short for one reason. Unlike the acceptable “compromise position”, (Position I), which would endorse legislation if it provides some restrictions on abortion, this position would reject at least some legislative opportunities to endorse restrictions and would certainly not entertain the endorsement of highly restrictive legislation without public consensus.

For example, this position might endorse legislation that restricts partial birth abortion, but would not endorse legislation that would restrict abortion in cases of rape, incest, etc. or perhaps restrict availability of legal abortion services to the poor. This position could be reasonably defended as justified in conscience based on the historical evidence that restrictive legislation failed to stop abortions prior to *Roe v Wade* and that reintroducing such legislation, especially after legalization for over 20 years, would cause more evil than good and thus the lesser of two evils must be chosen.

Such a judgment is well within the Catholic tradition. Furthermore, in November of 2002, the Vatican’s Congregation for the Doctrine of the Faith published a document entitled: *Doctrinal Note on Some Questions Regarding the Participation of Catholics in Political Life*. In this note, while Catholics are exhorted not to support policies that compromise fundamental ethical values, it notes that there are “a variety of strategies available for accomplishing or guaranteeing the same fundamental value”. The documents goes on to note that in the Church’s effort to form the consciences of Catholics, there is no desire on the part of the Church “to exercise political power *or eliminate freedom of opinion of Catholics regarding contingent questions*” (note 6).

Certainly practical political judgments about how fundamental moral values are promoted through legislation are contingent questions and in the realm of practical politics, not morality as such. Other legislative strategies focusing on social justice may rightly be judged to be more effective in promoting certain fundamental ethical values, such as the right to life of the unborn.

Position IV -- (1) Personally accepts the official Catholic moral position only with respect to fetal life after the first 14 days of gestation; (2) agrees that it is appropriate to introduce religiously based moral positions into the legislative forum; (3) willing to support compromise legislation that will restrict the legal availability of some abortions after the first 14 days of gestation and support further restrictions within the “politics of the possible”, with a focus on public order relative to enforcement.

Evaluation: This position would seem to be officially unacceptable. The moral evaluation expressed in (1) concerning the first 14 days of gestation does not reflect the

official position of at least a moral presumption of personal human life from conception nor the moral dictum to “follow the safer course” when human life is at stake. However, this position would adopt the Catholic position for fetal life after the first 14 days. Item (2) is an officially acceptable position and (3) except for the exclusion of the first 14 days, is acceptable and reflects the “compromise position” (Position I).

It is possible, that Catholic politicians could justify the formation of their consciences concerning the first 14 days of fetal life based on the principle of probabilism - precepts only bind when they are known (St. Thomas) and true knowledge is not present when supporting opinion is only probable (see “Background” pp. 2-6).

However, this position might be officially challenged on the grounds that not enough reputable moralists (five plus?) agree that individual, personal human life is probably not present during the first 14 days of gestation to establish grounds for use of the principle of probabilism.

Position V -- (1) Personally accepts the official Catholic moral position; (2) views the morality of abortion as a private religious issue and thus inappropriate to introduce into the legislative forum; (3) willing to support legislation that reflects and accepts the consensual values of a pluralistic society or a legislatively neutral position with a focus on public order relative to enforcement.

Evaluation -- This position would seem to be officially unacceptable. While (1) is certainly an acceptable position, (2) is unacceptable because it is contrary to the official Catholic position that runs throughout the social encyclicals since *Rerum Novarum* in the 19th century and also affirmed in the Vatican II document “The Pastoral Constitution on the Church in the Modern World”. This position holds that it is not only acceptable to introduce Catholic moral insights into the legislative forum, but that it is indeed an obligation - a social and moral obligation to contribute to the common good. Item (3) would also be judged unacceptable because it does not appear to be necessarily supportive of any proposed legislation that would restrict abortion, but would be judged by the politician as not passing the “consensual values of society test”.

