POLITICS, POWER AND THE PAPACY: CHALLENGES FOR CATHOLICS IN A DEMOCRATIC AGE

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“The Church respects the legitimate autonomy of the democratic order and is not entitled to express preferences for this or that institutional or constitutional solution.” 1

1. DEMOCRACIES, POLITICS AND CATHOLICS

1.1 Catholics take a prominent and leading role in the public life of many Western democracies that had, historically at least, founded their claims to independent nationhood, and based their constitutions, on either Protestant rejections of the claims of Papal authority and/or post-Enlightenment rejections of the claims of any revealed religion to interfere in the workings of the State.

1.2 In the United States of America, for example, Catholics now account for about one quarter of the total population and they make up the largest Christian denomination in that country. Their increasing political influence and visibility calls into question the traditional self-understanding of the United States – at least from the time of its founding in 1776 - as essentially a Protestant nation founded on principles of religious liberty and freedom of conscience. In 1928, Al Smith, the Governor of New York, was the first Catholic to be nominated by a major political party to run for the office of President of the United States. He was defeated by the Republican candidate Herbert Hoover in an election that was marked by leading Evangelicals’ attacks on the Democrats candidate’s Catholicism, a religion described by one Protestant leader of the Temperance movement campaigning against Smith as “the mother of ignorance, superstition, intolerance and sin”. 2 The publication in 1949 of Paul Blanshard’s American Freedom and Catholic Power 3 – a book that went through eleven printings within one year and remained on the New York Times best-seller list for seven months - showed that the claim that Catholicism was fundamentally “un-American” still struck, for some, a resonant note in post World War II America. 4 And in the 1960 election campaign the second Catholic (and to date only successful) candidate for the office of US President, John F. Kennedy, had to counter the accusation that his profession of Catholicism was incompatible with the principles underpinning the United States constitution, stating instead to a gathering of Protestant ministers that he believed “in an America where the separation of church and state is absolute” and denying either that he spoke for his church on public matters or that his church spoke for him. 5
1.3 But the United States political landscape has altered significantly in the almost 50 years since Kennedy’s election. In the period since the late 1970s a growing rapprochement has been gradually engineered (by political operatives in the Republican party) between socially conservative Protestant Evangelicals and Catholics which seeks to downplay or ignore their continued theological differences, highlighting instead their apparent agreement on a conservative sexual morality (dubbed “values”) and on the role of the State to encourage and enforce such a morality in its laws and in its decisions on funding. Catholic now form a majority of the justices on the bench of the Supreme Court of the United States, the Chief Justice being Catholic along with four of his brethren. These five Catholic justices have been said by Ronald Dworkin, in his fury at many of the decisions emanating from the first two years of the Roberts court, to constitute a “right wing phalanx … guided by no judicial or political principle at all, but only by partisan, cultural, and perhaps religious allegiance”.

1.4 In the United Kingdom, despite forming a much smaller proportion of the population than in the United States, Catholics also now take a prominent and leading role in the public life of the British State. There are Catholic peers, Catholic MPs, a Catholic Speaker of the House of Commons, Catholic (indeed avowed Opus Dei) members of the Cabinet and Catholics leaders of the major political parties. Tony Blair, Britain’s Prime Minister from May 1997 until June 2007, whose wife and children are Catholic, regularly attended Mass with and without his family while Prime Minister and, after leaving office he was formally received into full communion with the Catholic Church in December 2007.

1.5 Against that background it may thought that the question which I wish to consider in this book – whether Catholics can fully, unreservedly, and conscientiously carry out the duties as citizens and as holders of their various public offices in accordance with the laws and constitution of the democratic and pluralist States in which they live – need ever be asked. Surely the fact that Catholics have held and continue to hold high office within contemporary democracies is answer enough to that question? My fear, however, is that things are not that simple. My concern is that the terms of certain pronouncements which have emanated from the Vatican and from individual bishops in recent years have re-opened that question. The increasingly fierce criticism by the
Church – particularly in the course of the last decade of the pontificate of John Paul II and in the first years of the reign of Benedict XVI - of the perceived trend towards secularization in the social and political mores of Western (particularly European) democracies, and the greater readiness by Church officials to take it upon themselves explicitly to instruct the laity in political matters, requires that the issue be re-examined. This will require the posing and answering of such question as: can a holder of public office have competing civil obligations and religious duties ?; if so, which trumps and when ?; what is an official to do, and what are those who might appoint him or her to (or supervise him or her within) that office to do ?; does the fact that that official is Catholic mean that his or her ultimate loyalty, even in the performance of their public office, lies elsewhere than in the constitution under which he or she was appointed ?  Put crudely, are Catholics committed by their religion to being the Pope’s “Fifth Columnists”, supporting the structures and laws of the State only insofar as permitted to do so by the institutional Church; or can one, instead, be both a faithful Catholic and a loyal officer within the State ?  My hope is that the answer to that last question is “yes” but my fear is that some of the more recent presentation of official Catholic teaching on this matter is not as clear as it should be (or, perhaps, it is too clear). My concern is, in particular, that some of the language used, the images chosen, the metaphors adopted in aforementioned Church documents, among others, place real difficulties in our being able to say with absolute confidence that one can be a loyal servant of both God and the King, or of both the Church and the Constitution. And if those two loyalties cannot, in fact, be reconciled, then the issue as to whether Catholics can properly accept or be appointed to public office in the State arises. Does the Church require, in effect, the withdrawal (or rejection) of Catholics from public life – or the State their expulsion?

1.6 More concretely, too, I want to look at the question as to if, when and how the clergy should seek to exert their influence within the political sphere. This extends beyond the question of whether Catholics can properly hold public office, and spills into the question of how ordinary Catholics ought to exercise their rights to vote, as citizens, within democracies. In particular, I wish to consider whether the bishops of the Catholic Church should seek to use their ecclesiastical authority (over the faithful) to oppose or promote changes in the laws which apply to all within our society and/or to influence the way we might vote. I want to examine the implications that the use of
such ecclesiastical authority may have for the democratic States we live in. This is a big and complex area. It involves the interplay of politics and theology, of private and public morality. It touches on the role of teaching office of the Catholic Church and the assent (and possibility of dissent) on the part of the faithful. It takes in questions of conscientious objection and unjust laws. It concerns individual conscience and the hope of salvation. It is about voting and sinning. It is about judging, and being judged.

1.7 I should make it clear that this is not, then, a disengaged or purely theoretical exercise. It is first and foremost a practical project for me. I bring my own perspective to the book which is that of an individual - from the Scottish and Catholic traditions - actively engaged both with religion, and with the public life of the polity. The book aims to answer the questions “what should I do?” and, more particularly, “how are the demands of my religion to be reconciled to the duties laid upon me as a participant within the public life of the nation?”. In addressing these questions, of course, the answers will not simply impact upon my own and others’ individual action, but may well affect the development of the State’s collective response to the religious within its midst. This project is concerned with the interface (and tensions arising) between my individual religious affiliation, and my allegiance to (and participation within) civil society. The root of the problem is this: can the Church reconcile itself to democracy? For as Jeffrey Stout has observed:

“Democracy ... is a tradition. It inculcates certain habits of reasoning, certain attitudes towards deference and authority in political discussion, and love for certain goods and virtues, as well as a disposition to respond to certain types of actions, events or persons with admiration, pity or horror. ... Its ethical substance, however, is more a matter of enduring attitudes, concerns, dispositions and patterns of conduct than it is a matter of agreement on a conception of justice.”

