

The Politics of Abortion

A Dilemma for the Catholic Church, the Catholic Politician and the Catholic Voter

The official Catholic position on abortion is clear. What remains unclear is exactly what this position demands of the Catholic bishops, Catholic politicians and Catholic voters in the political arena. Since the Church has never developed a formal doctrinal position on the question of translating morality into law, Catholics, especially Catholic politicians, have been left to craft their own political positions without much guidance.

Certainly all would agree that there is no requirement to attempt to translate all moral positions into secular law, e.g., birth control 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. Unfortunately, the question of exactly how to translate the Church's moral position on abortion into the political arena remains problematic, even for some members of the Church hierarchy.

In the public forum one often hears the objection 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 is usually a tactic employed by supporters of liberal abortion laws 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 objection. Abortion is a moral issue, as such, 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.

Nor do we hold that the abortion issue is simply private. 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 issue concerning the destruction of human life. It judges this issue to be of first importance for all citizens.

Later in this paper, we will emphasize the Church's contention that the public dialogue concerning abortion can be effectively joined at the level of human reason without reference to religion. But, in passing, the point should be made that just because a moral position is based on a religious conviction does not *necessarily* make such a position "sectarian" or a "private religious conviction" and thus inappropriate for introduction into the political arena. To make this point, we need only to recall that there was no outcry

from the political Left when religious leaders like Rev. Martin Luther King were engaged in the civil rights movement or when Catholic clergymen like the Berrigan brothers were in the forefront of the Vietnam anti-war protest. If “religious-based views” are to be excluded in principle from the public forum, then at least some rationale should be proposed by advocates of such a position to explain these and other obvious exceptions to the principle.

Given the irony of the above example, there is, however, an important positive reality here that can provide a basis for a fruitful dialogue on the issue of abortion. If those on the Left need to be reminded that the Church has been their ally in many important social movements, the Church, also, must remember that those who endorse liberal abortion laws are not necessarily a ruthless, callous alliance of anti-Christians determined to overthrow our moral standards. Many are religious people (Christians, Jews, etc.) whose “reading of the divine will” in this case happens to be different than ours. Others are non-religious, moral people dedicated to the good of humanity, who simply see the issue differently than the Catholic community.

More importantly, they are, in many cases, the same people, religious and non-religious alike, who have joined and continue to work with Catholics to end discrimination, eliminate the death penalty, end the arms race, denounce nuclear war, provide for the hungry and the homeless, promote fair housing, advocate a living wage, lobby for adequate health care, search for ways to protect the environment, humanize the prison system, advocate universal access to health care and a laundry list of other social programs that are at the heart of the Church’s social encyclicals. We have so much in common, surely we can establish a dialogue in good faith. *If we are right about abortion, we need to make a reasoned case in terms that are clear to those who do not share our tradition.*

There is reason for hope, but we must begin in earnest to establish a common ground for dialogue. Many inside and outside the Church are not aware that within the Catholic ethical tradition, it has long been taught that it is possible to discuss and come to agreement on moral issues without necessarily referencing religion. Aside from any specific religious convictions, the Church claims a common ground for moral discourse with all believers and unbelievers based on reason alone. This common ground is the *natural law*. (We shall give detailed treatment of the concept of natural law later.)

It is crucial to point out that the modern Church believes that an important part of its mission is to critique society and also to support all that contributes to society’s welfare, including the formulation of laws. This is precisely the reason why the separation of church and state is so important. The Church must always be free to critique the state when necessary - separation ensures this freedom. And this critique and/or support should be welcomed in the public square and considered on its merits and not dismissed just because it is religiously motivated. The First Amendment was designed to secure religious liberty, i.e., to protect church from the state control, not the state from church critique and support.

The social teachings of the Catholic Church constitute a large and significant part of its teaching mission addressed not only to its members, but to society as a whole. Therefore, the Church could never envision abandoning its role as a moral actor in the political sphere, as if it had nothing to offer or by succumbing to the critique that translating its moral vision into law is somehow politically inappropriate.

Before proceeding, we need to pause a moment and try to understand why so many people strongly object to the introduction of “sectarian religious beliefs” into the public forum. They have a legitimate fear. Stephen Carter (*Culture of Disbelief*) reminds us that “Indeed, there is virtually no evil that one can name that has not been done, at some time and at some place and to some real person, in the name of religion” (p. 83). And when the Church joins with the State to create a theocracy, (e.g., the Holy Roman Empire), it has proven to be an unmitigated disaster for both Church and State. As James Bryce (*Modern Democracies*) observed: “The more the Church identified with the world, the further did it depart from its own best self. The Church expected or professed to Christianize the world, but in effect the world secularized the Church.” Lord Acton’s adage to the effect that “power corrupts and absolute power corrupts absolutely” certainly applies to the Church. When political power and dogma are joined, the temptation to persecute “unbelievers” is rarely resisted, e.g., the Inquisition and Calvin’s Geneva. Examples in modern Iran and Iraq are also instructive. So if a church or a group of churches have an agenda to take over and join together Church and State, we all have much to fear.

Note: 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 the question. The question is how they relate to the flourishing of human kind which includes the common good and the founding ideals of the secular society.

Nevertheless, an appropriate role for the Church is to aid in the creation of a society and a state in which human life can flourish. Its methods are critique and cooperation. The Catholic Church in the present age has no intention of establishing a theocracy. The Second Vatican Council made it clear that the Church is “inspired by no earthly ambition” “... Christ, to be sure, gave His Church no proper mission in the political, economic or social order. The purpose which he set before her is a religious one” (Preface; sec.42, *Gaudium et Spes*). However, George Marsden (*Fundamentalism and American Culture*), points out that in our times American fundamentalism (e.g. the Christian Coalition) does indeed have a political agenda -- the preservation or restoration of a nondenominational conservative Christian culture to include a theocracy. This

explains the fear that motivates those most vocal in demanding the exclusion of “sectarian religious beliefs” from the public forum. It should be our fear too.

Given these elements of the current political climate and the uncertainty of how the role of the Church, its politicians and its voting members should actually be played out in the political forum, especially concerning the issue of abortion, the Catholic community is currently confronted with a number of very important questions. For example:

- 1) On what grounds can the Church engage society and the state in the abortion debate?
- 2) What position should a Catholic politician take?
- 3) What is the role of the Bishops?
- 4) What is the role of the Catholic voter?

What follows is an attempt to discuss these questions, realizing, of course, that a fair treatment of each question would demand more insight and expertise than this author can muster. For most questions there is no clear answer. What is clear is that the official Church, its politicians and voters have an obligation to continually investigate these questions and engage in meaningful dialogue both inside and outside the Church. It is hoped that through this process, all parties concerned will be able to form their consciences and make the best practical judgments possible in *relating the morality of abortion to the politics of abortion*.

On What Grounds Can The Church Engage Society In The Abortion Debate?

As noted above, the Catholic Church’s position on abortion is often dismissed as a “sectarian religious belief”. However, the Church does not accept this “dismissal” from the public forum on the abortion issue or any other moral issue. While not denying the value of its religious heritage in formulating moral positions, the Church believes that it can effectively engage society on any moral issue on the grounds of reason alone. This is based on a concept of the *natural law* which maintains that “human reason, reflecting on human nature and human experience, can also arrive at a true moral wisdom and knowledge that holds not only for Christians, but for all people.” (McBrien, *Catholicism* p. 959)

The Natural Law Tradition

For over 700 years, especially since the time of St. Thomas Aquinas, the Catholic moral tradition has developed and employed the concept of the *natural law*. The natural law theory presumes that nature is in some sense normative for human action. While, within the Catholic tradition, natural law is understood as participating in the eternal law by which God governs the universe, it can still provide a common ground within a pluralistic society, because it 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.

Furthermore, those committed to a natural law tradition assume that reasonable people can discover together what it means to be human and what 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 (in this case laws) that will enable our natures to grow and flower.

Natural law is not a theoretical knowledge of propositions; ...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 goods of our natures. (*Narrative of the Natural Law* - Pamela Hall p.37)

That the natural law must be discovered implies that the employment of the natural law in moral discourse is a *rational process*. *Rational* establishes that the ground for discussion is human reason, something human beings share in common. *Process* means that there is an element of discovery in understanding the natural law. *It is not simply a process of referencing a set of immutable principles, but a discovery of "what works" for human beings in the particular circumstances of their individual and social lives.*

The classic Greek statement is from the play *Antigone* by Sophocles. Antigone defies the order of the king not to bury her brother killed in a civil war opposing the king. She says:

For me, it was not Zeus who made (your) order, nor did that justice who lives with the gods below mark out such laws to hold among mankind. Nor did I think your orders were so strong that you, a mortal man, could overrun the gods' unwritten and unfailing laws. Not now, not yesterday; They always live, and no one knows their origins in time. (Lines 446-457, *The Complete Greek Tragedies*, Green and Lattimore, eds.)

Even for the Greeks, natural law was not viewed as a monolithic philosophical system with a set, immutable code of ethical conduct. They started with the observation that all human beings desire happiness and self-realization. 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 and self-realization.

The Romans also adopted a concept of natural law. Building on the tradition of the Greeks -- from the Sophists, through Socrates, Plato and Aristotle -- Cicero (d. 43 BC) stressed the power of reason to direct human actions in the political arena. The Roman jurist Gaius (d. 180 AD) distinguished two major types of law: *ius civile* (law of the nation), that which is proper to each country and *ius gentium* (law of the nations), the common heritage of all humanity, which is known through natural reason (the natural law). Reason establishes the *ius gentium* by conforming to the natural order of things through human instinct, which is common to all when it comes to providing for the

necessities of human existence. Later, Ulpian (d.228 AD) added a third notion termed *ius naturale*, which emphasized that which is common to humans and animals. It focused on the physical structure of human beings as normative for morality. Each of these approaches used reason as the analytical tool to determine what is moral.

Based in part on the Greek and Roman concepts of natural law, St. Thomas Aquinas in the 13th century taught that all human law is derived from the natural law. *Ius gentium* (common to all) is human law derived from the natural law by way of deductions; whereas *ius civile* (for a certain country) is a further specification and determination of the natural law for specific national purposes.

Indeed, it is one of the foundational convictions of Western civilization that there is an objective and universal justice which transcends any particular expression of justice found in the civil law of nations. This is known as the *natural law tradition* which, based on a rational investigation of human nature, establishes the standard of justice for those making civil law.

Even a noted secular humanist like John Kekes, (*Facing Evil, 1990*), believes that he and other secular humanists are capable of judging some things as objectively evil without reference to a divine order. He states that some human acts militate against what he calls “the fundamental goal of morality: promoting human welfare”. Such human acts are thus viewed as immoral.

That some human laws have been judged to be unjust when measured by this “higher” order of universal justice is historically clear. The history of nations is replete with instances when citizens rose up against unjust laws. What was the basis of their protest? How were these laws judged to be unjust? For the common citizen, certain laws were “instinctively” or “intuitively” understood to be contrary to the nature of human beings and thus militated against their ability to grow and flourish.

In his “Letter from a Birmingham Jail”, Martin Luther King justified civil disobedience by citing the natural law.

A just law is a man-made code that squares with the moral law or the law of God...An unjust law is a code that is out of harmony with the moral law. To put it in the terms of Saint Thomas Aquinas: ‘An unjust law is a human law that is not rooted in eternal law and natural law.’

In the words of the Nuremberg Trials, Hitler’s unjust laws concerning Jews were judged to result in “crimes against humanity”. Such judgments that some laws are unjust are based on the reality of a common human nature - the basis for natural law.