Position VI -- (1) Rejects the official Catholic moral position; (2) agrees that it is appropriate to introduce religiously based moral positions into the legislative forum; (3) willing to support only that legislation that maintains the superiority of the civil rights of a pregnant woman’s right to choose and/or the right of privacy over the human rights that might pertain to fetal life at any stage before birth.

Evaluation -- This position would certainly be officially unacceptable because (1) is a rejection of the official moral position. While (2) reflects the official position, (3) is unacceptable because it flows from (1) and grants no inalienable right to life under the law for the fetus at any stage prior to birth.

Position VII -- (1) Rejects the official Catholic moral position; (2) views the morality of abortion as a private religious issue and thus inappropriate to introduce into the legislative forum; (3) willing to support only that legislation that maintains of the civil rights of a

pregnant woman's right to choose and/or the right of privacy as superior in law to the human rights that might pertain to fetal life at any stage before birth.

Evaluation -- This position is clearly unacceptable. Neither (1), (2), nor (3) coincide with any official Catholic position.

Possible Official Responses to Each Position

Procedure - Identify common ground; articulate any differences from official positions; assume conflicting positions to be held in good conscience; initiate dialogue; evaluate individual politicians on a wide range of Catholic social issues; invoke public ecclesiastical penalties as a last resort.

Position I -- (1) Personally accepts the official Catholic moral position; (2) agrees that it is appropriate to introduce religiously based moral positions into the legislative forum; (3) willing to support compromise legislation that will restrict the legal availability of some abortions and support further restrictions within the "politics of the possible", with a focus on public order relative to enforcement.

Response -- (1) Acknowledge congruence with official position. Provide materials to support this position from Catholic moral tradition, especially materials based on the natural law tradition that will enable politicians to dialogue with those who do not share the Catholic moral tradition. (2) Acknowledge congruence and provide supporting materials, especially those valuable for dialogue with other traditions. (3) Acknowledge the Catholic acceptance of the "politics of the possible" and explain the basis for this position of political compromise.

Position II -- (1) Personally accepts the official Catholic moral position; (2) agrees that it is appropriate to introduce religiously based moral positions into the legislative forum; (3) willing to support *only* legislation that will absolutely prohibit all abortions, ignoring issues concerning public order relative to enforcement.

Response -- (1) Acknowledge congruence with the official position. Provide materials to support this position from the Catholic moral tradition, especially materials based on the natural law tradition that will enable politicians to dialogue with those who do not share the Catholic moral tradition. (2) Acknowledge congruence and provide supporting materials, especially those valuable for dialogue with other traditions. (3) Indicate acceptance of the claim of acting in good conscience. Make information available that addresses the issue of "collusion" and which gives an explanation of the official position that compromise in order to legally restrict at least some abortions is morally acceptable and practically preferable as stated in NCCB documents.

Position III -- (1) Personally accepts the official Catholic moral position; (2) agrees that it is appropriate to introduce religiously based moral positions into the legislative forum; (3) willing to support restrictive legislation concerning abortion that is liberal to moderate and unwilling to support most highly restrictive legislation (esp. in cases of

rape, incest and fetal deformity) and/or absolutely restrictive legislation.

This position is based on two judgments: First, historically, highly restrictive laws have been ineffective in significantly reducing the number of abortions. Secondly, given the current lack of public moral consensus for highly restrictive laws, such laws would result in enforcement problems, health issues related to illegal abortions and a general disrespect for the law - all serious challenges to public order and thus contrary to the common good.

It could also be argued that the practical, political judgment of whether or not to attempt to promote the fundamental value of protecting fetal life through legislation is a “contingent question”. And in its *Doctrinal Note* of 11/02, the Vatican stated that in its attempts to form the consciences of Catholics it did not desire “to exercise political power or eliminate freedom of opinion of Catholics regarding contingent questions (no.6) (Italics mine). Thus the judgment that coercive legislation is not appropriate or effective in the present cultural situation is not a moral issue, but one of practical politics which is more appropriately the area of the politician than of the hierarchy.