1.8 But is the Catholic tradition ultimately one in conflict with the democratic tradition?

In his 1885 encyclical *Immortale Dei* Pope Leo XIII says:

23. That harmful and deplorable passion for innovation which was aroused in the sixteenth century threw first of all into confusion the Christian religion, and next, by natural sequence, invaded the precincts of philosophy, whence it spread amongst all classes of society. From this source, as from a fountain-head, burst forth all those later tenets of unbridled license which, in the midst of the terrible upheavals of the last century, were wildly conceived and boldly proclaimed as the principles and foundation of that new conception of law which was not merely previously unknown, but was at variance on many points with not only the Christian, but even the natural law.
24. Amongst these principles the main one lays down that as all men are alike by race and nature, so in like manner all are equal in the control of their life; that each one is so far his own master as to be in no sense under the rule of any other individual; that each is free to think on every subject just as he may choose, and to do whatever he may like to do; that no man has any right to rule over other men. In a society grounded upon such maxims all government is nothing more nor less than the will of the people, and the people, being under the power of itself alone, is alone its own ruler. It does choose, nevertheless, some to whose charge it may commit itself, but in such wise that it makes over to them not the right so much as the business of governing, to be exercised, however, in its name.

[...]

30. Now, natural reason itself proves convincingly that such concepts of the government of a State are wholly at variance with the truth. Nature itself bears witness that all power, of every kind, has its origin from God, who is its chief and most august source.

31. The sovereignty of the people, however, and this without any reference to God, is held to reside in the multitude; which is doubtless a doctrine exceedingly well calculated to flatter and to inflame many passions, but which lacks all reasonable proof, and all power of insuring public safety and preserving order. Indeed, from the prevalence of this teaching, things have come to such a pass that many hold as an axiom of civil jurisprudence that seditions may be rightfully fostered. For the opinion prevails that princes are nothing more than delegates chosen to carry out the will of the people; whence it necessarily follows that all things are as changeable as the will of the people, so that risk of public disturbance is ever hanging over our heads. [...]

32. So, too, the liberty of thinking, and of publishing, whatsoever each one likes, without any hindrance, is not in itself an advantage over which society can wisely rejoice. On the contrary, it is the fountain-head and origin of many evils. [...][T]he State is acting against the laws and dictates of nature whenever it permits the license of opinion and of action to lead minds astray from truth and souls away from the practice of virtue. [...]

48. But in matters merely political, as, for instance, the best form of government, and this or that system of administration, a difference of opinion is lawful. Those, therefore, whose piety is in other respects known, and whose minds are ready to accept in all obedience the decrees of the apostolic see, cannot in justice be accounted as bad men because they disagree as to subjects We have mentioned; and still graver wrong will be done them, if - as We have more than once perceived with regret - they are accused of violating, or of wavering in, the Catholic faith.”

1.9 Thus, while making clear his personal distaste for what he sees as the excesses of democratic governance, it appears that Leo XIII at least allowed that other Catholics might in conscience disagree with him in his political analyses. Coming as I do from a Scottish and a Catholic background (and as a human rights lawyer) I want to see whether I can - consistently with my own faith tradition - successfully negotiate the tensions between what it may mean to be a loyal subject of both God and Caesar, or a good citizen of both the City of God and the City of Man. In particular, I want to see
how to reconcile the demands of religion – and the principle of religious freedom – with those other fundamental principles of human rights also proclaimed by Western democracies, notably respect for liberty of conscience, freedom of speech, equality of treatment, tolerance and pluralism.

2. **THE TEMPTATION OF **Shari’a**

2.1 In Luke 12:13 the following exchange is noted:

“A man in the crowd said to Jesus, ‘Master, tell my brother to give me a share of our inheritance’. ‘My friend’, Jesus replied, ‘who appointed me your judge, or the arbiter of your claims?’”

Jesus, then, declines jurisdiction. He refuses to become involved in a dispute between brothers. He does not step in and seek to reconcile or conciliate between the parties to a family breakdown. He expresses no view on the merits of the complaint, on the justice of the claim of one brother over another. And he avoids the task of adjudicating over the matter, it would seem, because there are already existing mechanisms for the resolution of disputes of this nature. There are rules to be applied, lawyers to argue over them, and civil judges to apply them.

2.2 This Scriptural text might therefore be seen as an assertion or confirmation that the Christian tradition is one which is mindful of the distinction between the political and the religious spheres, and recognises the autonomy of the State and civil law from the Church and from religious law. The text might also be interpreted as a warning to the Church to avoid what may be called “the temptation of shari’a” – that is to say, the project of seeking to have the civil laws of a society mirror religiously based laws.

2.3 My concern is that the terms of certain pronouncements which have emanated from the Vatican and from individual bishops in recent years would seem to indicate that the Catholic Church has given into this temptation. The particular documents which have given rise to this concern include the following:

(i) Pope John Paul II: *Papal Address to the Roman Rota* on “Divorce and the duties of canon lawyers and of Catholic civil lawyers and judges” (28 January 2002, the Feast day of St. Thomas Aquinas); 18
(ii) Congregation for the Doctrine of the Faith: *Doctrinal Note on some questions regarding the participation of Catholics in political life* (24 November 2002, Solemnity of Christ the King)

(iii) Congregation for the Doctrine of the Faith *Considerations regarding proposals to give legal recognition to unions between homosexual persons* (3 June 2003, the Memorial of Saint Charles Lwanga and his Companions, Martyrs.)

(iv) Archbishop Raymond Burke of St. Louis, Missouri, USA: *On Our Civic Responsibility for the Common Good* (1 October 2004, the Memorial of St. Thérèse of Lisieux); and more recently his 2007 Canon Law article *On the Discipline regarding the denial of Holy Communion to those obstinately persevering in manifest grave sin.*

2.4 The second and third mentioned documents were prepared by the Congregation of the Doctrine of the Faith at a time when this Congregation was headed by Cardinal Joseph Ratzinger, now Pope Benedict XVI. It is understood that Benedict XVI is currently engaged in writing a new encyclical concerning the Catholic Church’s teaching on “natural law” and its impact on issues of positive law and politics. Some indication of the direction in which his thinking is moving on these issues may perhaps be gleaned from the first encyclicals of his pontificate, *Deus Caritas Est: on Christian love* and *Spe Salvi: on Christian hope* as well as from a number of his recent speeches to university political and general audiences: for example his September 2007 Address to the Conference of the Executive Committee of “Centrist Democratic International”, the international union of (primarily European and Latin American) Christian Democratic parties; his Message for the Celebration of the World Day of Peace 1 January 2008; and his January 2008 speech written for – but, in the event not delivered, to - the faculty and students at La Sapienza University in Rome.

2.5 It would be premature to anticipate the terms of any encyclical (*De fide: on Christian Faith*) so the discussion in this paper of the thought of Benedict XVI as Pope is necessarily at this stage provisional. Going by his writings to date, however, Benedict XVI would appear to tend towards a certain *Weltschmerz* and to express a significant
degree of (Augustinian?/ Lutheran?/ post-Nazi?) pessimism in relation to the powers of human reason. He seems to take the view that reason is corrupted and - citing Kant’s judgment on the French Revolution - that left to itself in this corrupt state reason alone will tend to prefer evil (a “perverted end”) rather than good. In order to see “the Good”, reason needs to be “purified” and shielded from the “dazzling effect of power and special interests”. And what shields and purifies reason (from such temptations as utilitarianism or pragmatism) is said to be faith: faith in God, faith in Christ and, ultimately, a faith in the (Catholic) Church which “liberates reason from its blind spots”.