Based upon these judgments, unjust laws were often repealed and just laws were instituted. These new laws were considered just because they were deemed to aid in the process of human growth and maturity, for individuals and society. This is basically what we mean by an appeal to the natural law. It is a *rational*, nonsectarian *process* based on a

historical reflection on human nature and a determination, in this case, of what laws either militate for or against the good of individuals and society.

And so, in the Catholic tradition, to go against the natural law is to act against the universal human good. It is important to note that this type of morality is viewed as intrinsic, not extrinsic. It pertains to internal laws of our nature and not to laws imposed from the outside by either divine or human authority. So it is considered possible that through a rational examination of human nature, we can come to understand what is good for us, what works for us, so that we can in turn determine what social structures (including laws) will help us attain our individual and collective human good.

St. Thomas thus 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) In Vatican II’s “Pastoral Constitution on the Church in Modern World” the common good is described as the “sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfillment” (No. 74).

Writing within the Thomistic tradition, the Dominican theologian Benedict Ashley outlines his analysis of the common good. He reminds us that, according to St. Thomas, there are four basic goods or needs that are required for our fulfillment as human persons -- “life, reproduction, society and truth”. The right to “life itself” is assumed in this context, because without a right to life itself all other rights would obviously be without basis and therefore could not be construed as rights in any practical sense..

Ashley, on his part, divides “life” into “food and security” and adds “creativity” to Thomas’ list. Thus, for Ashley, there are six basic goods or needs: *food* (appropriate nourishment); *security* (personal protection, shelter and freedom); *sex* (reproduction and marriage); *society* (community to meet our needs and share friendship); *truth* (knowledge and our need to communicate it); *creativity* (the need to be creative in arts and culture and to seek “Ultimate Totality”). The rational basis for arriving at these basic goods is established by scientific anthropology -- the study of human nature. (FCS Quarterly, Fall 1999 p.2-5)

Two prominent natural law theorists, John Finnis and Germain Grisez speak of basic human goods that include life, knowledge and appreciation of beauty, excellence in work and play, harmony with others, harmony of self, a harmony of choices with one’s judgments and religion in some form.

Writing in the Thomistic tradition, Pamela Hall, (quoted above) gives her concise outline of the basis and the process of a natural law approach which she believes can provide a common ground for moral discourse:

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 to help secure and constitute the good for us. We both give the law to ourselves and discover it.

This discovery, I stress, takes place within a life, within the narrative context of experiences that engage a person's intellect and will in the making of concrete choices. In attention to what makes up one's experience and in the making of choices, both good and bad, a human being augments understanding of his or her own nature and of what most promotes the flourishing of that nature. This process of inquiry is, then, one of practical reasoning, practical reasoning which must be carried on individually and communally. (*Narrative of the Natural Law*, Pamela M. Hall p. 37)

In his encyclical letter *Veritas Splendor*, Pope John Paul II speaks of a universal law of nature which is discoverable by human reason. It exists in all peoples and all cultures and provides a basis for judging action as right or wrong. In a similar vein, the Anglican theologian John Macquarrie wrote:

...Natural law is foundational to morality. It is the inner drive toward authentic personhood and is presupposed in all particular ethical traditions, including the Christian one. (*Three Issues in Ethics* p. 91)

Natural law is, as it were, the pointer within us that orients us to the goal of (authentic) human existence. Actual rules, laws, and prohibitions are judged by this "unwritten law" in accordance with whether they promote or impede the movement toward fuller (human) existence. (*Three Issues in Ethics* p. 106)

Both the Pope speaking of "a universal law of nature" and Macquarrie's appeal to the "unwritten law of human existence" support what we indicated above, that ordinary people have an intuitive awareness of what scholars call the *natural law*. Human experience has led us to an awareness that our humanity is not a blank slate on which anything at all can be written; certain kinds of behavior lead to human flourishing while others lead to human frustration. This is true for all, theists and non-theists.

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, friendship, kindness, love and any other values that most of us can agree are desirable apart from any specific religious base or context.

Using the Natural Law

As mentioned above, St. Thomas defined civil law as "an ordinance of reason for the common good, made by the authority which has care of the community and promulgated". (ST 1-2, q.90, art. 40) When people react to civil laws that seem to them

unjust they “sense” that the law is wrong because it is an offense against the common good, it attacks certain basic, shared human values. While these laws in question may have been created and enacted by lawful authority, people object that they are unjust by referring to something beyond or more basic than simple authority -- i.e., human nature. Just laws must correspond *intrinsically* to the good of individuals and communities. When they do not, people rightly object. *Here the common ground for moral reflection and political action is human nature. The rational process involved in determining the means for achieving the goods of our natures, we call the discovery of the natural law.*

A powerful example of people from various religions and no religion objecting to existing civil law and coming to agreement on a moral issue was experienced in the civil rights struggle, which we noted briefly above. This was viewed as a moral issue, based on common human dignity. Of course there were legal issues, but the vast majority of marchers who took to the streets were not lawyers or jurists. They were ordinary people who “knew in their hearts” that discrimination was a mortal offense against human nature and human community. As accepted under law it was a threat to their individual freedom and it was a destructive force within society. It is a classic example of a moral decision based on human reason, but not excluding religious insight, (e.g. Rev. Martin Luther King), being translated into law.

A political consensus was reached that segregation was an attack on our common human dignity. A universal experience of what it means to be human provided the common ground (*natural law*) for social action, resulting in the enactment of anti-discrimination laws to allow greater possibilities for human beings to grow and flourish within society. A parallel case is that of slavery.

(See Postscript p. 38 below for a critique of the Natural Law approach)

The Church’s Engagement With Society

The Church does not see itself as a sideline observer, morally superior and simply passing judgment on moral issues from a privileged position of revealed moral certitude. In fact, the Church must admit that, if there are evils and injustices in the political arena and the wider society, it is also to some degree responsible. The recent public confessions of guilt by Pope John Paul II attest to this fact. Who could deny that the sinners outnumber the saints in the Church? So moral discourse in the public forum presupposes an examination of conscience for Catholic citizens as an integral part of the process of social critique.

In this context, the Church does not seek to impose “sectarian religious beliefs” on the nation. The Church understands itself as a public moral agent, morally obligated to be an active partner with its fellow citizens in the task of creating and sustaining a society in which human life can flourish. It does not pretend to come with all the answers, but with a willingness to search and learn in a partnership of discovery.

In my view, what all this means is that the Church, by its understanding of natural law,

has the ability to find common ground with its fellow citizens within the public forum. It need not enter the public forum simply to promote some narrow sectarian moral position. It is equipped through its natural law tradition to collaborate with all fellow citizens in an investigation of what it means to be human, using the tools of human experience and human reason, a process which has engaged Western societies since the time of Plato and Aristotle.

Out of this process it should be possible to reasonably, (not infallibly) decide or reach consensus about what society ought to do, (including the formulation of laws), to promote the authentic human existence of its citizens. An acceptance of the natural law as a common ground for moral discourse will help to reverse the growing moral judgment that there is no ground for moral appeal beyond the individualistic pursuit of personal interests. Stark individualism demands the “freedom to choose”, but provides no external reference point to help predict the consequences of our actions. We may know *that* we can choose, but how do we judge *what we ought to choose*? In any event, some individual choices, e.g., perjury and drunk driving, cannot be allowed in civil societies in the name of the common good. Our individual and collective destinies depend on our choices.

Conclusion

In answer to the initial question, we have tried to demonstrate that in the abortion debate the Church can engage society on the common ground of human reason as expressed in the natural law tradition. That is all we have attempted to establish.

What else have we accomplished? Not much yet. Next we have to convince our fellow debaters that we do indeed have a common ground for debate. Can we convince them of this? Not without a good deal of effort on our part. We must frame our position in clear and reasoned terms as required in the natural law approach. We must make an equally convincing case for the assertion that there is a real distinction between religious and moral issues. Assuming that the debate goes forward on these grounds, what is the hope for a consensus which reflects the Church’s position on abortion? For a consensus without some compromise, I would judge the chances as very slim and not in the foreseeable future.

If this is so then why should we enter the debate at all? One thought -- perhaps we could learn something. Another thought -- by convincing others to join us in the debate on the common ground of human reason and the goal of enriching human life, we will have accomplished something very important. We will have changed the mode of communication from confrontation, where nobody wins, to one of mutual understanding and cooperation where a number of good things can happen. Let me name some:

- 1) Perhaps we can mute the voices of the fanatics on both sides.
- 2) Perhaps, we can now view each other as friends, friends with legitimate differences,

but with a common concern for truth and the welfare of all human beings. We can have a common focus -- the good of individuals and society. Of course, both sides cannot be totally correct on the judgment of the moral value of abortion, but that is the purpose of the debate -- the reasoned, well intentioned search for the truth. If we do our part well, then truth will be served.

3) If we cannot reach total political consensus on the politics of abortion, perhaps we can generate enough good will, based on our common concern for our fellow human beings, to generate enough political consensus to take significant steps toward eliminating some of the social and economic causes of abortion and perhaps restrict some types of abortion e.g. partial birth abortion.

4) By all of the above we are nurturing the democratic process, which provides perhaps the best political environment for the freedom of religion and the expression of moral views. This alone is reason enough to enter the debate.

A Final Word

We cannot escape the consideration of our human existence. Even if we assume that there is no God, the issue of life is fundamental to us as citizens of the world. As Mario Cuomo noted in his 1984 address at the University of Notre Dame concerning the politics of abortion: "Even a radically secular world must struggle with the questions of when life begins, under what circumstances it can be ended, when it must be protected, by what authority; it too must decide what protection to extend to the helpless and the dying, to the aged and the unborn, to life in all its phases." (*Religious Belief and Public Morality: A Catholic Governor's Perspective*, University of Notre Dame 8/13/84) We cannot escape our moral duty to enter the political arena to work with our fellow citizens as they grapple with these life and death issues.

What Position Should A Catholic Politician Take?

The Situation

The Catholic politician often finds himself/herself in a difficult position in attempting to articulate and implement a political agenda. This is especially difficult when this agenda attempts to integrate individual morality, the public positions of Church leaders and the realities and responsibilities of political action within a pluralistic society. This is painfully true in the area of abortion.

Note: The plight of the Catholic politician is really unfair. There seems to be an unrealistic supposition by many that if all abortions were outlawed the issue would be solved. However, long before *Roe v Wade*, when most abortions were illegal, abortions were not uncommon and few offenders (physicians) were ever prosecuted. A report cited

by Ralph Potter Jr. in Chapter 3 of “The Religious Situation 1968” estimated that in 1957 the frequency of induced abortions in the U.S. could be as low as 200,000 and as high as 1,200,000. A 1969 article in the *Suffolk University Law Review* by Charles Kindregan, a Catholic and professor of law and theology, cites an article (*Medical Abortion Practices in the United States*, Niswander) that estimates that “there may be one illegal abortion for every four live births) based on a estimate of 250,000 to 1,000,000 criminal abortions per year. The “problem of abortion” is certainly a legal issue, *but not primarily*. In this instance, we have much greater need for a moral consensus than we do for a change of the law without this consensus. As many have said: *the ultimate solution to the abortion problem is not just to make abortion illegal, but to make abortion unthinkable*. Certainly the molding of this moral consensus is not exclusively or even primarily the task of the Catholic politician, it is a task for the entire Church.

We expect too much from the law. And the official Church has perhaps laid too much responsibility for correcting the “abortion problem” at the feet of Catholic politicians. And if citizens, including Catholic citizens, are to be restrained from acts of abortion only by the force of law, then we, the Church, have a great deal of work to do and that work is preaching the Gospel and living the Gospel by being a living example of what it means to revere all human life, not just the life of the unborn. This is not to suggest that ideally the law should not restrict or outlaw abortions, but only that the legal prohibition of abortion is not the “solution” to the abortion issue or even the most important element in attempts to solve the problem.