Response -- (1) Acknowledge congruence with the official position. Provide materials to support this position from the Catholic moral tradition, especially materials based on the natural law tradition that will enable politicians to dialogue with those who do not share the Catholic moral tradition. (2) Acknowledge congruence and provide supporting materials, especially those valuable for dialogue with other traditions

(3) Acknowledge congruence with the official position of voting for compromise legislation that is moderate to liberal, insofar as it is at least partially restrictive relative to current legislation, i.e., restricting *as far as possible*. State and explain the Church’s goal of total legislative restriction of abortion, again, within the politics of the possible. Such restriction would imply in principle to all direct abortions without regard to the circumstances of rape, incest, fetal deformity, etc. Open a process of on-going dialogue. Acknowledge that this position could be held in good conscience (even if objectively erroneous) for the reasons given above.

If dialogue fails to alter the incongruities, public ecclesiastical penalties would seem to be inappropriate, based on the high level congruency with the official position as expressed in (1) and (2) and in the knowledge that if legal abortions were restricted to circumstances of rape, incest and fetal deformity, only 1% of current abortions would be legal. Thus, this position would probably not cause grave public scandal given that this is a common position even among Catholics. Plus, the practical, political judgment to refrain from highly restrictive legislation relative to abortion in the present cultural situation may indeed be a correct judgment and one which could be instructive to the official Church.

Position IV -- (1) Personally accepts the official Catholic moral position only with respect to fetal life after the first 14 days of gestation; (2) agrees that it is appropriate to

introduce religiously based moral positions into the legislative forum; (3) willing to support compromise legislation that will restrict the legal availability of some abortions after the first 14 days of gestation and support further restrictions within the “politics of the possible”, with a focus on public order relative to enforcement.

Response -- (1) Acknowledge congruence with the official position as to fetal life after the first 14 days. Acknowledge the possibility that this position could be held in good conscience on the grounds of probabilism due to the ongoing debate about the status of human life during the first 14 days. Open dialogue by granting a situation of some doubt, reiterate the official position that when doubt concerns a vital matter, i.e., human life, a presumption of individual, personal human life from conception is considered a moral imperative. Provide materials to support this position from the Catholic moral tradition, especially materials based on the natural law tradition that will enable politicians to dialogue with those who do not share the Catholic moral tradition.

(2) Acknowledge congruence and provide supporting materials, especially those valuable for dialogue with other traditions. (3) Acknowledge the Catholic acceptance of the “politics of the possible” for human life after the first 14 days and explain the basis for this position. State and explain the official Catholic position that calls for the expansion of this legislative compromise position to human life from the time conception.

Open a process of on-going dialogue. If dialogue fails to alter the incongruities, public ecclesiastical penalties would seem to be inappropriate, based on the high level congruency with the official position and the absence of grave public scandal and the possibility that the judgment about the first 14 days of gestation may indeed be correct.

Position V -- (1) Personally accepts the official Catholic moral position; (2) views the morality of abortion as a private religious issue and thus inappropriate to introduce into the legislative forum; (3) willing to support legislation that reflects and accepts the consensual values of a pluralistic society or a legislatively neutral position with a focus on public order relative to enforcement.

Response -- (1) Acknowledge congruence with the official position. Provide materials to support this position from the Catholic moral tradition, especially materials based on the natural law tradition that will enable politicians to dialogue with those who do not share the Catholic moral tradition. (2) Indicate that this judgment is contrary to the official Catholic position that runs throughout the social encyclicals since *Rerum Novarum* in the 19th century and also affirmed in the Vatican II document “The Pastoral Constitution on the Church in the Modern World”. This position holds that it is not only acceptable to introduce Catholic moral insights into the legislative forum, but that it is indeed an obligation - a social and moral obligation to contribute to the common good. Moral opinions, whatever their source, are foundational to civil law.