2.6 The reasoning of the Catholic Church on moral matters is said by Benedict XVI to form a particular internally consistent discourse. But because this ethical discourse is ultimately founded upon the existence of - and a particular vision for - God, it can only properly be understood and appreciated within the context of this faith. He argues that the reasoning and conclusions of the Catholic Church on moral and ethical matters are, nonetheless, worthy of a certain respect and owed a some deference within the wider (post-Christian?/ post-Enlightenment?) society because they embody the wisdom of ages and a tradition of sustained ethical reflection over the past two millennia. For Benedict XVI it would appear that a society which fails to follow or rejects the Catholic church’s ethical strictures, preferring the lights of its own reasoning unaided by faith and tradition, is doomed. It will not achieve the goal of a well-ordered and just polity but, instead, will revert to the condition of a great robber band, a Mafia society among whom there is no honour or justice - Remota itaque iustitia quid sunt regna nisi magna latrocinia?, Benedict XVI approvingly cites Saint Augustine’s observation in the City of God.

2.7 It is not yet clear whether these various remarks of Benedict XVI emphasising on the corruption of human reason and proclaiming the State’s apparent tendency towards evil unless checked by the forces of faith represent some kind of innovation or rejection of the heretofore accepted (within 19th and 20th century Papal social teaching at least) Aristotelian-Thomist tradition of natural law – or perhaps its reformulation on (for him) more congenially Platonist lines. Little express reference appears to be made by him
in his writings to the Thomist tradition and, at times, he seems to regard the idea of natural law as a post-Reformation Protestant development rather than as part of the pre-Reformation Catholic theological appropriation of Aristotelian political thought. Thus he stated in certain remarks made just prior to his elevation to the Papacy:

“[Consequent upon the Reformation] it was necessary to elaborate a law, or at least a legal minimum, antecedent to dogma: the sources of this law then had to lie, no longer in faith, but in nature and in human reason. Hugo Grotius, Samuel von Pufendorf and others developed the idea of natural law, which transcends the confessional boundaries of faith by establishing reason as the instrument whereby law can be posited in common.

Natural law has remained (especially in the Catholic Church) the key issue in dialogues with secular society and with other communities of faith in order to appeal to the reason we share in common and to seek the basis for a consensus about the ethical principles of law in a secular, pluralistic, society. Unfortunately, this instrument has become blunt. Accordingly I do not intend to appeal to it for support in this conversation. The idea of natural law presupposed a concept of “nature” in which nature and reason overlap, since nature itself is rational. With the victory of the theory of evolution this view of nature has capsized: nowadays we think that nature as such is not rational. ... One final element of the natural law that claimed (at least in the modern period) that it was ultimately a rational law has remained, namely human rights. These are incomprehensible without the presupposition that man qua man, thanks simply to his membership in the species man, is the subject of rights and that his being bears within itself values and norms that must be discovered – but not invented. Today, we ought perhaps to amplify the doctrine of human rights with a doctrine of human obligations and human limitations. This could help us to grasp anew the relevance of the question as to whether there might exist a rationality of nature and hence a rational law for man and for his existence in the world.” 37

2.8 Doubtless more will be revealed in the anticipated forthcoming encyclical on natural law, though some commentators are already suggesting that the published views of Benedict XVI to date on law, nature and the State involve an effective abandonment of the Aristotelian-Thomist synthesis that has formed the basis of Catholic social teaching from the late 19th century on. 38 If this were indeed the case, then this would mark a fundamental shift in the political self-understanding of the role of the Church in modern society – from a position of positive dialogue with, and full participation within, society as heralded in the Second Vatican Council we may, perhaps, see a move to a withdrawal from such engagement. My fear is that the alternative model to active engagement might be instead one of a “fortress Church” which rallies to itself a “faithful remnant” while railing against the unredeemable forces of secularism, relativism and unfaithful reason without. This would have implications for all Catholic currently engaged in public life, potentially making us, with the Pope, “prisoners of the Vatican”. 39
3. Voting as Sinning and Deprivation of the Eucharist

3.1 The question of the role of Catholics in public life gained a certain topicality in the course of 2004 both in the United States (in the context of John Kerry’s candidature in that year’s Presidential election) and in the European Union - with the furore over whether there should be explicit mention of Christianity in the foreword of the proposed new European Constitution, and over the suitability of one Dr. Rocco Buttiglione (a member of the Catholic group Communion and Liberation) to be appointed an EU Commissioner in charge of its justice and anti-discrimination programme. Subsequently the appointment in the UK of Ms. Ruth Kelly, a member of Opus Dei, to the Cabinet post of Secretary of State for Education has also raised the issue of the compatibility of duties of an individual’s Catholicism with the carrying out of public political duties.

3.2 The issue came to particular prominence in 2004 as a result of the public pronouncements by a number of US Bishops that they would refuse Communion to Catholic politicians, who in their work as legislators were deemed by the bishop to have shown “support” for abortion or the legalisation of euthanasia, or stem-cell research, or for same sex marriage. The idea of using ecclesiastical discipline as a sanction against “wrongful” voting by Catholics came as something of a surprise to many. However, in January 2004 Bishop Raymond Burke - then bishop of the diocese of LaCrosse, Wisconsin - published a formal “canonical notification” in the diocesan newspaper in which he stated that Catholic politicians, who in their work as legislators were deemed by the bishop to have shown “support” for abortion or the legalisation of euthanasia, would not be admitted to Communion within “his diocese”. Bishop Burke was subsequently installed as Archbishop of St. Louis, Missouri. As Archbishop, he specified that the Catholic US presidential candidate, John Kerry would be refused communion and that individual Catholic voters who voted for him in the election should also be excluded from communion until such time as they had confessed and repented their “sin” in voting for such “a pro-choice politician”. We saw, then, the paradoxical position of a Catholic prelate effectively campaigning against the Catholic candidate for high public office and favouring, instead, the candidacy of the professed born-again Methodist-Evangelical incumbent, George W. Bush. Another American bishop, Bishop Michael Sheridan of Colorado Springs, also stated that the act of voting for politicians whom he judged to
have fallen into error on the issue of the regulation of abortion and the legalization of gay marriage constituted a serious sin. In a Pastoral letter issued in May 2004 he stated:

“There must be no confusion on these matters. Any Catholic politicians who advocate for abortion, for illicit stem cell research or for any form of euthanasia ipso facto place themselves outside full communion with the Church and so jeopardize their salvation. Any Catholics who vote for candidates who stand for abortion, illicit stem cell research or euthanasia suffer the same fateful consequences. …

As in the matter of abortion any Catholic politician who would promote so-called ‘same-sex marriage’ and any Catholic who would vote for that political candidate place themselves outside the full communion of the Church and may not receive Holy Communion until they have recanted their positions and been reconciled [with God and the Church] by the Sacrament of Penance.”

3.3 It is perhaps worthy of at least passing note that these same bishops appeared willing to continue to give Communion to Catholic politicians and judges who supported the continued use of the death penalty in the United States, who were in favour of the pre-emptive military strike on Iraq, and who supported the continued stock-piling of nuclear weapons and other weapons of mass destruction by Western interests. In response to these individual bishops’ pronouncements, the US bishops’ conference issued in June 2004 a public statement - Catholics in political life – in which they appeared to uphold an individual bishops’ right to proclaim such diocese-specific “excommunications” while allowing that:

“bishops can legitimately make different judgments on the most prudent course of pastoral action”.

3.4 The approach of the then Cardinal Ratzinger (now Pope Benedict XVI) to the issue was, perhaps, more nuanced than some of the more rigorist American bishops, such as Burke and Sheridan. In a memorandum to the President of the US Catholic episcopal conference he stated that a Catholic politician who consistently campaigned and voted for permissive abortion and euthanasia laws - and any individual Catholic who deliberately voted for a politician “precisely because of the candidate’s permissive stand on abortion and/or euthanasia” - would be guilty of “formal co-operation in evil” and therefore would be deemed “unworthy” to present himself or herself to Communion. Cardinal Ratzinger did leave open the possibility that an individual voter might have “proportionate reasons” for voting for such a candidate despite their stand on abortion and/or euthanasia. The Cardinal asserted, too, that “not all moral issues have the same moral weight as abortion and euthanasia”. While the Catholic Church has always and everywhere taught that
abortion and euthanasia “intrinsically evil” he said that it had not shown such consistency as regards the death penalty or just war. Accordingly Cardinal Ratzinger allowed that:

“there may be legitimate diversity of opinion, even among Catholics, about waging war and applying the death penalty but not however with regard to abortion and euthanasia.”