If we are going to lobby Catholic politicians, it may be more profitable to seek ways in which the law can play a role in addressing the social roots of abortion - poverty, child care, the lack of social, emotional and spiritual support for women at risk, the need for counseling, viable alternatives to abortion like adoption, availability of affordable health care, etc.. The problem of abortion is too complicated to be simply dumped into the lap and upon the conscience of the Catholic politician. And the “solution” is certainly more complicated than a change in the law to recriminalize abortion. The mission of the official Church is more than assuming the role of a moral critic, it must also assume the role of problem solver, addressing a vast array of social issues. I truly believe the bishops of the United States understand this, but the editorial pages of the Catholic press and letters to the editor of local newspapers seem to focus primarily on the legal issue. (more of this later)

In 1984, Congressman Henry Hyde, speaking at the University of Notre Dame, described certain aspects of the current atmosphere in which Catholics must function by highlighting the often heard charges that Catholics are guilty of “forcing our beliefs” on the nation and “violating the constitutional separation of church and state” in their public stand on the legality of abortion:

These charges have a triple purpose. First, they are designed to create the assumption that the whole question of legal abortion is a “religious” issue.

Second, they are designed to create suspicion against Catholics who oppose abortion. But third, and worst of all, they are designed to make Catholics themselves afraid and ashamed to speak out in defense of the unborn. I'm sorry to say that these tactics have been succeeding all too well. Millions of people now take for granted that opposition to abortion can only be grounded in religious dogma; millions assume that Catholics are trying to import an alien doctrine on abortion; and many Catholics (esp. Catholic politicians) are timorously eager to placate potential hostility and bigotry by pleading that although they are "personally opposed" to abortion, they would never "impose their views" on anyone else. (*Keeping God in the Closet: Some Thought on the Exorcism of Religious Values from Public Life* delivered at the University of Notre Dame 9/24/84)

Interestingly enough, this attempt to label abortion as a "religious issue" echoes Stephen Douglas' answer to the question about the rights of slaves in the Kansas-Nebraska Act. He said that those issues should be left to moralists and theologians and not considered in the political or legal realm. Such remarks have an odd ring today, but are heard again in the abortion debate.

Richard McBrien, writing in *Caesar's Coin*, gives his analysis of the framework of the debate which currently engages the Catholic politician:

Our concern here, however, is fixed at the point where morality intersects with the political order. Whether abortion is defined as a civil rights issue (the pregnant woman's right to choose, or, as in *Roe v. Wade*, the right of privacy) or as a human rights issue (the fetus' right to life"), it is always reducible to a question of law. Should the law allow abortions or not? Should the law authorize the use of tax monies to pay for abortions or not? Should the law be changed to reflect one moral view over others or not? (p. 614)

Needless to say, to these questions there are no easy answers. In his classic book, *We Hold These Truths*, John Courtney Murray made this observation: "the American mind has never been clear about the relation between morals and the law." (p. 156) Should morality determine the law or should law determine morality? To these and many others question there are no simple solutions.

A Dilemma of the Catholic Politician

Given this complex situation, we shall turn our attention to the Catholic politician, again, a person who should command a great deal of our sympathy. Within the context of competing moral theories, (even within the Church), of a confusion in terms and concepts, stern admonitions from Church officials to "do something or else", no formal training in ethics or moral theology and fanatic advocacy groups (Liberal and

Conservative) at the door, the politician must act. There is no time to enjoy the luxury of an ivory tower debate, no time to take a year or two to research the issues, no clear cut, traditional procedures available from the Church or constituents, only criticism or praise in equal parts no matter what course of action is taken.

In politics the time is now. There are media reporters with questions. There are committee meetings to attend, policies to be formed, legislation to be initiated and voting to be done *now*. And so the Catholic politician must decide to take a position, to adopt a plan of action. There are a number of scenarios that could result in such a decision, but for our purposes we will discuss the classic case of the Catholic politician whose personal moral stance on abortion coincides with the moral position of the Catholic Church, but now must decide if and how to translate this individual moral position and public commitment to the Church into specific political action directed toward the common good - voting, crafting legislation, considering compromise positions, etc.- within the context of the abortion issue.

We shall consider two basic political postures or positions for a Catholic politician to assume in this situation, which put bluntly amounts to this: “I am personally opposed to abortion, now what do I do?” These two political positions are:

a) Absolute Prohibition -- Give public witness to a personal conviction that abortion is morally wrong. Adopt a political position of total commitment, without compromise, to a political agenda committed to the goal of the absolute prohibition of abortion under state and federal law.

b) Political Compromise -- Give public witness to a personal conviction that abortion is morally wrong. Adopt a political position that accepts the political reality that, at least at this time, the possibility of an absolute prohibition of abortion is unlikely and thus prudence dictates the support and perhaps even the initiation of compromise legislation, reflecting the popular consensus, that would at least reduce the number of abortions, while providing fair treatment for all citizens under the law.

Notice! Both positions include giving *public witness to a personal conviction that abortion is morally wrong*. Such a public witness would contain language that would include “a personal moral commitment never to directly take or collude in the taking of innocent human life, which by definition would include fetal life”. Also neither of these positions assumes that the politician will claim that this personal moral conviction is “private” and/or “religious”, thereby excluding it from the context of political action. (Some Catholic politicians have assumed such a position e.g. Geraldine Ferraro in the 1984 election campaign). The claim that personal moral convictions are religious and private has been criticized on three points: 1) Abortion is not an exclusively religious issue, it is a moral issue; 2) Our religious beliefs are sometimes quite relevant to politics (e.g., civil rights); 3) Religious convictions, if they are real, are never purely private, but enter into how we form our society and act politically. Religion and politics do mix, the question is: how?

Note: I hope to make a strong case for the position of Political Compromise. Why do I support such a position? I will explain later, but simply put -- it works better. This is not a position of mere expediency, moral relativism, situational ethics or utilitarian ethics. It is a political/ethical position with a long and respected place in Catholic moral teachings. In fact, I believe that this is the current public position of the U.S. Catholic bishops. However, certain ultraconservative elements in the Catholic Church, both clergy and lay, view any political support of compromise legislation that would restrict certain abortions, but not demand an absolute prohibition of all abortions, as morally wrong.

For the purposes of this discussion we will assume the possibility that a Catholic politician could, in good conscience, adopt either of these political positions outlined above-- *absolute prohibition or political compromise*. A parallel situation is outlined by Burtchael in "*Philemon's Problem*" where he sets out the rationale for being either a "conscientious objector" or a "conscientious warrior". There are important values embraced in either position and, as Burtchael points out, in the end there are striking similarities between them so that a Christian in good conscience might endorse either position. I think the same argument could be made for a politician in the area of abortion legislation, as I shall attempt to describe below.

1. Absolute Prohibition

Some Catholic politicians may conclude, based on their individual moral assessment and the public assessment of the Church, 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. The support of any compromise legislation would be seen as a 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 with the approval of the state. Such a position could certainly be judged as encompassing some important positive values: *political courage; unequivocal witness; effective apostolate; political responsibility; and moral responsibility*.

Political Courage - It requires a great deal of *political courage* to take a position that in reality is supported by neither political party. The Democrats in recent times are publicly committed to a "pro-choice" position and the Republicans, while at times (esp. during elections) giving some verbal support to the "pro-life" agenda, are nevertheless so philosophically committed to individual autonomy and so politically uncommitted to interference by the state in the individual life of citizens, that any real legislative action to establish an absolute legal prohibition of abortion is, in my view, politically out of the question.

Unequivocal Witness - Such a public stand gives *unequivocal witness* to the belief in the

sanctity of life and provides a shining example of courage in standing for one's beliefs even in the face of possible political martyrdom. This type of witness in the face of danger could be viewed as an extension of the witness of such acclaimed modern crusaders as Gandhi and King whose heroic witness was eventually responsible for significant moral influence on the laws of a nation. The result was appropriate and valuable service to the state.

Therefore, it could be argued that such a position is not only "the right thing to do" morally, but, perhaps in the long run, could be an effective way to change the public conscience, as in the examples of Gandhi and King, and thus provide for the public consensus necessary for an effective change in the laws of the land and for an effective enforcement of such laws if enacted. Perhaps it is enough for legislation to be considered "right and just" by responsible legislators, even without public consensus. Furthermore, the acknowledged role of the law as "teacher" may prove instrumental in the molding of a public consensus after the fact and making enforcement more effective.

Note: -- As a reminder to those who would argue that a public consensus is absolutely required before the initiation of legislation, it could be pointed out that no prior consensus was deemed necessary for the abolition of slavery, the adoption of Fair Housing legislation or the 1964 Civil Rights Act. It is also worth remembering that there were voices in the 1950s and early 1960s, including President Eisenhower, who opposed civil rights legislation on the grounds that "law was no substitute for a change of heart". Of course, the issue of consensus is not only important, but also complicated. We shall give more attention to it later in this paper.

Effective Apostolate - Such a public stand by a prominent Catholic layperson could be an *effective apostolate* to fellow Catholics to help them understand and accept the Church's moral position on abortion and to have the courage to support such a position in their private and public lives. This is especially important because polls have consistently shown that Catholics do not significantly differ from their fellow citizens on the issue of abortion legislation, thus they either simply do not accept the Church's moral position on abortion or are uncertain about its application in the political arena.

Political Responsibility - This position could also be defended as *politically responsible* because it is clearly the duty of public officials to protect the rights of all citizens under the law, especially those who are least represented and least able to defend themselves. Furthermore, if abortion is, in fact, morally wrong, then by definition it will frustrate the ultimate purpose of all law which is to assure those civil conditions under which human life can grow and flourish. Within the Catholic context, such a position reflects the statement by the National Conference of Catholic Bishops which stated that "a Catholic public official cannot finally sunder personal conscience and civic responsibility".

Moral Responsibility - Such a position could well be judged as an instance of taking *moral responsibility*. Individual Catholics and the official Catholic Church have been (perhaps correctly) publicly criticized for not taking a stand when human lives were at stake, e.g., The Holocaust. Pope John II made history by publicly acknowledging lapses in the moral responsibility of Church members. Also, in this instance, the Catholic politician would certainly seem to be “taking a stand” and thereby exonerated from any criticism of indirect, but culpable participation in the destruction of innocent human life.

A Word About Compromise

Before we consider the position of “Political Compromise”, we need to say something about compromise as a political tactic. For many, the word “compromise” is flatly unacceptable within the context of the life and death issue of abortion. It seems like an act of simple expediency or moral relativism.

How could anyone who is morally opposed to abortion imagine using compromise when the issue at hand concerns the legality of taking innocent human life? Compromise indicates collusion and collusion in the taking of innocent human life is immoral. How can compromise even be considered in the case of abortion?

As St. Thomas would say, first we need to make a distinction (even though he did not make the following distinction.) *Compromise in the political application of a moral principle does not necessarily imply compromise or disagreement over the moral principle itself.* It is not a contradiction to accept a moral principle as true and yet entertain at least the *possibility* of a compromise in the political application of this same principle.

It is interesting that St. Thomas did say this:

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 “imperfection” could be related to “consensus” then Thomas would seem to support a practical, prudential judgment that, for example, a law enacted without consensus would

run the risk of creating even greater evils within society.

A modern disciple of St. Thomas, the Catholic philosopher Jacques Maritain, also wrote about morals in a religiously diverse society. In *Humanisme Integral* (1936) 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* (my emphasis) within it -- to tolerate is not to approve --...ways of worship and also ways of conceiving the meaning of life and modes of behavior (morals).