While item (3) would seem to follow logically from the judgment in (2), since (2) is unacceptable so is (3). However, this again comes within the scope of a “contingent

question” as discussed above and could be left to the practical, political judgment of the legislator.

Reiterate and explain the policy of a compromise approach to restrictive abortion legislation. Open on-going dialogue. If dialogue fails to alter the incongruities, public ecclesiastical penalties would seem to be inappropriate, unless grave public scandal would result. The likelihood would be minimal because many in society, including Catholics, believe (wrongly) that abortion can be seen as a private issue, not to be introduced into the legislative forum.

Position VI -- (1) Rejects the official Catholic moral position; (2) agrees that it is appropriate to introduce religiously based moral positions into the legislative forum; (3) willing to support only that legislation that maintains the superiority of the civil rights of a pregnant woman’s right to choose and/or the right of privacy over the human rights that might pertain to fetal life at any stage before birth.

Response -- (1) Open dialogue immediately and address the Catholic position on the morality of abortion using natural law theory. Acknowledge the theoretical concerns about the first 14 days of fetal life and propose the “safer course theory” as part of a traditional Catholic natural law approach. (2) Acknowledge the congruence with the Catholic position. (3) Continue open dialogue and focus on the relationship between human rights and civil rights.

If a long process of true dialogue fails to alter the incongruities, perhaps a process could begin that might end in some type of non-public ecclesiastical penalties. Public penalties, such as denying communion, are seldom effective on changing one’s heart or mind, which is the immediate goal. Furthermore, since an unacceptable position on abortion such as Position VI may indeed be held in good conscience, the politician would be, in fact, morally innocent. Judgment of moral guilt or innocence in the issue under consideration is usually highly problematic. This type of moral innocence would not prohibit, in itself, the possibility of private or public ecclesiastical penalties, however, prudentially they should be a last resort.

Position VII -- (1) Rejects the official Catholic moral position; (2) views the morality of abortion as a private religious issue and thus inappropriate to introduce into the legislative forum; (3) willing to support only that legislation that maintains of the civil rights of a pregnant woman’s right to choose and/or the right of privacy as superior in law to the human rights that might pertain to fetal life at any stage before birth.

Response -- (1) Open dialogue immediately and address the Catholic position on the morality of abortion using natural law theory. Acknowledge the theoretical concerns about the first 14 days of fetal life and propose the “safer course theory” as part of a traditional Catholic natural law approach. (2) Indicate that this judgment is contrary to the official Catholic position that runs throughout the social encyclicals since *Rerum Novarum* in the 19th century and also affirmed in the Vatican II document “The Pastoral

Constitution on the Church in the Modern World”. This position holds that it is not only acceptable to introduce Catholic moral insights into the legislative forum, but that it is indeed an obligation - a social and moral obligation to contribute to the common good. Moral opinions, whatever their source, are foundational to civil law.

If a long process of true dialogue fails to alter the incongruities, perhaps some form of due process begin that might end in some type of non-public ecclesiastical penalties. Public penalties, such as denying communion, are seldom effective on changing one’s heart or mind. Again, since an unacceptable position on abortion such as Position VII may indeed be held in good conscience, the politician would be, in fact, morally innocent. Judgment of moral guilt or innocence in the issue under consideration is usually highly problematic. This type of moral innocence would not prohibit, in itself, the possibility of ecclesiastical penalties, however, prudentially they seem to be a last resort.

Summary

- 1) Positions I and II seem to be acceptable political positions relative to the official positions of the American Catholic Church. They would fit the “pro-life” label.
- 2) Positions III, IV and V seem to be at least partially unacceptable for various reasons. Positions III and V accept the official moral position on abortion and IV accepts the same moral position relative to fetal life after 14 days. This is an important area of common ground. Also, III and IV accept the appropriateness of introducing morality into the legislative forum. All three positions would accept some kinds of restrictive legislation. There is a solid common ground in all three of these Positions for fruitful dialogue.