3.5 Archbishop Burke came back into the fray with the publication, on 1 October 2004, of a new pastoral letter entitled On Our Civic Responsibility for the Common Good in which he expanded on his earlier positions, and stated that individuals had a moral duty both to vote and to use that vote against any candidate supporting, inter alia, same sex marriage no matter that vote candidate’s position on any other issues. He noted:

“As Archbishop … I write now to assist you in informing your consciences as fully as possible, regarding your responsibilities as a citizen. I do not claim to be wise and can offer no wisdom of my own. What I give you is the wisdom of the Church, the wisdom of Christ.[…] Some Catholics have suggested that a candidate’s position on the death penalty and war are as important as his or her position on procured abortion or same sex marriage. This, however, is not true. Procured abortion and homosexual acts are intrinsically evil and as such can never be justified in any circumstances. Although war and capital punishment can rarely be justified, they are not intrinsically evil. Neither practice includes the direct intention of killing innocent human beings. In some circumstances, self-defence and defence of the nation are not only rights but responsibilities. Neither individuals nor governments can be denied the right of lawful defence in appropriate circumstances.[…]

But there is no element of the common good, no morally good practice that a candidate may promote and to which a voter may be dedicated which could justify voting for a candidate who also endorses and supports the deliberate killing of the innocent, abortion, embryonic stem cell research, euthanasia, human cloning or the recognition of a same sex relationship as legal marriage. These elements are so fundamental to the common good that they cannot be subordinated to any other cause, no matter how good.”

3.6 And Archbishop Burke has unequivocally indicated his dissent from the position taken by his fellow bishops that they might “legitimately make different judgments on the most prudent course of pastoral action” in this area. Relying in part on authorities citing the text from the Gospel of Matthew which warns against giving dogs what is holy or throwing pearls before pigs, the archbishop insists:

“The statement of the United States’ Bishops, Catholic in Political Life … failed to take account of the clear requirement to exclude from Holy Communion those who, after appropriate admonition, obstinately persist in supporting public legislation which is contrary to natural moral law.…. While the judgment regarding the disposition of the individual who presents himself to receive holy communion belongs to the minister of the sacrament, the question regarding the objective state of Catholic politicians who knowingly and willingly
hold opinions contrary to the natural moral law would hardly seem to change from place to place. [...] 

The person who persists in grave and public sin lacks the integrity of faith, which is required to receive the sacrament. [...] 

With respect to the activity of legislatures and courts, the principle makes it clear that Catholics must oppose ‘judicial decisions or civil laws that authorise or promote abortion or euthanasia’ [...] 

The discipline must be applied in order to avoid serious scandal, for example, the erroneous acceptance of procured abortion against the constant teaching of the moral law. No matter how often a bishop or priest repeats the teaching of the Church regarding procured abortion, if he stand by and does nothing to discipline a Catholic who publicly supports legislation permitting the gravest of injustices and, at the same time, presents himself to receive holy communion, then his teaching rings hollow. To remain silent is to permit serious confusion regarding a fundamental truth of moral law. Confusion is, of course, one of the most insidious fruits of scandalous behaviour. [...] 

Catholics in public office bear an especially heavy burden of responsibility to uphold the moral law in the exercise of their office, which is exercised for the common good, especially the good of the innocent and defenceless. When they fail, they lead others, Catholics and non-Catholics alike, to be deceived regarding the evils of procured abortion and other attacks on innocent and defenceless life, on the integrity of human procreation, and on the family.” 54 

3.7 And as the United States Conference of Catholic Bishops has recently noted in its guidance to Catholic voters on how to exercise their franchise:

“Pope John Paul II taught that when a government official who fully opposes abortion cannot succeed in completely overturning a pro-abortion law, he or she may work to improve protection for unborn human life, “limiting the harm done by such a law” and lessening its negative impact as much as possible (Evangelium Vitae, no. 73). Such incremental improvements in the law are acceptable as steps toward the full restoration of justice. 55 However, Catholics must never abandon the moral requirement to seek full protection for all human life from the moment of conception until natural death.” 56 

3.7 Whether or not this stark approach to the issues - which would appear at times to reduce Catholic social teaching ultimately to whether or not an intentional abortion be treated in the same way as murder, and subject to the full force and rigour of the criminal law which applies to any wilful taking of a human life – does, in fact, accurately reflect the full tradition of Church teaching under which Catholics are exhorted fully to participate in public life and “to reject as unacceptable all forms of violence, to promote attitudes of dialogue and peace and to commit themselves to establish a just international and social order” 57 - is a matter for another paper. One may note at this stage, however, the words of the late Pope John Paul II in his encyclical letter Ecclesia de Eucharistia: 58
“Many problems darken the horizon of our time. We need but think of the urgent need to work for peace, to base relationships between peoples on solid premises of justice and solidarity, and to defend human life from conception to its natural end. And what should we say of the thousand inconsistencies of a globalized world where the weakest, the most powerless and the poorest appear to have so little hope! It is in this world that Christian hope must shine forth!”

3.8 Although the point has not in terms been raised, the logic of the bishops’ position - at least within the US constitutional context - should surely lead them also to direct their threats of ecclesiastical sanctions against those Catholic judges who fail to favour the “pro-life/pro-family position” in cases before their courts. In particular, as we have noted a majority (five) of the nine current justice of the US Supreme Court, including the Chief Justice, are Catholic. Should Archbishop Burke not also be threatening to withhold communion to these Catholic Justices on the basis of how they vote and reason in particular cases before them? In particular, the Supreme Court Justices’ failure or delay in overturning the 1972 case of Roe v. Wade - which declared that access to abortion was a right covered by the implicit right (read into the US Constitution) to respect for an individual’s private life, and that therefore federal or State laws which, on the court’s estimate, unduly restricted access to abortion would be struck down as unconstitutional – directly impacts upon the availability of abortion in the United States far more than, say John Kerry’s voting record in the US Senate. And just five individuals’ votes US Supreme Court could result in the de-constitutionalisation of abortion and the restoration of its regulation to the legislatures of the individual States.

3.9 Article VI of the US Constitution states that “all executive and judicial officers, both of the United States and of the several States shall be bound by oath or affirmation to support the constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States”. And the terms of the judicial oath are provided for in 28 U.S.C. § 453 (2000) as follows:

“Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office:

‘I, _____ _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God.’
But following Benedict XVI’s and John Paul II analysis of the requirements of “justice” and “equal right” a judge who reached judicial decisions which protected or promoted, for example abortion rights or same-sex marriage would not in fact be administering “justice” or doing “equal right”. Thus if one takes those Papal claims seriously the very judicial oath would seem, on its face, to be permeable to considerations derived from the social teaching of the Catholic Church. And if the Constitution of the United States and laws “properly so called” are understood as being instruments intended to achieve “justice” rather than “injustice” then the way is open to specifically Catholic interpretation of those laws and that constitution by those who hold themselves out as both faithful Catholics and faithful judges. Thus Cardinal Levada, formerly archbishop of San Francisco and now the former Cardinal Ratzinger’s successor as head of the Vatican Congregation on the Doctrine of the Faith, has asserted that:

“Supreme Court decisions are not infrequently changed or reversed over time. The Dred Scott decision on slavery is perhaps the most cited case in point. The Supreme Court’s judgment about the application of the Constitution should also be guided by principles of the moral law.”