Here we have room for 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, 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 reason (natural law not civil law) to lead people to virtue. Not only is discourse based on the natural law a more effective teacher than civil law, this method also can avoid other evils that can result when moral consensus is lacking.

In its *Declaration on Abortion* in 1974, the Sacred Congregation for the Doctrine of the Faith also affirmed the principle of “lesser evil”:

It is true that civil law cannot expect to cover the whole field of morality or to punish all faults. No one expects it to do so. It must often tolerate what is in fact a *lesser evil* (italics mine), in order to avoid a greater one.

While granting this principle, it makes this important observation:

The law is not obliged to sanction everything, but it cannot act contrary to a law which is deeper and more majestic than any human law: the natural

law engraved in men's hearts by the Creator as a norm which reason clarifies and strives to formulate properly, and which one must always struggle to understand better, but which it is always wrong to contradict.

Here the Congregation, while agreeing that some evils may be tolerated to avoid greater evils, seems to say that abortion cannot be tolerated because it is a contradiction of the natural law. However, the question remains as to whether the right of the state, and perhaps its duty, to protect the innocent by legislating against abortion may be limited by the fact that a significant number of its citizens of good will have not reached the reasoned conclusion that abortion is indeed against the natural law. Given this fact the state must also consider the criteria of practicality and feasibility in a pluralistic society deeply divided on this issue. It is in judging the applicability of these two criteria that the Catholic politician must make a prudential choice.

In a 1975 document, entitled "Pastoral Plan for Pro-Life Activities", the National Conference of Catholic Bishops (NCCB) announced their focus on law reform which seems to imply the acceptance of compromise. These are two of their initiatives:

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*.

One last example, an excellent treatment of the "morality of compromise" is treated by Richard Neuhaus in *The Naked Public Square* 2ed., Ch. 7. Coming from a conservative theological perspective (former Lutheran, now Catholic priest), Neuhaus makes the case for political compromise. I can only recommend a reading of the entire chapter, but here are a few highlights:

1) Two non-compromising positions must be rejected: sectarianism and triumphalism. *Sectarianism* will not compromise and thus withdraws from the public order as much as possible, e.g., the Amish. *Triumphalism* sees compromise as unfaithfulness to the divine will and aims at replacing a democracy based on compromise with some brand of uncompromising theocracy -- a "Christian design for society" establishing "the rule of the righteous" with the resulting tyranny as witnessed recently in modern Iran. This destruction of the democratic process would be the failure of a religious duty, (in his view), to advance the democratic process, which history proves holds the best hope for religious freedom.

2) The demands for compromise inherent in a democracy are not caused so much by a clash of religious values against non-religious values, but more often result from conflicting readings of the divine will by religious people. Accepting the possibility of compromise is not an amoral position as if the truth does not matter, but rather the adoption of a strategy of dialogue rather than withdrawal and a strategy of persuasion rather than coercion.

It is a recognition that democracy is a product not of a vision of perfection, but of the knowledge of imperfection. It is a recognition that in a democracy some issues cannot be pursued to their logical end except at the price of imperiling public discourse, public order and perhaps democracy itself. Christians should know and work within the knowledge that: 1) The Church cannot be equated with the Kingdom of God and 2) the Kingdom of God will never be equated with any temporal social order and 3) the Kingdom will never be fully realized within human history as we know it.

3) Those who believe that democracy, while admittedly not perfect, is the best form of political order recognize that it cannot exist without religious liberty, tolerance of imperfection and by definition, compromise. Compromise is not a dirty word. It is a moral act. *It does not imply that all compromise is good or that truth is relative*, but that in certain cases compromise may further the cause of the Kingdom of God more than an uncompromising withdrawal or an uncompromising commitment to absolutist political position.

2. Political Compromise

To continue our comparison, an alternative position to one of absolute prohibition is that of political compromise. I hope we have established that the *concept* or the *possibility* of compromise in the political arena when applying a moral principle has a basis in traditional Catholic ethics and has value for the common good. The question remains if such a position is, in fact, acceptable in the present abortion controversy and what form such a compromise position would take.

Parts of an outline of such a position have been adapted from an article by George McKenna in the September 1995 issue of the Atlantic Monthly entitled: *On Abortion: A Lincolnian Position*. It runs as follows.

Lincoln's position on slavery when shifted to abortion would be unequivocally pro-life, but effectively would not ban all abortions. His tactic of political compromise could be outlined thus: *permit, restrict, discourage* -- all within the context of a public, personal affirmation that abortion is evil. A Catholic candidate adopting such a position might use campaign language like this:

Abortion may be legal, but abortion is wrong. It violates the "right to life" guaranteed in the Declaration of Independence. I am against abortion, it is an evil that needs to be restricted and discouraged. I will support the Supreme Court in its decisions, yet I will support all reasonable legislative efforts aimed at restricting abortions that pass muster with the Supreme Court.

I believe that we have a public consensus in this country that judges abortion-on-demand to be wrong and should be banned under the law.

This consensus would, however, allow the freedom to choose an abortion in cases like rape, incest, danger to the mother's life or radical fetal deformity. I would support such legislation even though I believe all direct taking of innocent human life is wrong. I would do so because I believe this compromise legislation will claim the public consensus needed for passage and enforcement while preventing many abortions.

I will also support all efforts to provide alternatives to abortion, to provide aid to mothers at risk and to eliminate the social causes of abortion decisions. I will support any reasonable legislation that will reduce the number of abortions in this country. I believe that the ultimate political goal would be the elimination of all abortions. I take this stand because I believe abortion violates and undermines the most fundamental of the rights enshrined in this nation's founding charter -- the right to life.

It should be recognized that within such a position of *political compromise* there is an awareness of the same tension between *principle and expediency* that President Lincoln experienced in his battle against slavery. Lincoln was ready to make political compromises. If necessary he would have accepted slavery in the South to preserve the Union. Lincoln was willing to tolerate compromise in the *application* of the principle that "all men are created equal", but he would not tolerate compromise on the principle itself. He publicly declared that slavery was wrong and that his goal was to stop the spread of slavery and work toward its eventual extinction. So, for Lincoln, the principle itself could remain uncompromised even when compromises in its application were tolerated for the greater good.

Such a political stand or one similar to it would avoid the -- "I am against abortion personally, but I will not force my private religious moral beliefs on others" -- approach which has been rightly criticized as lacking merit. For example, how could a politician be credible in saying: "I am personally against discrimination against blacks and women, but I don't want to force my beliefs on those who disagree with me". The issue is not legislative force. Lacking total consensus, all legislation forces the will of some on others e.g. federal intervention to integrate Southern schools. Nor should we confuse religious beliefs with moral issues. Abortion is a public moral issue, not just a private religious belief.

Compromise deals with the interplay of public consensus, practical politics and the overall common good. This same insight was expressed by Cardinal Bernardin in an October 25th 1984 address at Georgetown University entitled *Religion and Politics: The Future Agenda*. In that address the Cardinal first stated that the policy of abortion on demand needed to be resisted and reversed. He asserted that abortion is a "direct attack on human life". Secondly, he admitted that in our society such a moral insight is not self-evident. He acknowledged that in this pluralistic society we need to make a "rationally persuasive case" (natural law approach). He also acknowledged that there is no official Church teaching on how to implement moral principles in public policy.

Lastly, he made a distinction “between moral principle and political/legal strategies”. He also went on to say that to accept compromise legislation rather than a total ban on abortion “is not to change Catholic teaching on the morality of abortion. It is to recognize the different roles played by moral law and civil law in a pluralistic society”. In the final analysis, political compromise is a policy of containment and measured change. It is a prudent, practical, political stand, well within the Catholic tradition rooted in the teachings of St. Thomas and expressed today by men like Cardinal Bernardin. An acceptable compromise position concerning abortion includes an unequivocal personal condemnation of abortion, admission that it is a matter of public morals appropriately encompassed in the law, coupled with a recognition of the reality of the current law, the gradual nature of legislative change and an appreciation of the current state of public consensus on the abortion issue.

This is what I mean by “Political Compromise”. I judge it to be an acceptable position for a Catholic politician in the year 2000. It is a position which a Catholic politician could choose in good conscience and which the U.S. Bishops and the Catholic laity could support or at least should not condemn outright.

Comparison and Critique

Comparison and critique will be limited to a brief statement of how the “political compromise” position also encompasses the positive values listed above relative to the “absolute prohibition” i.e., *political courage; unequivocal witness; effective apostolate; political responsibility; and moral responsibility.*

Political Courage - The statement of personal opposition to abortion assumed in the “compromise position” is also one of *political courage* because it may well alienate single issue liberal voters who use personal moral positions as a litmus test for support as well as single issue conservative voters who view a willingness to compromise as culpable collusion in the taking of innocent human life. Democrats would probably view the commitment to *permit, contain and discourage* abortion, a la Lincoln, as inimical to their political platform. Republicans might well object to such a public commitment as politically unacceptable or politically risky.

Unequivocal Witness - Secondly, the personal public stand against abortion also provides *unequivocal witness* to the belief in the sanctity of life, while the acceptance of compromise actually imitates the witness of Gandhi and King who also calculated the “politics of the possible” in their demands for social justice. For example, most agree that Gandhi’s tactics of confrontation in communist Russia or China would not have had the same effects as it did in the morally responsive political culture of England. In this case, compromise is judged to advance the goal of the protection of innocent human life by a recognition of the “politics of the possible”.

Effective Apostolate - The same politically courageous position of personal opposition

coupled with the possibility of political compromise could also be an *effective apostolate* to fellow Catholics giving them hope in the democratic processes within a pluralistic society with its conflicting moral evaluations of abortion. Any incremental legislative successes in restricting abortion would give witness to the fact that there is a responsible alternative to sectarianism or triumphalism that can be politically successful, albeit only partially successful, in protecting the lives of the unborn. The absolute prohibition position gives little hope of any such success while, in principle, endangering the values of democracy.

Political Responsibility - A position of compromise is *politically responsible* because it respects the democratic process without denying the personal witness and the political commitment to restrict abortion where politically possible. It thus reflects the position of the National Conference of Catholic Bishops that “a Catholic public official cannot finally sunder personal conscience and civic responsibility”.

In contrast, the logical extension of a position of “absolute prohibition” leads to one of two unacceptable public stances: sectarianism or triumphalism”. Either of these approaches renders the Catholic politician impotent in effecting real change. Each is a form of fanaticism and as Neuhaus warns us: “Fanaticism is contagious. It tends to evoke a similar response from opponents not ordinarily given to being fanatical.” (p. 8) These positions do not help solve the problem of “the Naked Public Square”, as described by Neuhaus, rather they contribute to it. The Catholic politician who espouses either sectarianism or triumphalism effectively drops out of the democratic search for just legislation that takes place in the public forum. The moral role of the Catholic politician is to bring his or her moral insights into the public square and pursue them within the democratic process.

NOTE: An unequivocal ban on abortion would go beyond the Catholic moral position, which accepts removal of the fetus in cases of tubal pregnancies and in the treatment of cancer of the womb, under the principle of double effect and the acceptance of the death of the fetus when the life of the mother is at stake, under the principle of the lesser of two evils (see the statement of the Belgian bishops). Given that the Catholics might well want to include these exceptions in the law, what about the exceptions of other interest groups, e.g. rape, incest, deformity etc.? On what political and/or moral grounds would these be accepted or rejected?

Moral Responsibility - The compromise position as envisioned here is *morally responsible*. It is not equivalent to “not taking a stand”. For many the ethic of compromise is difficult to distinguish from an ethic of expediency or relativism. To accept the better when the best is not possible is seen to be morally deficient. Adopting the compromise position, the Catholic politician remains committed to the transcendent value of human life and can pursue it fully in personal life and within the life of the Church community, but when functioning within the context of a pluralistic democracy, compromise can be a reasonable moral act well within the Catholic tradition. In a way, compromise is the fulfillment of a religious duty based on the conviction that in the

service of religious liberty one has a duty to protect and advance democratic governance.