Certainly, none of these positions could be labeled “pro-abortion”, however, they would all probably be labeled “pro-choice” rather than “pro-life”. However, with the modification noted in Position IV, they all accept the official Church position on the morality of abortion. Their disagreements are more political than moral.

The traditional moral wisdom of the official Church is certainly relevant to the areas of the morality of abortion and of the relevance of morality to law. However, when the official Church enters the area of prudential political judgments made within a pluralistic society with an eye to the tranquility of the social order, its authority is often less presumptive.

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

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* (italics added) 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)

If this is indeed a “contingent question”, as noted earlier, an official statement from Rome has stated 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* (italics added)”.

In the area of politics, the quest for a common goal (reduction in abortions) often relies on tactics, i.e., the politics of the possible, with an eye to good public order. To err in this arena one may be judged to be a bad politician, but not necessarily a bad Catholic - certainly not an immoral one.

3) Positions VI and VII seem most unacceptable. The rejection of the official moral position on abortion leaves the partners in dialogue without important common ground. Nevertheless, the focus is not on assessing moral guilt, but it arriving at the truth. This common quest for truth, using a natural law approach, can provide the common ground for fruitful dialogue. All partners in the dialogue can be assumed to be in good conscience and can proceed as friends and not adversaries in their quest for the truth.

The bishops, as official representatives of the Church, have a right and an obligation to publicly express their judgments and positions and to make clear the differences of opinions. They also have a moral obligation to teach in the area of morality. Certainly, the bishops have the power to inflict ecclesiastical penalties, either private or public, on those members of the Church whom they judge are creating grave public scandal. The question remains as to the prudence of inflicting such penalties in accomplishing the ultimate goal of changing minds and hearts on the issue of abortion.

A Final Note:

An excellent short analysis of this complex moral/political situation was given by Lisa Sowle Cahill in her essay, “*Catholic Commitment and Public Responsibility*”, found in “Abortion & Public Policy”, edited by R. Randall Rainey, S.J. and Gerard Magill:

In regard to the issue before us, both the past moral wisdom of Catholicism and present political and moral experience teach that abortion is a broad-based social problem demanding a multi-pronged, complex, flexible, and necessarily gradual solution.

If we appreciate the cumulative and communal character of moral wisdom, we will realize that the “right” social solution to the abortion dilemma may not be easy to devise or recognize. Moreover, political and legal solutions, even when characterized by objective moral rightness, must be adequately nuanced to their situations. So, on the one hand, we recognize that our moral knowledge about abortion as a social problem may be incomplete. And, on the other hand, we see that even a complete and accurate moral solution to abortion requires going beyond abstract or general principles to deal with the human realities which a law affects.

Respecting Catholicism’s protective stance toward unborn life, even in its earliest stages, is consistent with a political agenda which recognizes the practical divisiveness and even destructiveness of an absolutist position on the recriminalization of abortion -- and hence the possibility of its objective, moral failure as a prudent means to the worthy end of protecting human life.

A comprehensive sense of social justice, grounded both in Aquinas and in Catholic social teaching, recommends, however, that the decision to abort be socially discouraged in favor of more constructive alternatives for women, children, and families. The task of the politician is to seek consensus around a supportive environment for women facing a difficult pregnancy, and to that end aid the cultivation of civic virtues of cooperation, generosity, and even sacrifice on the part of the community as a whole. (p. 159)

Having said all this, it is well to reiterate once more that the issue of abortion in American society is, at the present time, fundamentally a juridical, not a legislative issue. *Roe v. Wade* made the legalized abortion a constitutional issue. Therefore, any legislative efforts at the state or national level to reduce the incidence of abortion through statutory prohibition will face significant constitutional hurdles in the Supreme Court.