But if the votes of the Supreme Court Justices are to be determined not (just) by the terms of law or the intention of the Framers of the constitution, but (also) by wholly external considerations such as the requirements of the religion of the particular judge (as told to them by their bishops) is there not a problem about separation of powers and of the separation between Church and State? One suspects that any explicit episcopal attempt to dictate to Catholic judges would result in a backlash against religious interference in the affairs of the State. But it is not immediately clear why - for other than prudential reasons - the bishops should not be seeking to assert their authority over those of their flock who hold judicial office, just as they have sought to assert it over those who or seek executive or legislative office, and over those citizens who might vote them into such office. Or is it simply that judges who consider themselves conscientious Catholics should simply recuse themselves from hearing abortion cases (thereby, in its present Catholic majority make-up, rendering the Supreme Court always non-quorate ever to re-consider or over-rule Roe v. Wade).

For the purposes of the present paper the interesting thing about these controversies is that they seem to indicate a growing readiness on the part of sections of the Catholic hierarchy directly to intervene in the political sphere and threaten the use of ecclesiastical sanctions
against Catholic politicians and Catholic voters if they fail to act in accord with the bishops’ instructions. But what sort of model of the relationship of Church to State do any such instructions to politicians and voters suppose? And is such a model compatible with the possibility of Catholics continuing to participate at all in public life – as legislators, judges, administrators, and indeed voters - within liberal pluralist democracies?


4.1 But what is the problem? The bishops protest that all that they are doing in making their public pronouncements is exercising the prophetic and teaching function that inheres in their episcopal office. They would say that they are not illicitly interfering in the political sphere, but are simply reiterating the Church’s constant social teaching on respect for life and on matters of sexual ethics. They are just doing their job. But of course they are not just teaching; they are directing, they are giving orders and issuing threats. Their claim is that it is “sinful” and threaten damnation for a Catholic voting in a particular way and they seek to impose such sanctions as they have at their disposal – exclusion from Communion – in an apparent attempt to enforce uniformity and discipline among their flock. Theirs, then, is a model of society in which people can be told how to vote and punished – at least ecclesiastically - if they fail to exercise the vote in the required manner.

4.2 If the bishops’ threatened use of Church disciplinary measures against the recalcitrant “liberals” were successful, and the faithful then obeyed their instructions on the use of their franchise, what would then be created would be a Catholic bloc vote, which could be delivered on call. The bishops would thus become powerful political players, of similar influence and importance to the trade union barons of old Labour (in a United Kingdom context) or to the lords of Tammany Hall. In this way the institutional Church might increase its power within civil society – even where Catholics form a minority of the electorate - and politicians would once again fear the wrath and condemnation of turbulent priests.
4.3 The legislature (and courts) within such a society - in which Catholic voters voted for the political candidate favoured by the bishops, and where Catholic citizens, legislators (and judges) voted in accordance with the bishops’ moral instructions - might be expected to push through a radical legal programme. Given the tone of some of the more recent pronouncements emanating from the Vatican this specifically “Catholic agenda” might include such issues as:

- the acceptance within domestic jurisdictions of the binding and enforceable nature of international (humanitarian) law and, specifically, the State’s acceptance of the jurisdiction of the international criminal court over its nationals;
- the domestic re-criminalisation of abortion and the banning of IUDs and the morning-after pill;
- the outlawing of human embryonic stem cell research and any therapeutic or reproductive cloning of human embryos;
- strict regulatory control on the use of human in vitro fertilisation with a view to avoiding the creation of “excess embryos” and the prohibition of surrogacy and donor arrangements in relation to assisted pregnancy;
- strengthening the laws against euthanasia or any physician assisted suicide;
- the improvement of prison conditions and the abolition (except, perhaps, in the most extreme circumstances) of the death penalty;
- limitation on the availability of contraceptives and the positive promotion of a sex education curriculum directed against the fostering of a “contraceptive mentality”;
- withdrawing legal recognition from unmarried de facto family relationships;
- making divorce more difficult, and - conceivably - also prohibiting remarriage after divorce;
- supporting measures aimed at allowing women to participate equally and without suffering discrimination in the workplace;
- promoting measures aimed at integrating people with disabilities within society, and particularly to ensure their non-discrimination within the workplace;
- withdrawal of the protection of any anti-discrimination legislation covering sexual orientation and a veto over any possible legal recognition of same sex unions; and
- the licensing and encouragement of (beneficial) bio-technological innovations (including genetic modification) in the area of plant and (non-human) animal life.
4.4 The passing and enforcement of such a legislative programme would *not* depend on there being a general consensus among the electorate, or even a majority opinion in their favour, since legislation of this nature would be intended to instantiate the “Natural Law” which sets out the objective standards of justice and morality applicable to all. As John Paul II wrote:

“Democracy cannot be idolized to the point of making it a substitute for morality or a panacea for immorality. Fundamentally, democracy is a ‘system’ and as such is a means and not an end. Its ‘moral’ value is not automatic, but depends on conformity to the moral law to which it, like every other form of human behaviour, must be subject. … [T]he value of democracy stands or falls with the values which it embodies and promotes…. The basis of these values cannot be provisional and changeable ‘majority’ opinions, but only the acknowledgment of an objective moral law which, as the ‘natural law’ written in the human heart, is the obligatory point of reference for civil law itself.

[…]

Even in participatory systems of government, the regulation of interests often occurs to the advantage of the most powerful, since they are the ones most capable of maneuvering not only the levers of power but also of shaping the formation of consensus. In such a situation, democracy easily becomes an empty word.

It is therefore urgently necessary, for the future of society and the development of a *sound* democracy, to rediscover those essential and innate human and moral values which flow from the very truth of the human being and express and safeguard the dignity of the person: *values which no individual, no majority and no State can ever create, modify or destroy, but must only acknowledge, respect and promote.*”

4.5 In similar vein, Cardinal Ratzinger, shortly before his election as Pope, observed as follows:

“[M]ajorities too can be blind or unjust, as history teaches us very plainly. When a majority (even if it is an utterly preponderant majority) oppresses a religious or racial minority by means of unjust laws, can we still speak in this instance of justice or indeed, of law? In other words, the majority principle always leaves open the question of the ethical foundations of the law. This is the question whether there is something that can never become law but always remains injustice; or to reverse this formulation, whether there is something that is of its very nature inalienably law, something that is antecedent to every majority decision and *must be respected by all such decisions.*”

4.6 These radical “Catholic” laws (and judicial decisions) would seem, then, to gain their binding force and legitimacy not from any consent of the people, but from the fact that they are said to reflect the world as God intended it. The model assumes that it can be said that God created man – and the rest of creation – with a fundamentally fixed “nature” or essence. It further assumes that by careful observation, it is possible to discern certain “natural laws” which govern the appropriate exercise of that nature. These natural law are in principle immutable – since human nature is said to be an unchanging “given”. 
And all and any action contrary to these natural laws will be, in all circumstances, objectively immoral since contrary to nature and to God’s purpose. 92

4.7 Further it assumes that the civil law of the State should reflect and enforce these moral norms of natural law. As the Congregation for the Doctrine of the Faith put it:

“Civil law cannot contradict right reason without losing its binding force on conscience. Every humanly-created law is legitimate insofar as it is consistent with the natural moral law, recognized by right reason, and insofar as it respects the inalienable rights of every person.” 93

And in Evangelium Vitae, John Paul II stated that:

“The doctrine on the necessary conformity of civil law with the moral law is in continuity with the whole tradition of the Church”. 94

4.7 By contrast, however, St. Thomas Aquinas held that it was not the business of human law either to restrain all moral vices, or to require all virtuous acts. Immorality did not map directly on to illegality. 95 This apparent collapsing of the careful distinctions made by Aquinas in these more recent Vatican and Papal pronouncements does look as if the temptation of shari’a, outlined at the outset, has been given into by the Catholic Church, and that the idea of a proper divergence between the moral order and the civil law has been lost sight of. And the failure to recognise the independent dignity and integrity of the system of the positive law of civil society as itself creating a normative order of binding obligations - regardless of its supposed consistency or congruence with the moral order - seems to have arisen from a profound lack of sympathy on the part of the Vatican with legal developments, particularly occurring in Western democratic societies in the areas of sexuality, family and life issues.