Note: The morality of the “compromise position” would be judged quite differently in the days before *Roe v. Wade*. In that context voting for compromise legislation would be allowing the abortion laws to be incrementally liberalized and thus be judged immoral on the grounds of collusion. Now the situation is different. Currently the law effectively makes abortion-on-demand legal. Given this context any compromise legislation would, by definition, make abortion laws incrementally restrictive and thus be judged moral.

A Final Word on Consensus

In this paper, the importance of consensus has been mentioned many times. Consensus is obviously crucial in the legislative process where votes determine legislation. The consensus of the general public is also crucial in two ways. First, politicians, who want to be re-elected, tend to support legislation which has the support of the “folks back home”. Secondly, public consensus is a consideration when judgments are made about the enforceability of legislation. It has been argued here that political compromise is based in large part on a recognition of a lack of consensus and that the Catholic politician must attend to the politics of the possible. This is true.

However, it has also been mentioned in this paper that in certain cases, e.g. civil rights and fair housing, public consensus has been rightly ignored, because the moral issues were too great. In the end, Lincoln had to endure a civil war. (Someone has quipped that if Jesus had taken a poll, He would never have preached the Gospel). Sometimes laws must be enacted simply because they are just. The moral issues are too great to be ignored. So legislators ignore public sentiment, enact the laws and hope that the educational function of the law will help shape consensus so that enforcement will be possible. We need only recall scenes of George Wallace and others attempting to subvert the integration of southern schools to realize how difficult this can be.

One of the most important functions of our democracy is the protection of minorities. Often, minorities must be protected from the tyranny of the majority. When the protection of minorities is translated into public policy it is almost by definition that this takes place without a majority consensus. So while consensus is extremely valuable to have, it is not the sole consideration to make when considering public policy.

Having said this, if indeed abortion is a “moral issue too great to be ignored” -- the right to life--, then why cannot we use this fact to conclude that politicians do indeed have a moral duty to strive for the enactment of laws to prohibit abortion even without public consensus (as in civil rights), and be willing to endure the difficulties and failures in enforcement and hope that the educational function of the law will help shape consensus?

Two comments:

1) As noted earlier, the U.S. did have restrictive abortion laws prior to *Roe v Wade* which

were ignored by many (est. 200,000 to 1,000,000 annual abortions) and seldom enforced. Liberal critics pointed to the lack of public consensus and the resulting corruption of law enforcement officials, physical dangers to women from criminal abortionists and the generation of an atmosphere of disregard for the law at all levels and therefore argued for the repeal of these restrictive laws.

However, conservative commentators noted that disregard for the law in itself is not an overriding argument. Is it not true that we have laws against cheating on income tax reporting, laws against child abuse, laws against stealing, etc. that are also broken by many, but who would argue that this fact should mean that these laws ought to be repealed?

2) So what is to be said about the function of consensus in the formulation of civil law? Who is right, the liberals or the conservatives? Perhaps they are both right, but for different reasons. How can this be so? We need to consider the *values* that are the object of consensus, because generally speaking civil law tends to represent the values of a society. The conservatives have a point - the fact that a law is often broken does not justify its repeal - however it is so in these examples, because there is a wide, if not universal public consensus that the values inherent in the laws against, cheating, child abuse, stealing etc. are accepted values - cheating is wrong, child abuse is wrong, stealing is wrong - even though many fellow citizens disregard them in practice. There is thus wide consensus that these are good laws, because they reflect the values of the majority. Few citizens would advocate repeal of these laws based on the fact that they are often broken.

There is a subtle, but important distinction in the case of abortion. Many judge that the *values* inherent in the conservative position on abortion are not the values of the majority of U.S. citizens and that a consensus on these values must first be established before a total legal restriction on abortion would be effective and “good law” - i.e. reflecting the values of society. Without consensus on the values inherent in the abortion issue many judge that abortion cannot be reduced to a legal issue. Those who would change the law, must first change the values, if not, greater evils - disrespect for the law, corruption of law enforcement officials, endangerment of women - will follow. Furthermore, it is argued, the actual number of abortions will not be significantly reduced and we will be left with a situation similar to the nightmare of the “War Against Drugs”.

Let us revisit the civil rights issue. While there was enough political consensus to pass the Civil Rights Act, the turmoil following integration efforts in the nation’s schools indicated that a public consensus did not exist for civil rights legislation. However, the civil rights effort did not collapse or disintegrate into chaos. Again, the values inherent in the civil rights legislation - living in a neighborhood of choice, drinking from public fountains, freely eating and lodging at places open to the public - considered in themselves, had near universal acceptance.

Given these observations, some politicians would judge that no significant legislation should be enacted that does not contain values that reflect a public consensus.

Is this a correct position? Many would say yes and many would say no. The point is that there are grounds for disagreement among politicians of good will. Thus it seems possible that Catholic politicians who hold abortion to be morally wrong and do not deny that it is a public issue, could nevertheless judge, in good conscience, that a total legal ban on abortion should not be enacted until there is public consensus on the values inherent in the issue of abortion. The moral point would be that some legalization of abortion is the lesser of two evils.

It is interesting to note that following the 1984 address by Henry Hyde, Fr. Hesburgh, the president of Notre Dame, indicated that there was in fact a “secret consensus” in the country that rejected abortion on demand, but would allow it to be legal in special cases like rape, incest and severe deformity. The political power of this “secret consensus” was obviated when Roe v Wade removed the issue from the political arena. Perhaps politicians need to work toward making this “secret” consensus public.

What is the Role of the Bishops?

Background

The role of the Bishops is critical, for they have the power to focus public attention and exert moral authority by way of word and example. Ideally, the role of the bishops in the politics of abortion should be an extension the way the universal Church views its role in the affairs of society and the state. The Church’s understanding of its role *vis-a-vis* society and the state is outlined in the Pastoral Constitution of the Church in the Modern World, known as *Gaudium et Spes*.

In this remarkable document, the Church views itself as a servant to society, sharing in its “joys, hopes and griefs” (1), “inspired by no earthly ambition... not to sit in judgment, to serve and not to be served”(3). The Church does not claim to have all the answers, but “wishes to speak to all men in order to illuminate the mystery of man and to *cooperate* (my italics) in finding a solution to the outstanding problems of our time” (10).

The document goes on to affirm the dignity of the human person and a recognition of the right to liberty and the inviolability of individual moral conscience. The focus is on the individual as a member of society and the belief that the Church can “contribute greatly toward making the family of man and its history more human” (10).

When speaking of how the Church relates to the world, the document speaks of dialogue (40) coupled with a humble admission that the Church enters this dialogue “without having at hand the solution to particular problems” (33). This implies that the Church can learn through this process of dialogue and discovery.

If the Bishops adopt the vision of *Gaudium et Spes*, they avoid the temptations of

sectarianism and triumphalism. The Church is fully immersed in the world not withdrawn into its own world and its willingness to dialogue and learn from others defines its role as one of servant, rather than master. And if they adopt a focus on human dignity they endorse the common ground (human dignity) necessary for moral discourse implicit in the natural law tradition.

The National Conference of Catholic Bishops did indeed endorse the vision of *Gaudium et Spes* in its 1999 document "*Faithful Citizenship: Civic responsibility for a New Millennium*". The Preface states: "This is a time to bring together the guidance of the Gospel and the opportunities of our democracy to shape a society more respectful of human life and dignity, and more committed to justice and peace." Here the Bishops affirm the role of the Church as one of engagement with society with the goal of shaping society by proclaiming and living out the Gospel of Life as espoused by John Paul II.

As we now turn to the role of the Bishops, we will consider how the dual role of cooperation and critique might be played out in three different arenas: 1) the political arena, 2) the social arena and 3) the religious arena.

The Political Arena

The National Conference of Catholic Bishops (NCCB) has often lifted up a strong voice in the political arena. The NCCB has spoken out on a wide range of public issues - arms control, capital punishment, civil rights, the economy, education, energy, family life, agriculture policy, health, housing, human rights and mass media. Its approach in these areas reflects its understanding of the different roles of church and state. It respects a healthy separation of church and state - it does not expect the state to appoint bishops and priests nor does it expect the Church to appoint presidents, governors or judges. It supports religious liberty and rejects favoritism by the state toward any one denomination. No member of the NCCB has ever run for public office nor has the NCCB ever endorsed a candidate for public office. The Church knows how to play by the rules. In effect, the Church supports democracy.

Assuming its responsibility as a political actor in the abortion debate, the NCCB must continue to speak out in the public forum, but also be aware of the limits of its influence. Its failure at efforts to override the Clinton veto of the partial-birth abortion ban should have given it pause. Without compromising its public moral stance, perhaps the NCCB should support compromise legislation that more closely mirrors public consensus. This would increase the probability of some legislative success that would at least reduce the number of abortions. Realistically the chances for a total legal ban on abortions in the foreseeable future are zero.

Certainly more energy could be spent in developing a position on abortion in such a way that its validity can be more easily understood in dialogue with others of different or no religious persuasion. We must use a common language, e.g. the natural law approach. To issue official statements based solely on authority or citing the "Catholic tradition" has

limited value in changing minds even within the Church. It is open dialogue, the search for truth utilizing terms and procedures understood by all parties (natural law approach) that holds the best hope of understanding, consensus and possible conversion.

Just the simple fact that meaningful dialogue takes place will go a long way in reducing the animosity between opposing ideological camps and increase the likelihood that legislative progress can be made in other areas which could reduce the incidence of unwanted pregnancies and provide more alternatives to abortion. Another bonus would be to distance the NCCB from the radical elements of the Far Right.

The tactics of the NCCB should remain within the sphere of acceptable political activity. Of course, there is precedence for public protest e.g. the civil rights protests, however, in the abortion controversy, there seems to have been little advantage gained in loud public protests which tend to fan the fires of fanaticism.

One important reason why current abortion protests are largely ineffective may be due to the focus of the protests. In the civil rights protests the main focus was on the black community itself. It was the black community who said *we have a problem*. We need justice under the law so that we can be full citizens and so we can flourish as human beings. In sharp contrast, in the typical abortion protest the focus is on the perceived offenders not the offended. Abortion protestors point the finger and say *you have a problem*. You are murders, you are guilty of crimes against God and humanity etc.. As a tactic it does not work well. When people are attacked they become defensive. It is only natural. In human problem solving the process always works better when the tactics do not take the form of an attack on the person you are trying to change. There is an old adage in Organizational Development literature that states: “you must get others to own the problem, before they will own the solution”. Acceptance and implementation of solutions depend heavily on individual perceptions of need.

If marchers are determined to carry placards with slogans protesting abortion, perhaps the Church should challenge them to display on the back of each placard their name and telephone number indicating that if called upon, day or night, they will help a pregnant woman in crisis and later with her new baby. Arms-folded displays of moral superiority find no support in the Gospels nor do they win the hearts of people.

It is also critical that the Catholic Bishops support their Catholic politicians. They must make every effort to help them. They need to give them the tools to be effective. Through education they can help Catholic politicians understand the issues and the principles of dialogue, e.g., the distinction between religion and morals, direct and indirect abortions and an understanding of the natural law approach to moral discourse.

Given the fact that among the best of Catholic theologians there are many unsolved issues concerning the legal response to abortion, how can the theologically unsophisticated Catholic politician be expected to make the “right” political decisions without a good deal of help from the Church? To be effective, Catholic politicians need more than simple

directives to vote this way or that. They need to know the *reasons* why and thus be able to explain to their fellow politicians and their constituents, on the basis of human reason, why they advocate this or that stand on the legality of abortion.