Conscience

The Formation of Conscience

If it is true that we must follow our conscience, even an erroneous conscience, then it is important that we form our consciences correctly. To make bad decisions, even with a good intention, will by definition bring harm to ourselves, others, and the world. Bad decisions lead to death, not life. Therefore we need to understand what we mean by conscience and explore how to form a good conscience.

1) What is the nature of conscience?

Conscience is not a “small voice” which is evoked by some mysterious in-built mechanism that indicates what actions are right or wrong. It is not our “super-ego” as Freud proposed. Conscience is a *judgment* based on information we have gathered in attempt to evaluate which actions are right or wrong. Conscience is a function of our intelligence, not simply our feelings. While the *data* upon which our judgments are made may indeed be in large part the unconscious or conscious value judgments which we inherit from our family or culture, the *act of judgment* is not.

A judgment of conscience can only be made by the person who owns and utters it. It is a personal act of judgment. Thus, no one can claim possession of another’s conscience. There is no “third agent” or Jiminy Cricket who tells us what to do. No state or church can hold dominion over an individual’s conscience. Only my own moral judgment is my conscience.

So does that mean that we can do whatever we please as long as we have good intentions? Certainly not, because with or without good intentions the evil we do will surely destroy us and others. Therefore, we all have a profound, life or death, obligation to inform our conscience from the best sources available. We need to discern God’s creative will for us as it applies to our daily lives.

2) What sources are available to help form our conscience?

Perhaps we can define the formation of conscience as: a life-long search to find God’s creative purposes for us in the concrete situations of our everyday life. This is no easy task. There are many instances when there are no immediate, clear cut answers to our moral questions. For example: Is it time to put my mother into a nursing home? Should

I separate from my abusive husband? Should I enlist in the army? Should I tell my patient she is dying? Should I put my out-of-wedlock child up for adoption? What are my obligations to the poor? What is a just wage for my employees? How should I vote?

Because of the unique circumstances of each human life, many important moral decisions must be made without any clear direction. However, we must do the best that we can to do good and avoid evil in all circumstances. But what does this mean? It means that insofar as is possible we must consult all the sources we have available to help us make good moral decisions. There is a great deal at stake, because our lives and the lives of others are often profoundly affected by our moral decisions.

What, then, are specific sources that we can consult to help form our conscience? 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" and this tradition has transmitted, directly or indirectly, some of its values to us in the process of growing up.

Given this "training" in many of the daily moral decisions we make, we do so instinctively. For example, if a clerk at a store gives us too much change, we "automatically" give it back. If we see someone injured in an accident, without a second thought we run to their aid. We do not cheat on our income taxes. We do not lie. However, in difficult cases like some abortion decisions where many conflicting and complex values are involved, 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" 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 priest 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 it is reasonable to expect to find concrete answers to specific questions in the Scriptures. But in reading the New Testament we can get a "sense" of how Jesus lived and what he taught by word and example. We can begin to

take on the “mind” of Jesus as St. Paul spoke about. This is not something that can be accomplished by simply rushing to the Scriptures in times of need, but rather it is a life long process making the reading of Scripture a part of our life.

The Church - Certainly the collective wisdom of the Church provides an invaluable guide. It is part of the mission of the Church through its bishops and moral theologians 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..

The official teaching authority in the Church express its moral teaching in a variety of ways including papal encyclicals, council documents, and in other formal formats such as speeches from the pope and various moral directives and teachings from bishops’ conferences. There are also official Catechisms. In addition, we have a vast collection of books and articles from prominent Catholic moral theologians on every moral topic imaginable.

Consulting “good people” - This is different from consulting a good listener or a counselor. There are certain people we know who seem to make good judgments in their lives. They have been successful as human beings and have raised their children well. They are the “wise men and women” in our midst. They have proven to be people of sound judgment and we feel that we can trust them to give us good advice.

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.

Conscience - Must it be followed?