4.8 What, then, is the difference between such an agenda, and the calls made by radical Islamists for the imposition in all Muslim countries of shari’a law, based on the Qu’ran, sayings of the Prophet and the subsequent writings of Islamic scholars? 96 Why, for example, should Catholic prelates not be calling for the (re-)criminalisation of adultery such as was recently proposed in Turkey. Adultery is after all a clear breach of one of the Ten Commandments, an objectively immoral act which undermines the family and therefore, on Catholic teaching, the very basis for civil society?
4.9 Paradoxically, the push for a “Catholic” legal agenda such as that outlined above would, if anything, be more radical in its scope than the Islamic programme. This is because the Church contends that the moral standards which it seeks to proclaim are not simply mandated by any specific Divine revelation or founded on any authoritative religious text, but are instead discernible as the products of rational reflection on the human condition. They are therefore standards which everyone, regardless of religious belief or culture, can properly be expected to recognise and affirm. 97 As is stated in *Veritatis Splendor*:

“Only by obedience to universal moral norms does man find full confirmation of his personal uniqueness and the possibility of authentic moral growth. For this very reason, this service is also directed to *all mankind*: it is not only for individuals but also for the community, for society as such. These norms in fact represent the unshakable foundation and solid guarantee of a just and peaceful human coexistence, *and hence of genuine democracy*, which can come into being and develop only on the basis of the equality of all its members, who possess common rights and duties. *When it is a matter of the moral norms prohibiting intrinsic evil, there are no privileges or exceptions for anyone.* It makes no difference whether one is the master of the world or the ‘poorest of the poor’ on the face of the earth. Before the demands of morality we are all absolutely equal. […]

Even though intentions may sometimes be good, and circumstances frequently difficult, *civil authorities and particular individuals never have authority to violate the fundamental and inalienable rights of the human person*. In the end, only a morality which acknowledges certain norms as valid always and for everyone, with no exception, can guarantee the ethical foundation of social coexistence, both on the national and international levels.” 98

4.10 But it is rather difficult to fit in this high theocratic vision with the democratic ideals to which Western civil societies now adhere, and which our politicians so zealously seek to spread among the nations of the developing and of the Islamic worlds. The bishops’ vision of the City of God being realized on earth leaves little room in it for the (potentially various) voices of the people. This is a problem.

5. **CATHOLICISM, CONSCIENTIOUS OBJECTION AND UNJUST LAWS**

5.1 And in the interim, while waiting for the establishment of this Godly State, what do the bishops tell us should be the attitude of Catholic Christians to those apparently objectionable civil laws which still hold their place in the statute book on the constitutional or fundamental rights rulings of the courts? The Catholic bishops’ critique of such laws has, of late, tended to use the language of fundamental or human rights. Thus, in the Vatican’s *Compendium of the Social Doctrine of the Church* the following is stated:
“The movement towards the identification and proclamation of human rights is one of the most significant attempts to respond effectively to the inescapable demands of human dignity. […] The ultimate source of human rights is not found in the mere will of human beings, in the reality of the State, in public powers, but in man himself and in God his Creator. These rights are ‘universal, inviolable, inalienable’. Universal because they are present in all human beings without exception of time, place or subject. Inviolable insofar as ‘they are inherent in the human person and in human dignity’ and because ‘it would be vain to proclaim rights, if at the same time everything were not done to ensure the duty of respecting them by all people, everywhere, and for all people’. Inalienable insofar as ‘no one can legitimately deprive another person, whoever they may be, of these rights, since this would do violence to their nature’.”  

5.2 And Church authorities have relied upon the right to freedom of religion and freedom of expression as the basis for asserting their own entitlement to intervene in issues of public policy which impact upon issues of morality.  

5.3 The problem with many of the documents emanating from the Vatican (and some of the more politically activist bishops) is that they show little or no awareness either of what use of the language of human rights within the context of a civil democratic society commits them to as a matter of process. And there seems little awareness, at times, of the complexities involved in the process of the rule of law and the fact that fidelity to the values of legality and constitutionality is itself a moral requirement for participation in the public life of a democracy.  

5.4 Instead the model for the relationship of the individual to the State which is put forward is that the individual’s obedience to the laws of the State (no matter the position he holds within the State) is always contingent on a judgment that those laws conform to the demands of God, as mediated through His Church. Thus the Catechism of the Catholic Church states:

“The citizen is obliged in conscience not to follow the directives of civil authorities when they are contrary to the demands of the moral order, to the fundamental rights of persons or the teachings of the Gospel. Refusing obedience to civil authorities, when their demands are contrary to those of an upright conscience, finds its justification in the distinction between serving God and serving the political community.”

and in Evangelium Vitae, John Paul II stated that:

“Laws which authorize and promote abortion and euthanasia are … radically opposed not only to the good of the individual but also to the common good; as such they are completely lacking in authentic juridical validity. … [A] civil law authorizing abortion or euthanasia
ceases by that very fact to be a true, morally binding civil law. Abortion and euthanasia are thus crimes which no human law can claim to legitimize. There is no obligation in conscience to obey such laws; instead there is a grave and clear obligation to oppose them by conscientious objection[...]

It is precisely from obedience to God -to whom alone is due that fear which is acknowledgment of his absolute sovereignty-that the strength and the courage to resist unjust human laws are born. It is the strength and the courage of those prepared even to be imprisoned or put to the sword, in the certainty that this is what makes for ‘the endurance and faith of the saints’ (Rev 13:10).”

5.5 There is a paradoxical reliance in this passage on the primacy of individual conscience – apparently otherwise denied (at least by those such as Archbishop Burke) to legislators, judges and voters – and the use of the language of the Apocalypse to deny the binding nature, and legal validity, of laws with which the Church is in disagreement. Comparisons are drawn with the early Christian martyrs of Ancient Rome. At the same time, however, John Paul II sought the protection of the civil law for those who would disobey those laws from which the Church dissents, noting:

“[M]orally upright people ... have a right to demand not to be forced to take part in morally evil actions. Sometimes the choices which have to be made are difficult; they may require the sacrifice of prestigious professional positions or the relinquishing of reasonable hopes of career advancement.[...]

To refuse to take part in committing an injustice is not only a moral duty; it is also a basic human right. ... Those who have recourse to conscientious objection must be protected not only from legal penalties but also from any negative effects on the legal, disciplinary, financial and professional plane.”