The Bishops must understand the limited abilities of individual politicians to effect change and have sympathy for their efforts to accomplish the politically possible while upholding the current law and promoting the common welfare of all citizens. In its 1989 “Resolution on Abortion” the NCCB implicitly recognized this “politics of the possible” in their first policy goal: “constitutional protection for the right to life of unborn children *to the maximum degree possible* (italics mine). Again, St. Thomas stressed the principle of the “possible” when considering the legal ban on human evil. But who will help the Catholic politician to decide what indeed is “possible” in terms of St. Thomas’ criteria of enforceability and the effects of legislation in other areas of social life?

Finally, the Bishops must educate themselves. Certainly, many bishops are well educated in moral theology and certainly the papers issued by the NCCB show remarkable moral insight. But this cannot be said of every bishop. Unfortunately, the rite of episcopal consecration does not automatically provide unique moral knowledge, much less moral wisdom. There must be an ongoing process of education. This education should not be just in the stated moral pronouncements and traditions of the Church, but in the reasoning and religious insights on which these moral pronouncements and traditions are grounded.

They also need to locate and understand the positive values contained in the pro-choice approach e.g. privacy and protection of women. They need to hear and understand the unique views of women. They need to understand the natural law approach and appreciate that “human nature” is not limited to just the physical aspects of human nature, but human nature defined within a broader bio-cultural context. They also need to understand political process, the nature of democracy and how it is sustained in a pluralistic society.

This is critical. The official Church must be constantly aware that whether they are giving expression to their faith in preaching the Gospel or are operating on the level of reason in the natural law tradition, the Church is always operating within a certain ideology. It is not possible to cannot escape into pure reason. This does not mean that the Catholic ideology is wrong, just the opposite. It does not mean that the Church does not need an ideology, it does. The Church cannot exist without a Christian ideology, without religious conviction, without a prophetic message and mission, without a vision of “the nature of reality and how things ought to be”.

However, it must always be remembered that their partners in dialogue are operating within their own ideology, their own religious or non-religious convictions and their own mission or agenda, their own vision of reality and how things ought to be. Furthermore, we must concede to them the same good will and respect for conscience we hope they concede to us. Without this recognition and understanding of these differing ideologies, dialogue, no matter how well intentioned, will fail. It takes a great deal more than a

religious message and the best of intentions to set off a fruitful dialogue within a pluralistic intellectual community.

To walk in another's "intellectual shoes" is very difficult. We simply do not "see" things the same way. We have different assumptions and thus different conclusions. Unless the Catholic moral vision can be translated into language and concepts that can be grasped by others outside the Catholic ideology and relate to values within their ideologies, communication cannot take place. Common points of reference, common values and common aspirations for society must be identified and employed as a basis for dialogue. It is a daunting task, but it must be undertaken to foster true dialogue and have any hope of consensus or conversion.

In summary, the Catholic Bishops through the NCCB should continue their political activity based on open dialogue, respect for the democratic process and the support of attainable political goals. They should understand that a change in the law may be a part of the solution, but it is only a part and perhaps not the most important at that.

The Social Arena

By the "social arena" I mean the broad spectrum of social life. There is a growing awareness that much can be done indirectly to attend to the abortion problem by a public witness through word and deed that demonstrates a deep concern for human life at all stages and in all circumstances. The recent public statement indicating a change in the official Church position on capital punishment is a powerful statement of the Church's teaching that all human life is valuable and that the Church can change its moral positions in light of changed circumstances and new insights. This ability to learn and change gives hope that dialogue will indeed be open and not simply an exchange of set ideas.

Perhaps two simple, but important changes would help. 1) Switch the emphasis from a narrow focus on "anti-abortion" to the broader category of "the dignity of human life" with a pro-women emphasis and 2) switch the focus from tactics of coercion, i.e. civil coercion -- recriminalizing abortion, to one of persuasion through transforming the culture by living out the Gospel through loving service to humanity in imitation of Jesus.

Emphasizing the "dignity of life" means an observable respect for all life. This has been called by some the adoption of a "consistent life ethic". It is a witness to the world that all life is worthy of respect, not because it is in a certain stage of human development, not because it is morally good or physically perfect, not because of its identification with any race, color, creed or sexual orientation, but simply because it is human. If we truly believe that God is Father, then we must act that way, i.e. treat others as brothers and sisters. This means promoting human rights and fostering the unity of the human family in any way possible. The hypocrisy of certain "Christian groups" in demanding respect for the humanity of the fetus, while denying equal respect for the humanity of criminals, blacks or homosexuals gives lie to the belief that God is the creator of all human life. It also destroys the credibility of an ethic based on the "dignity of human life".

The global aim or goal of a public witness to a belief in the dignity of human life would be to make abortion unthinkable, not simply illegal. There is some hope to accomplish the former and little hope at this time for the latter. Coercion alarms people, loving service redeems them. (Certainly Jesus is our example - not to condemn, but to save.) To be credible, and thus effective, the official Church must convince people that it sees its role as servant and as a participant with their fellow citizens in their daily “joys, hopes, griefs and anxieties”. (*Gaudium et Spes, Preface 1*) It is not the singular role of the Church to stand on the sidelines of life as a morally superior commentator on the moral failures of human society. At the heart of the Church’s mission is the transformation of people’s lives.

If the Church would decide to make this change in emphasis and tactics it already has numerous structures now in place to support such an approach. The Office of Catholic Charities in nearly every diocese offers help to pregnant women in crisis and a large number of lay organizations offer counseling before and after an abortion decision is made. Significant monies now spent on legislative lobbying could be diverted to strengthen these organizations and a massive public awareness campaign could be mounted to make the general public aware that such services are available.

Changing Tactics: Food for thought: We stressed earlier the value of the natural law approach in establishing a common ground for ethical research and debate in a pluralistic society. The common ground established in such an approach is basically an intellectual common ground. While this intellectual common ground is valuable, we also have an urgent need to establish what we might call a “practical” common ground. This practical common ground could focus on the individual women confronted with abortion decisions and could perhaps create an alternative position to the often radical “pro-life” and “pro-choice” positions, where common ground is practically nonexistent.. *This alternative position could be called “pro-woman”.*

The major goal of a “pro-woman” approach would be to confront all those powerful and debilitating social structures - lack of health care, day care, housing, child support, job training, a living wage, etc. - that leave many women to judge that they have “no-choice”, but to have an abortion. This approach should promote the goals of both pro-choice and pro-life advocates. Expanding reproductive choices for women certainly ought to be the heart of the “pro-choice” position. And since reforms in debilitating social structures would reduce the circumstances where women judge that they have “no choice”, abortion rates should drop and this is certainly a major goal of the “pro-life” position.

Catholic pro-life groups could certainly find support for such a position in the message of Pope John XXIII in his Encyclical *Pacem in Terris*, where the pontiff spoke of the “right to life” to include adequate food, clothing, shelter, rest, medical care, necessary social services and, in the case of sickness, inability to work, widowhood or unemployment, some form of “security” which the state might rightly provide when necessary. He also spoke of economic rights as including opportunity to work without coercion, a just wage,

private property and a share of productive goods. He spoke of all these issues within the context of the Christian duty of promote social justice. And so Catholic “pro-life” groups may be challenged by the pope’s message to ask themselves: “Are we really pro-life or simply anti-abortion?”

Therefore, it seems quite possible that, leaving out the extremists on both sides, there is great *potential* that many on both sides could work together for the welfare of women, even while having different intellectual assessments of the ethics of abortion. However, both sides would need a “wake up call”, because both camps have so much intellectual and emotional investment in their positions.

Change is always difficult. In our English New Testaments, both John the Baptist and Jesus are said to have begun their ministry with a call for “repentance”. However, repentance is the English translation of the Greek word *metanoia* which is also translated to mean “change your mind”. Most people recognize their shortcomings and are willing to repent, but to “change you mind”, that is another matter, as John and Jesus found out.

An example of this “wake up call” that could “change minds” was provided by the passage of a welfare reform act by the New Jersey State Legislature in 1992. This legislation included a provision for a “family cap”. The family cap meant that any woman on welfare who became pregnant and decided to “keep her baby” (not to have an abortion) was to receive no additional state money (by 1988 some 20 states had passed similar legislation). The implication was that poverty was caused by welfare mothers having babies. This is part of the “individual-moral-failure” explanation of poverty by those who simply ignore the lack of social justice (and their part in it) that is at the heart of the conditions of poverty experienced by many in the United States.

What followed was the extraordinary spectacle of the New Jersey Right to Life and the New Jersey State Catholic Conference joining forces with the ACLU and the NOW Legal Defense and Education Fund to voice opposition to the family cap. Since the family cap provision encouraged abortions it challenged the goals of the pro-life camp and since it restricted real choice for women it challenged the goals of the pro-choice camp.

However, the real potential for a wake up call came from the research on the family cap commissioned by the State of New Jersey. The interesting news for the pro-choice position was that researchers found that 71% of the welfare women said that the *only* acceptable reasons for aborting are that the birth would threaten the life of the mother and in cases of rape and incest. Only 28% of the women agreed that an acceptable reason for termination is when it is an accidental or unplanned pregnancy.

The message here for the pro-choice advocates is that the majority of welfare women do not want to have abortions and if pro-choice advocates really want to help expand real reproductive choices for women they ought to concentrate on the root causes of poverty so that the lack of state aid will not be a determining factor in welfare women choosing abortion when in fact they would rather bring their babies to term.

There was also interesting news from the research for the pro-life camp. The first message is that welfare mothers do not need to be convinced of pro-life attitudes, they already have them. The research showed that poor women simply lack the resources to live out a pro-life ethic. When asked about factors influencing their decision to abort, 75% of the women responded “finding adequate child care” and 85% responded “not having adequate finances to raise the child”. Welfare mothers need economic and political help, not a convincing lecture.

The message for the pro-life camp is the same as for the pro-choice camp: concentrate on the root causes of poverty. This is not easy for either group. It calls for *metanoia* - a change in mind. For pro-choicers it is not enough to speak of free choice, it is necessary to restructure society so that the conditions for true free choice are present. And here is the zinger for pro-choice groups: most welfare mothers will choose not to have an abortion if at all possible. In other words, if pro-choice groups really get the message, their work will result in fewer abortions. Perhaps a difficult image to accept.

For pro-lifers the message is that it is not helpful to simply play the sideline role of moral judges, marshalling public protests and labeling those who disagree as murderers. Welfare women need help. And in the case of Catholic pro-life groups, welfare women need the help of church members whose social consciousness has been molded by the vast body of Catholic social teachings which stress that social justice is at the heart of the gospel message. This will be difficult for many Catholic pro-life advocates because they tend to make political alliances with fiscal conservatives who may pass the litmus test of saying that they are “pro-life”, but often do very little to attack the roots of poverty or promote social justice. It would be a rare political conservative who would endorse any of the major themes of traditional Catholic social teaching. Furthermore, many pro-lifers themselves are unwilling to make the political and monetary commitment necessary to address the roots of poverty. And they fail to see that when they do not make this commitment they are helping to maintain the social and economic conditions that actually increase the number of abortions, especially among welfare women.

Given all the above, in theory at least, there should be great hope for a common effort among pro-choice and pro-life groups based on a common ground with a focus on welfare women and their dire financial straits. There are also great obstacles to be overcome in order that old enemies open their minds to change and join in a common cause. We can only pray for *metanoia*. (End of food for thought.)