In a word - yes. While we are certainly under grave obligation to inform our conscience by searching as best we can for the moral truth about decisions facing us, in the end it is left to us as individuals to decide. What if, objectively speaking, we have done our best, but still, unknown to us, we have an erroneous conscience? Answer: we must follow it. St. Thomas pointed out that if in good conscience we judge that we must leave the Catholic Church, then leave it we must.

Conscience represents our best judgment about a moral matter in our lives. We may be wrong, but we can only do our best. The Constitution on the Church refers to conscience as a person’s “most secret core and sanctuary” where one is “alone with God”. For us as individuals, conscience is our final conviction about what is true and we must live by it lest we betray ourselves. No one, not the Church or God can force us to act contrary to our conscience. Not to follow our conscience would be itself sinful, because it would

violate our most basic moral principle - to do good and avoid evil. Morally, we must follow our conscience.

For those raised in the Catholic tradition such a statements might sound a bit odd. What about the official positions of the Church? What if we disagree with official positions on moral issues? Is not the Church, directed by the Holy Spirit, our unfailing guide? As faithful Catholics, are we not obligated to form our consciences according to the teachings of the Church?

Official Catholic Teaching and the Formation of Conscience

Certainly, in the case of an infallible moral pronouncement, full consent must be given, however it seems that the Church has never spoken infallibly on the matter of morals. But what of non-infallible teachings? Certainly, we must take them very seriously. In most cases we can assume the Spirit of truth guiding the Church in such statements. However, it is important to note what the Fathers of Vatican II said about this matter.

Prior the Vatican II, following one's conscience was not a burning issue. Catholics were to be guided in their moral decisions by the teachings of the Church and the advise of their confessor. Of course, one had to follow one's conscience, even an erroneous conscience, as St. Thomas had made clear in the 13th century. However, it was also stressed that one had the duty to form one's conscience correctly and to do that it was best to simply reference the Church teachings. Therefore, the thought that a good Catholic could have a "conscientious objection" to Church teachings was for all practical purposes out of the question.

And, of course, there is always Pius IX's *Syllabus of Errors* (1864) where he condemned:

that erroneous opinion which is especially injurious to the Catholic Church and the salvation of souls, called by our predecessor Gregory XVI insane raving, namely, that freedom of conscience and of worship is the proper right of each man, and that this should be proclaimed and asserted in every rightly constituted society.

The Documents of Vatican II gave lie to the simple assumption that all judgments concerning morality and conscience coming from the highest authority in Rome or the ordinary magisterium were the stuff of absolute truth. Without apologies, the Council reversed Pius IX in its *Declaration on Religious Liberty*:

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 faithfully, in order that he may come to God, for who he was created. It follows that he is not to be forced to act in a manner contrary to his conscience.

When the focus shifted from religious liberty to moral issues the *Declaration* states:

In the formation of their consciences, the Christian faithful ought carefully *to attend to* (italics mine) the sacred and certain doctrine of the Church (par. 14).

At first glance this seems to echo the pre-Vatican II concept of the conscience as a passive reservoir for Church teachings. However, an earlier formulation of this text offered to the Council fathers by the curia had read: “ought to form their consciences *according to* (italics mine) the teachings of the church.” By accepting this less restrictive reading “attend to”, the Council affirms that the obligation binding on the faithful to follow the teaching of the Church does not make the teaching an exclusive basis for moral judgment.

It does mean that Catholics must pay attention to the teaching of the Church and give it presumptive authority, but these teachings *alone* may not settle a concrete case of conflicting values.

In making this change the Council affirmed the primacy of individual conscience. While Catholics must pay careful and reverent attention to the teachings of the Church, these teachings are not the only source available for moral wisdom nor can they be expected to encompass every possible set of circumstance and thus settle every concrete moral issue . In the final analysis, Catholics are asked to give “presumptive authority” to official moral teachings, but in certain moral decisions these teaching *alone* may not settle the case.