5.6 What the late Pope seemed to be calling for was a legally guaranteed right for individuals - in the name of individual conscience - to dissent from and oppose laws with which that individual is in moral disagreement. But it is difficult to see how any legal system within a democratic society could give carte blanche for its citizens to engage such a pick-and-choose approach to legality. Indeed such an attitude to the civil law taken by the Church authorities may be seen to parallel the accusations that are made against (liberal) Catholics who seek to engage in debate over certain aspects of official Church teaching that they are indulging in “à la carte Catholicism”. The Church is in danger of indulging in “à la carte constitutionalism” when it states:

“The right to conscientious objection

It is a grave duty of conscience not to co-operate even formally in practices which although permitted by civil legislation are contrary to the Law of God. Such co-operation can never
be justified, not by invoking respect for the freedom of others nor by appealing to the fact that it is foreseen and required by the civil law. …

The right to resist

Recognizing that natural law is the basis for and places limits on positive law means admitting that it is legitimate to resist authority should it violate in a serious and repeated manner the essential principles of natural law. Saint Thomas Aquinas writes (in Summa Theologiae Ila-IIae q 104 a. 6 ad 3um) that ‘one is obliged to obey … insofar as it is required by the order of justice.’ Natural law is therefore the basis of the right to resistance.

There can be many different concrete ways this right may be exercised; there are also many different ends that may be pursued. Resistance to authority is meant to attest to the validity of a different way of looking at things, whether the intent is to achieve partial change, for example, modifying certain laws, or to fight for radical change in the situation.…

The gravity of the danger that recourse to violence entails today makes it preferable in any case that passive resistance be practiced, which is ‘a way more conformable to moral principles and having no less prospects of success’.  

5.7 But the simple (repeated) assertion that a law which the Church considers to be unjust is neither morally or legally binding on individuals – and that these individuals have a duty to resist such laws - in fact, fails to do justice to a complex and weighty problem. It appears, on its face, to contravene traditional Catholic moral teaching in suggesting that the good end (achievement of a result consistent with Church teaching) justifies the means (disobeying the duly enacted law). If the Church is indeed going to promote conscientious objection to the laws of civil society it needs to do better than that.

5.8 True conscientious objection, instead, has to be rooted in fidelity to the legal values of civil society, and to the democratic process which produced the whole corpus of law. Otherwise it becomes nothing more than a manifestation of contempt for the laws and the political system which sustains it.

6. RESPECT FOR HUMAN RIGHTS AS A DEMOCRATIC PRINCIPLE

6.1 As we have seen, documents emanating from the Popes, the Curia and the bishops have increasingly been willing to use the language of human rights (although the Vatican itself has not subscribed to the European Convention on Human Rights ). And the institutional Church has shown itself willing to criticise certain aspects of the laws of civil society because of their alleged incompatibility with human rights – for example in relation to the right to religious freedom. As the Code of Canon Law states:
“[T]he Church has the right always and everywhere to proclaim moral principles, even in respect of the social order, and to make judgments about any human matter in so far as this is required by fundamental human rights or the salvation of souls” \(^\text{112}\)

6.2 Of course, if the Church is willing to use human rights language to criticise civil society, it has also to be open to the possibility that it and its actions may itself be judged and criticised under reference to these self-same human rights standards. \(^\text{113}\) As is recognised in the *Compendium of Social Doctrine of the Church*:

“The Church profoundly experiences the need to respect justice and human rights within her own ranks.” \(^\text{114}\)

6.3 But the main problem with the use of human rights language by the institutional Church to criticize those laws of civil society with which it is in disagreement is that the Church uses the language of human rights as if it were simply another way of talking about “natural law”, and that the Church is doing nothing more than translating (what it states to be) its constant teaching on the requirements of morality in any given situation into intelligible contemporary terms and language.

6.4 I would argue, however, that in using the language of human rights in this way, the Church authorities are making a basic category or framework error. This attempt at aggiornamento in the type of language used so to convey and communicate the Church’s moral teaching in (what is thought to be) a more readily intelligible (and universally acceptable) species of discourse has engendered confusion and not illumination.

6.5 In Catholic teaching “natural law” is a specifically Christian theological account of what makes action by human beings into moral actions, and of what gives human (positive) laws their prescriptive or binding force. But contemporary fundamental rights talk is not about theology, nor is it about virtue (which is surely the proper focus for any Christian morality). Instead, “fundamental rights talk” is best understood as the articulation of a political statement or attitude, that the power of the State is not to be seen as unlimited. And one concrete expression of this limitation on power is that the State and its agents can be held to account - as a matter of law - for conduct which is held to be incompatible with respect for certain basic values. Contemporary fundamental rights
talk, then, arises from the particular historical experience of seeing (particularly in Nazi Germany) how far untrammelled State power can be used to abuse individuals. It seeks to protect individuals from the State and its agents. Its focus is individualistic. Its methods are legalistic. And its end is preservation of self-interests. It does not fully address the issue of the duties and responsibilities owed by individuals to others, or the interests of the community over and against the individual.

6.6 In apparently translating its claims of morality into the language of human rights, the Church fails to take due account of the political (and specifically the democratic) context within which fundamental rights talk is now embedded. In so de-contextualising, de-democratising and de-historicising human rights there is a danger that the Church misunderstands and misrepresents them.

6.7 Further, the claim that “democracy” and the processes of the rule of law have a central value in and of themselves has no direct counterpart in the traditions of unreformed Catholic Christianity. The contemporary Roman Church – in stark contrast, say, to the Presbyterian Church of Scotland – is not a democracy (the laity have no vote in its governance) nor has it apparently any aspiration to be such. 115

6.8 As we have noted, the context within which the adoption of legally enforceable statements of fundamental rights which the States authorities bind themselves to obey is, for the most part, a post-World War II phenomenon. It may best be understood as a reaction to the perversion of the form of the law that was engendered within the Nazi State, and the consequent corruption of those who participated as lawyers and judges within that system. 116

6.9 The unique horror of the Nazi system is that it purported to maintain the forms of law and legality, while permitting tyranny and injustice to reign. The omnipresent mark of the authority of the Nazi State was the “Fasces”, a symbol originally taken by Mussolini from Ancient Rome, which showed an axe surrounded by birch or elm rods bound together by a red strap. The very name “Fascism” is derived from their use of this symbol. The rods symbolised the power of the State authorities to carry out corporal
punishment upon individuals found guilty of infractions of the law. The axe symbolised the power of the State to impose the death penalty upon law-breakers. Fascism, then, carried a constant symbolic assertion by the ruling authorities’ powers of punishment, indeed of life and death, over all those under its rule.

6.10 Under the Nazi State, however, the legal system not only provided for punishment and death. It allowed for torture to be used against individuals. It routinely reversed the presumption of innocence and the principle that criminal legislation should not be applied retrospectively. It legislated for people to be held in slavery and conditions of forced labour. Under its “Nuremberg laws” it grossly interfered in the rights to privacy of those under its rule, and denied them rights to free expression, free assembly and to freedom of thought, conscience and religion. The Nazi authorities in the name of “eugenics” withdrew from certain individuals the right to marry and to found a family. Notoriously, they discriminated amongst the populations under their control on the grounds of “race”, religion, national and social origin and political or other opinion. In the words of the Nuremberg War Crimes Tribunal the Nazi legal system was one which nurtured

“a nation-wide government-organised system of cruelty and injustice, in violation of the laws of war and of humanity, and perpetrated in the name of law by the authority of the Ministry of Justice and through the instrumentality of the courts. The dagger of the assassin was concealed beneath the robe of the jurist”. 117

6.11 The response to the horrors and excesses of the Nazi State and its so called “legal system” – which purported to “legitimize” discrimination against, and ultimately to seek the expropriation and wholesale extermination of the Jews of Europe - was for jurists to come together to set out, both in international Charters and national constitutional documents, the actual substance of the moral underpinnings to the domestic law of States. Thus, the United Nations proclaimed the Universal Declaration of Human Rights in 1948. Regional agreements further expounding the principles of international humanitarian law were also entered into, notably the 1950 European Convention on Human Rights. The post-War German national constitution, the Grundgesetz, set out a list of basic rights which the German State was henceforth bound to accept and which could not be changed or abrogated by any constitutional amendment. In the post-War process of decolonization, too, States newly independent of the British Empire were given written
constitutions containing bills of fundamental rights modelled on the European Convention. And in the years after the War, Canada, New Zealand and South Africa created and incorporated their own Bills or Charters of Fundamental Rights and Freedoms.