In the final analysis, the Bishops must continue to stress social justice and to commit themselves to a “consistent life ethic” as advocated by Cardinal Bernardin. In giving witness to a concern for all human life -- the aged, the dying, the immigrant, the poor, the imprisoned, and all the marginalized and helpless in society -- the Church could be a powerful agent for change, a change in the culture. Jesus drew people to himself and converted them by healing, forgiving, caring, listening and calling them to follow him. Without condemnation or moralizing He promised the Kingdom to those who gave food to the hungry, drink to the thirsty, clothes to the naked, and consolation to the imprisoned.

He came not to condemn, but to give us life, His life. We are called to do the same.

The Religious Arena

If there is any arena in which the Bishops can have a significant impact it is surely in the religious arena. It is here that the Bishops can address the members of their own Church within a moral tradition that is common ground for all concerned. The goal would be to aid in the formation of a Catholic conscience so that for Catholics, abortion would indeed be unthinkable. This is an important goal, because, unfortunately, polls show that Catholics in the United States do not differ significantly from the rest of the population. For the purposes of this paper, we will narrow the discussion to two important areas in which the bishops can fruitfully interact with the churches under their care -- 1) Formation of conscience and 2) An appeal to the Catholic voter.

1) Formation of Conscience - There has been a great deal of ink spilled concerning the “ordinary magisterium”. This term has a long history, but in our times it has come to denote the teaching office and authority of the Church and the hierarchy (bishops and pope) who hold this teaching office. (The Latin term *magisterium* defined one who is a “master” in some area and was used to describe a teacher) The authority to teach that belongs to the bishops is seen to derive from the authority which Christ gave to His apostles to teach in His name. The proper subject matter of this teaching is relegated to matters of faith and morals. Thus, the ordinary magisterium, i.e., the teachings of the bishops, ought to be an important referent for Catholics as they strive to form their consciences.

In practice, bishops tend to approach the exercise their authority in two distinct ways. I will argue that, as an aid to the formation of conscience, these two approaches are not of equal value. This critique would apply to the pronouncements of the NCCB (the National Conference of Catholic Bishops), but more importantly to the local bishops throughout the United States.

First, there is the approach that conceives the role of authoritative teaching as that of simply reiterating the official teachings of the Church found in papal encyclicals, papal statements and positions taken by the NCCB. Such reiterations are followed by a statement that implies that Catholics must conform to these authoritative teachings out of a sense of loyalty. There is also the implication that in not conforming one is guilty of an offense against the legitimate authority of the bishop, the pope and the Holy Spirit Who guides the Church. Here the approach to teaching with authority is to spell out the official position of the Church and to remind the laity that it is their duty to give assent as loyal Catholics. This approach was exemplified in Cardinal O’Connor’s 1984 exchange with then candidate Geraldine Ferraro when he said that it was his responsibility “to spell out for Catholics what the Church teaches”. It is that, but much more.

This approach is called *authoritarianism*. *It appeals to the office of authority as the primary reason for people to adopt a certain moral position, rather than appealing to the*

intrinsic validity of the moral position itself. In this approach, there is little effort given to explain a moral position in such a way so that people can make this moral position their own. In order to be effective, persons in a position of moral authority need to be believable. Any indication of the process that led them to adopt such a position goes a long way toward establishing credibility.

Secondly, there is an approach to the exercise of authority that conceives of authority as being in the service of truth by appealing to the minds and hearts of people. It is not enough to state that abortion is wrong because the official teachers in the Church say that it is and that there are penalties for non-compliance. They may be correct, but that is not enough. As human beings we have a need and a right for something more.

This “something more” is a kind of moral authority that provides not only the “what” of the Church’s moral positions, but also the “why” of how this position came to be formulated. We must remember that adultery is not wrong because it is in the Ten Commandments, but rather the condemnation of adultery is in the Ten Commandments because it is wrong - i.e., destructive of human nature.

This approach also includes an understanding of the unique human circumstances surrounding moral choices and of how difficult it can be to make moral decisions in crisis situations especially in situations where there is a conflict of two or more positive moral values.

If abortion is wrong it is not because a bishop or pope said it was wrong, it is wrong because it is death dealing, because it brings physical death and moral disfigurement. It is to be avoided because it is an attack on our common humanity. We need to be able to “see” this, we need to understand why this is so, we need to internalize this moral judgment. Indeed, it is just this internalization of moral judgment that we call the formation of conscience. It results in moral judgments that spring from our intuitive and reasoned knowledge. No one can impose wisdom, but it can and should be proposed.

In the wider effort to convince our fellow citizens of our moral position on abortion, this general observation of Bruce Jennings is well worth our attention:

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. (Bruce Jennings, “Possibilities of Consensus: Toward Democratic Moral Discourse”, *Journal of Medicine*

and Philosophy 16, no. 4:447-63, p. 458)

To “test our views against those of others” logically includes taking note of those arguments and assumptions that lead others to make considered judgments that are different than ours. We must listen to others. We need to know how they have reasoned to their position. If their reasoning is faulty, then perhaps we can call on reasoned argumentation to show where the fault lies. Open, respectful dialogue in which the rational basis of both sides is carefully examined offers the only true hope for a consensus in a religiously pluralistic society.

Therefore, we can see the value of the natural law approach as discussed above. St. Thomas taught that the natural law participates in the eternal law of God, but its great value lies in its ability appeal to our human reason which helps us to understand how our moral choices enhance or diminish our flowering as human beings. It reminds us that abortion is not just a “Catholic issue” as our critics claim, but a human issue rooted in our common human nature. This is the approach to moral authority (moral teaching) that is most befitting our spiritual leaders, this is the kind of Spirit-driven teaching authority that is most helpful in preserving our lives and our faith.

An Appeal to the Catholic Voter -- As a body, the United States bishops have done an excellent service in this area. We can do no better than to read from 1984 statement of the Administrative Board of the U.S. Catholic Conference, entitled *Political Responsibilities: Choices for the 1980s* :

Christians believe that Jesus’ commandment to love one’s neighbor should extend beyond individual relationships to infuse and transform all human relations from the family to the entire human community. Jesus...called us to feed the hungry, clothe the naked, to care for the sick and afflicted and to comfort the victims of injustice. His example and words require individual acts of charity and concern from each of us. Yet they also require understanding and action on a broader scale in pursuit of peace and in opposition to poverty, hunger and injustice. Such action necessarily involves the institutions and structures of society, the economy and politics...

As citizens we are all called to become informed, active and responsible participants in the political process. It is the laity who are primarily responsible for activity in political affairs, for it is they who have the major responsibility for renewal of the temporal order...

We hope that voters will examine the positions of candidates on a full range of issues (italics mine) as well as their integrity, philosophy and performance.

This is a powerful statement which has three very important messages for Catholic voters:

- 1) The love of neighbor commanded by Jesus *necessarily* involves politics and the structures of society. This says that the love of one's neighbor must also be incarnated in the political and social structures of our society and that we have an moral obligation and Christian mission to make this happen.
- 2) The laity needs to get informed and "get with it" politically. We need to vote! And to be a responsible voter we must be informed.
- 3) In general, there should be no single issue litmus test for candidates. This would include abortion. No candidate should be qualified for public office simply because they announce a pro-life stance, nor can anyone be disqualified simply because they announce a pro-choice stance. A quick review of history would show that many "pro-life" candidates are more talk than action. Historically, the election of candidates for president with a "pro-life" stance has had little effect on the law of the land. It is also true that "pro-choice" candidates often promote many of the issues which appear on the broad moral agenda of the Catholic Church's social teaching, while these same issues are often neglected or even opposed by "pro-life" politicians.

Again, as noted above, the bishops encourage Catholic voters to "*examine the positions of candidates on a full range of issues*". The bishops are encouraging Catholic voters to resist the temptation to be single issue voters. This is consistent with the long standing policy of the Catholic bishops not to endorse individual candidates. It is not always the policy of individual bishops.

A Final Word - It seems clear that the Bishops must continue to work concurrently in the political, social and religious arenas. The political arena is probably the most difficult and perhaps consumes more of the Church's personal and financial resources that it merits relative to results. The social arena is a long range program, but it closely coincides with the overall mission of the Church to announce the Kingdom of God by both word and example. The religious arena can yield immediate and important benefits, however, at this time it lacks a coherent plan.

What is the Role of the Catholic Voter?

In considering the role of the Catholic voter in the politics of abortion there seems to be two broad directives which enable the Catholic voter to take a valuable role in the political process: 1) Become educated and 2) Get involved. These are both very difficult tasks. These are also very important tasks.

Education - The educational level of the Catholic laity, especially in the area of social issues is admittedly dismal. One can only imagine the results of a nationwide test assessing the laity's knowledge of the main Catholic positions on social issues since Leo XIII. How can this be corrected and what efforts are being made?

It is a daunting task, but it can be made much easier if the bishops and the local clergy make this “formation of a social conscience” a priority in the pastoral ministry. Certainly there are problems. One problem is the lack of priests and other teachers who have the knowledge and the ability to communicate this knowledge to others. Another problem is that it takes time for all concerned, teachers and “students” - everyone is busy, there are other things to do, etc..

However, the necessity of education is of paramount importance if we are to truly enter into dialogue with those outside the Church and have any hope of creating a public consensus on the political issues involved in abortion. Let us return again to the bishops’ document *Political Responsibility: Choices for the 1980s*:

As citizens we are all called to become informed, active and responsible participants in the political process. It is the laity who are primarily responsible for activity in political affairs, for it is they who have the major responsibility for renewal of the temporal order.

It has been sixteen years since this document was written and there seems to be little organized effort at the parish level to help the laity become “informed, active and responsible participants in the political process”. Again, there are great difficulties here, but the tasks are no less important.

Involvement - At a minimum people should vote. Too many people do not vote. The reasons why people do not vote are varied, but it seems clear that we are all becoming more and more individualistic. It seems to be the way our culture is developing and it is a frightening development for society and for democracy. We act as if we care less and less for the common good even though it has been one of the hallmarks of Catholic social teaching since Pope Leo XIII in the 19th century.

Beyond voting there is a wide array of opportunities to become politically involved at the local, state and even the federal level. Political parties need and want active participants. Voters who become involved either by becoming candidates for office or supporting candidates for office can have significant political influence on public policy.

The reasons to become involved in the democratic, political process are many and would require another paper to properly explore. However, I have one hope. It is that when it comes time to vote, voters would again reflect on the sentiment expressed by the bishops in their 1984 Letter mentioned above: “We hope that voters will examine the positions of candidates on the *full range of issues* as well as their integrity, philosophy and performance”.

Expressed here is a hope that we do not become *single issue voters*, even when considering such an important issue as abortion. In other words, if a candidate adopts the Compromise Position outlined in this paper or is labeled “pro-choice”, this fact alone should not determine our vote. This does not mean that the issue is unimportant, but simply that it is not *all important*. A wide variety of other considerations need to go into

the mix when considering whether or not to vote for a political candidate. We need to consider how they stand on the long list of social concerns which the Church supports for the common good. The issue is important, complex and there are good arguments on both sides. Something to think about.

Note: - When a politician announces or is labeled as “pro-choice” I believe an important distinction should be made. Under the umbrella “pro-choice” there are at least two quite different moral and political positions that can be identified. One “pro-choice” position could be better identified as “pro-abortion”. This is a position that sees abortion as itself morally neutral or even morally good. For example, such a position would see abortion as a useful tool in controlling population or in harvesting organs or tissue for medical experimentation. Thus there should be no legal restriction on abortion. This, I assume, is a minority position within the ranks of the “pro-choice”.