Richard Gula S.S., in his excellent book *Reason Informed by Faith* sums up the current position in this way:

The strong preference for the magisterial teaching guards against following cultural trends or special interest groups. It favors relying on the accumulated wisdom which the magisterium is able to articulate by drawing upon the expertise of a broad base of experience.

Although no external authority can ever replace conscience, conscience cannot be properly formed without the help of authority. The tension between conscience and authority will always be with us. Because we know how easy it is to deceive ourselves, and because we give at least a presumption in favor of authority, we sometimes take for granted that the authority is automatically right and any contrary opinion is automatically wrong. This need not be so. Both authority and conscience are complementary aspects of the search for what is morally true, right, and good. (p.161)

PAPER

Canon 915 - "Those who have been excommunicated or interdicted after the imposition or declaration of the penalty and others obstinately persevering in manifest grave sin are not to be admitted to holy Communion." Question of who is a public sinner - not defined in the canon. and no explanation of how to determine that.

Key question: is the person who is refused communion under formal ecclesiastical penalty. Should have some due process. Should be informed in writing that a sanction is being imposed.

2003 Doctrinal note on Catholics in public office "allows for freedom of conscience and political thought." What other teachings can be enforced by excommunication or interdict?

Zogby International Poll - Apr. 2004. --- 56% only rape, incest or endangering life of mother. 42% for any reason. 49% said they were pro-life, and 45% pro-choice. 61% said no abortion after fetal heartbeat. (margin of error 2.8%) 75% against use of tax dollars for abortions. 77% favored laws requiring information be given on fetal pain to women over 20 pregnant.

Cathy Ruse, Director of planning and info. for US bishop's Secretariat for Pro-Life America said: Two main reasons given by women: lack of financial and emotional support.

Burtchaell -- "Abortion is one of those issues that will never be resolved by law".p. 239 In OT, the function of the law was not merely to redress damages or to assure justice, but to protect the peace. p. 241 i.e, to prevent blood feuds.

Civil law is meant to protect the peace, but it may not offer peace with God or with one's conscience. Christianity offers the wisdom that sin is self-destructive - this operates by conversion, not coercion. Difference between criminal law and religious obligation.

Laws may be passed by politicians, but the people judge the law in the public forum.

Law cannot address the roots of the problem.

25% of all murders reported lead to conviction of adults. Forcible rape: 66% of reported (two to three times as many rapes occur than are reported) rapes end in arrest. 16% result in conviction. 5% of guilty parties are convicted. Theft 6%. "War on Drugs". However, this does not mean that we do not need the law.

Sin is its own punishment. Catholic counseling for those who have had abortions - not punishment.

Moral conversion necessary to provide motivation to observe the law.

"Law does not produce law's own goal: peace through justice. For justice is a disposition of character, and the law cannot govern character.

If you want the law to work, hearts must be converted.

Law may be appropriate - we must work for fair laws - , but it is limited in its effects.

Do we dispense with unenforceable laws? NO, they express the public conscience. Unenforceable law may have some educational value, but we have a long way to go.

Laws may not transform people, but they make a public statement about justice and fairness.

According to polls, most think that most abortions while legal, are unjust. Public excepts : rape and incest, and threat to life of the mother - if this was followed, only 1% of abortions would be legal. It would be this way in law, if it was released to the political process.

Change in law to reflect consensus - results: 1) significantly reduce the number of abortions, 2) the sheer numbers and relative safety of abortions would make it difficult to stem the tide. Still the law is not effectively addressing the cause of abortion or a change of heart.

The present law after Roe v. Wade does not reflect the majority of public opinion. However, the old law did not work.

The law does educate about morality. Many think "if it is legal, it is moral". A change in the law would challenge individual's moral convictions. We need laws to protect human life. However, the love of the helpless cannot be coerced. True justice requires a change of heart. Not coercion without education. (kids in street, pop can)