The majority who adopt a “pro-choice” stance put the emphasis on “choice”. They may consider abortion morally neutral, morally wrong or a position somewhere in between, but they want women who have a different view to have a choice. They focus on the civil liberties involved (right of a woman to choose) rather than the issue of human rights (respect for the life of the fetus). They may be certain or uncertain about the morality of abortion, but they are certain that they do not want society to restrict the choice of those who, in good conscience, view it as an acceptable choice for them. There are also those politicians who are against abortion, but judge that restrictive laws are ineffective (historically true) and may cause more harm than good. They judge that many abortions could be avoided if social conditions - housing, wages, child care, etc. - were addressed and that ultimately the best strategy to address the abortion issues is to change the minds and hearts of citizens. However, this position and thus are labeled “pro-choice”.

The issue here concerns how to translate a moral position into public policy more than whether or not and in what circumstances abortion is morally wrong. This position also is deeply concerned about the welfare of women, a concern which is very important and should be effectively addressed by advocates on either side of the political issue.

Also, when candidates announce that they are “pro-life” they also may be of two types. One kind of pro-life position could better be identified as “anti-abortion” and this is often a single issue position which does not focus on an ethical concern for all human life, nor the social conditions that contribute to abortion decisions. The other “pro-life” position embraces a “consistent ethic of life” and is concerned about all human life and the social conditions that enhance and/or threaten it. Some holding this position judge that restrictive laws would be helpful rather than harmful.

Conclusion

This treatment has been all too brief, but the subject is quite complex and deserves greater attention than this author can offer. The great questions of morality, the questions of good and evil are, in fact, at the heart of our political life. Politics is hard work and there is no end to it. Politics will always fall short of creating the Kingdom of God on earth. To acknowledge this is not a signal to give up or abandon the public square, to do so would be itself an immoral act. But it does mean that until God brings His Kingdom to fulfillment, compromise will always be part of the political landscape and a perfect social system will always elude us.

In our dear country, the democratic state serves religion by protecting it from itself and any possibility of a tyranny of the majority, especially a religious majority. Religion serves democracy by functioning as an independent moral voice, speaking from a tradition of moral understanding, whose ultimate source is the God who created us to live in peace. Furthermore, our American tradition of the separation of Church and State helps ensure that the partners - Church and State - remain free to exercise their respective roles.

POSTSCRIPT

Objections To The Concept of Natural Law

There has been a determined attempt in this paper to make a strong argument for recourse to the natural law in the public forum when debating the issue of abortion. However, recourse to natural law is not without its problems. It would take us too far afield to discuss the long history of the natural law tradition, however, a few remarks are necessary. The natural law tradition has had a history and not all of it good. For example, it became corrupted in the 19th century when too much confidence was put in the ability of human reason to determine the principles of the natural law and the process degenerated into the application of a myriad of principles to every possible kind of human activity all in the name of natural law (rationalism).

Catholic moral tradition came under criticism on the grounds that it ignored the *ius civile* and *ius gentium* of Cicero and Gaius and focused on the *ius naturale* of Ulpian. This resulted in moral acts being judged solely on whether or not they frustrated the operations and goals of the physical structures of human beings - e.g., sex is for procreation, contraception is wrong because it frustrates the goal of the physical act. Critics claim that this approach ignores the totality of the human person, which includes personal freedom, feelings, relationships, reasoning and a discernment about what is moral in this particular human situation. The "human situation" includes more than just the physical, it must include the totality of the human person.

Modern challenges have also come from existentialism and evolutionary theory. Existentialism holds that human nature is defined by what we make of ourselves. There is no objective, essential "nature" that can be called human. To put it another way, "the nature of mankind is not to have a nature". Thus any talk of natural law is irrelevant.

Certain evolutionary theorists, theists as well as atheists, hold that since human nature is subject to biological and cultural evolution, then we can say that human nature evolves (bio-cultural evolution) and therefore any morality based on human nature must also evolve, thus eliminating the idea of absolute moral norms based on human nature.

Part of the answer to these objections is that St. Thomas himself, without denying absolute moral norms, also taught that human nature is variable “But man’s nature is changeable, wherefore that which is natural to man may sometime fail”.(ST 2-2ae, q.57, art 2). However, the subject or substance that changes remains human nature. While we can speak of the universal notion of “tree”, actual trees find historical expression within a wide variety of individual trees. So too while we recognize a common human nature, we must attend to the historical realization of individual human natures which includes development or change. We can affirm a metaphysical human nature, but realize that such a nature is incarnated in diverse historical and cultural environments. Perhaps we can say that human nature is essentially the same but in incidentals, subject to bio-cultural evolution. Thus we can say that while torture, child abuse and murder have always frustrated universal human appetites and aspirations, our modern understanding of bacteria makes new moral demands for personal hygiene which were not required in a previous cultural context. In a sense, our moral awareness has evolved as we discover more about our humanity. This is what we alluded to earlier when we said that we come to understand the natural law through a *process of discovering what works in a particular historical context*.

But the most important challenge to natural law is an old one - relativism. Relativism has had a great impact on the concept of ethics. It creates a fundamental uncertainty about knowing the truth about anything and thus undermines the establishment of objectively valid universal ethical norms.

Relativism holds on one level (the cognitive) that there are no universal truths about the world only different ways of interpreting it. Each of us has our own point of view and we do the best we can to explain what we experience in our world. (As we shall see later, if this is so, then any natural law approach is impossible.)

On another level (ethical) relativism holds that there are no universally valid moral principles. Moral principles are valid relative to culture and/or individual choice. As we discover and observe other cultures we see a wide variety of ethical standards. These cultures seem to “work” so we may well conclude that while one ethical system may be held up as “true” for this particular culture, it need not be necessarily true for any other culture.

Sociologists argue that all cultures are “constructed” by human beings within a specific human history and that certain “plausibility structures” - religion, customs, laws - keep the culture acceptable and believable to its members. Thus, various cultures simply “agree” upon what ethics will be supportive of their culture. This is a form of relativism or subjectivism because it posits that ethics consists of judgments that are not true or

false independently of what we think of them, but only expressions of our beliefs, wants, emotions or hopes within a specific culture.

If relativists are correct, then we are unable to justify judgments that some things are good or evil, right or wrong, for everyone or from every point of view. In other words there are no objective, universally valid norms for human conduct. Ethical norms are the products of a variety of points of view, none of which can be said to be any better than any other. Ethics is a matter of cultural and/or individual preference, e.g., one culture's torture is another culture's method of getting at the truth, without any judgment being possible about whether torture is ethical regardless of its adoption or rejection by any culture.

Later critics of relativism will grant that there is some legitimate cultural relativity, e.g., sexual mores and the regulation of property. However, they argue that there is an ethical core that is or ought to be universally valid in all cultures, e.g., prohibitions against killing the innocent, torture, stealing, lying. For example, it seems difficult to dismiss Hitler's system of ethical values as simply a matter of taste.

Given the challenges of relativism and the fact that there are also disagreements even among those of good will who defend the natural law, how do we address this question: If it is true that we all possess a common human nature, why this lack of agreement concerning what human behavior is dictated by this fact? An adequate treatment of relativism would take us too far afield, however we can make some simple observations:

1) We are not perfect. Human reason is fallible. We make mistakes. Plus, the discernment of the natural law and the resulting moral consciousness is a process within cultures which is always incomplete and by definition includes misconceptions and cultural assumptions. For example, for centuries (from Aristotle, through Aquinas and the Church into the 19th century) slavery was actually defended on the grounds of natural law and child labor was not seen as a moral issue.

2) While we are defined as rational beings, we are not entirely rational. We also have an irrational side to our nature which can at times interfere with our ability to see reality objectively. St. Thomas would say that we are at times more under the rule of our passions than our reason. Reason thus impaired can err in the discernment of the natural law.

3) Certain moral principles may be invariable or absolute, but their application is always conditioned by circumstances. Thomas calls this the exercise of prudence. For example, while it is a general rule that you must return borrowed property, it would not be prudent to return a sword to one who has gone mad or has vowed to kill you.(ST 2-2ae,q.57,art.2)

4) The subject matter of moral judgments is changing. The issues of cloning, total warfare, stem cell research, genetic engineering and a host of other moral issues were not part of the moral landscape a hundred years ago. New insights into the natural law and its application to new circumstances is central to the changing world of moral theology and

an appreciation of the natural law.

What is the upshot to these objections to the natural law? We have offered some brief answers, but we must admit that the use of the natural law as a tool in defining morality requires hard work with no guarantees of success. It is a difficult process of reasoning about what it means to be fully human and then sifting through human history and personal experience to determine, in this concrete historical setting, what the state can do to foster the flowering of authentic human life. To use the natural law is not a process of applying a self-evident storehouse of immutable principles to every conceivable human situation. To employ the natural law is to be committed to a *quest*, a searching through human experience for those ways of acting that will promote the authentic humanity of individuals and society.

We should also note that using reason, because it provides a common ground, is not as simple as it sounds. When we “reason” we do so from a particular point of view. We all have our own frame of reference and who is it that enters a dialogue expecting to have their opinions changed? Not me! What each of us considers “reasonable” depends a great deal on our past experiences and our general approach to life. Ask any waitress the difference in what people consider a “reasonable tip”.

This observation has important implications for any who advocate the natural law approach to morality. To say that we reason from a particular point of view, means that we each operate with a certain ideology. An ideology is a certain way of understanding ourselves and our world. It reflects our aspirations for society. It is what we want for our society because we believe it to be “the right thing”. Whether or not these aspirations are grounded in reality is where the debate rages in a society with conflicting ideologies e.g. liberal vs. conservative.

When we recommend that the debate on abortion take place within the context of the natural law, we must be aware that it is almost impossible to escape the influence of our ideologies. Any dream of entering into the realm of pure reason, free of ideologies, to investigate grave moral issues is just that - a dream. Like the seldom resisted temptation to use the Bible as a source of “proof texts” to support our prejudices, we can also use reason as a tool to build a case to support the convictions we bring to the “table of reason” rather than a tool to explore reality in search of the truth with an openness to be surprised or to surrender our most cherished positions - to change our minds.

This is not to say the task is not worth undertaking, but to free ourselves of any delusion that it will be easy or that our conclusions will be the product of free, unprejudiced reason. It is also a signal to be patient with each other, because our ideologies are not just academic opinions of how we think the world ought to be, but they also define how we have come to understand our world and ourselves as human beings, such understandings change slowly, if ever. When someone challenges our ideology, we naturally become defensive. Therefore, consensus is elusive. That is why compromise, rather than total capitulation is the name of the game in a democratic society.

One last concern. What if all parties would accept a natural law approach and, given all the hard work and good-will in the world, we cannot reach consensus? To what higher court do we appeal? In this process there is none. And so there are no guarantees of success. All parties may agree that there are universal truths to be discovered in the examination of our human nature, but what guarantee do we have that our imperfect abilities to reason will uncover them and how will we know for certain if we do? We may sincerely believe we have, but the fact that we are so convinced is no guarantee that our beliefs correspond to reality. At best, it is a murky business. But it is the business we need to be about if we are responsible human beings. Perhaps reason is like democracy in Churchill's view - it doesn't work very well, but it is the best system we have, especially in a pluralistic society.

Given this built-in ambiguity, there is, however, one thing of which we are certain. Throughout history, citizens have rejected the absolute claims of human authority. This is what revolutions are all about. To the old Roman adage "What has pleased the sovereign has the force of law" the response has been, "not always".

When an appeal is made to confront the misuse of human authority, whether it is an appeal to "humanity", the "dignity of man" or the "natural law", the *function* of the appeal is the same, i.e., *to curb human authority*. Intuitively we sense that without the ability to appeal to something higher or beyond raw human authority and power civilization is in great danger. And if such appeals are to have any validity, that to which we appeal must be real and grounded in the essence of what it means to be human. I would call this the basis of natural law.