6.12 These human rights declarations and charters and developments in the common law were intended to incorporate, post-Nuremberg, the insight that untrammelled State power can lead to great evil and therefore of the need to set legally enforceable limits – based on fundamental values – on what the State might legitimately do and require of those within its jurisdiction.

6.13 While this addressed the issue of the State’s power vis à vis the individual, the other main insight gained post-Nuremberg concerned the individual’s relationship to the State. In particular, an attitude of unquestioning obedience by an individual before authority was also seen to lead to the possibility of great moral evil. Thus judges in the Nuremberg trial process rejected the “only following orders” or a defence of acting in accordance with Nazi “law” at the time as a valid defence to the trial and punishment of individuals for their acts or omissions deemed to be criminal “according to the general principles of law recognized by civilised nations” on the basis that “crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.” Individuals would not be permitted to abdicate their moral or legal responsibility for their actions, even when sanctioned by the State authorities.

6.14 With the possible exception of the United States, then, almost every other nation experienced significant constitutional change or development since World War II, whether through the creation of the European Union, the dismantling of Communism, the process of decolonisation, the transformation of Empire into Commonwealth, or the ending of apartheid. A central part of that constitutional change was the incorporation into the structures of the States the insights gained from the post-Nuremberg experience, in particular the need to protect individuals’ fundamental rights and set substantive limits on the powers of the State and also to emphasise the continuing responsibility of
individuals to examine question the demands of power and authority and not to lapse into habits of unthinking obedience thereto.

6.15 This embracing and incorporation of fundamental rights standards within national legal systems post-Nuremberg may be seen as a memorial for or legal monument to the victims of Nazism. The creation of this monument in so many States was also part of a specifically democratic process – being a conscious rejection of the evils and excesses seen in totalitarian dictatorships. Human rights charters were seen to embody the essence of the “rule of law”. Making human rights into politically and legally enforceable standards within the domestic forum is seen as being fundamental to what it is to be a democracy. 122

6.16 The legal systems of most of the world may now be said to be “post-Nuremberg” in that they have incorporated (with the acceptance of human rights) the fundamental insight that law and morality are not wholly distinct and separate spheres, and that those who hold office within national legal systems have a duty to “administer justice” in accordance with humanitarian principle and not simply mechanistically to “apply laws”. For example, the Lisbon Reform Treaty (as agreed between the Governments of the currently twenty seven Member States of the European Union 123 in late 2007 and now in the process of being ratified by the national Parliaments) made this “value laden” aspect of the law and constitutions of European States explicit when it inserted the following text into the preamble and body of Treaty on European Union:

“Drawing inspiration from the cultural, religious, and humanist inheritance of Europe, from which have developed the universal values of inviolable and inalienable rights of the human person, freedom, democracy, equality, and the rule of law, … the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between men and women prevail.” 124

6.17 There is no doubt that many of these values that Western democratic States now proclaim have their roots in the Christian moral tradition. But other values – such as the importance of freedom of speech and the idea of pluralism and tolerance – have their roots in the Enlightenment rejection of institutional Christianity. And while in its 1965 declaration Dignitatis Humanae 125 the Church finally proclaimed its belief in the
importance of legal recognition of the freedom of religion, the manner in which the
fundamental right to freedom of thought, conscience and religion (guaranteed under
Article 9 ECHR) has been understood in the modern European context is not necessarily
one by which those currently holding positions of influence within the Holy See would
appear to set great store. 126

6.18 The case law of the European Court of Human Rights is to the effect that
the legitimate end which is protected under Article 9 ECHR is not the preservation of
religious doctrine as such, or the upholding of the legal status historically given to a
particular establishment, but the maintenance of the individual’s freedom to hold and
practice one’s religion in a manner which is consistent with a tolerant and pluralist
democracy and with due respect for the rights of others. Hence, not every strong
religiously based feeling, opinion or judgment which an individual might make is
protected under Article 9 ECHR. A degree of value judgment is made by civil
authorities as to which convictions – even religiously based ones - may properly claim the
protection of the Convention in a democratic society. In particular, the religious and
philosophical convictions which are protected under Article 9 ECHR are to be
distinguished from prejudices – for example, say, anti-Semitism – which however deeply
held and “religiously” based, are not regarded as being compatible with respect for human
dignity, and are not worthy of respect in a democratic society. As the English Court of
Appeal judge, Lady Justice Arden has noted:

“[T]here are forms of belief, religious and otherwise, that are not desirable in a democratic
society and there are others which are even harmful to society. … [T]o be protected by
article 9, a religious belief, like a philosophical belief, must be consistent with the ideals of a
democratic society, and that it must be compatible with human dignity, serious, important,
and (to the extent that a religious belief can reasonably be required so to be) cogent and
coherent. … I would accept that the conditions for recognition must not be set at a level
which would deprive minority beliefs of the protection that they are obviously intended to
have under the Convention.” 127

6.19 And in her monograph Freedom of Religion under the European
Convention of Human Rights Dr. Carolyn Evans concluded as follows:

“While freedom of religion or belief is an important right, the free practice of religion or
belief should sometimes be limited. Even if the believer claims an absolute and divinely
mandated obligation to behave in a particular manner, it does not follow that the State or
human rights bodies should support those claims. Religions or groups of believers may be
involved in stirring up hatred against people who do not share their beliefs and they may
actively oppose the notion of religious freedom. Religions have also tended historically to
Some within the Vatican seem to see such an interpretation of the right to religious freedom within a democratic society as in fact a disguised atheistic attack on religion; and so they rush to claim “victim status” for Catholic Christianity, battered as they see it by a new intolerant secularism. Thus it is claimed:

“Unfortunately, even in democratic societies, there still remain expressions of secular intolerance that are hostile to granting any kind of political or cultural relevance to religious faiths. Such intolerance seeks to exclude the activity of Christians from the social and political spheres because Christians strive to uphold the truths taught by the Church and are obedient to the moral duty to act in accord with their consciences.”

and that:

“[T]he marginalisation of Christianity … would threaten the very spiritual and cultural foundations of civilisation.”

In effect, the values of modern European democratic State would appear to demands tolerance of the (religiously) tolerant and, by corollary, intolerance of the (religiously) intolerant. Is this, as has been presented in certain Church circles an example of “Christianophobia”, with those public holding to traditional religious belief being presented from holding public office by an aggressive (and peculiarly Continental) anti-clerical and anti-Christian “militant secularism”? I would not see it that way. The Church publicly teaches that:

“When – concerning areas or realities that involve fundamental ethical duties – legislative or political choices contrary to Christian principles and values are proposed or made, the Magisterium teaches that ‘a well formed Christian conscience does not permit one to vote for political programme or an individual law which contradicts the fundamental contents of faith and morals’. In cases where it is not possible to avoid the implementation of such political programmes or to block or abrogate such laws, the Magisterium teaches that a parliamentary representative whose personal absolute opposition to these programmes or laws is clear and known to all, may legitimately support proposals aimed at limiting the damage caused by such programmes or laws and at diminishing their negative effects on the level of culture and public morality. In this regard a typical example of such a case would be a law permitting abortion. The representative’s vote, in any case, cannot be interpreted as support of an unjust law, but only as a contribution to reducing the negative consequences of a legislative provision, the responsibility of which lies entirely with those who have brought it into being.”
And the Congregation for the Doctrine of the Faith in its Doctrinal Note of 2002 Regarding the participation of Catholic in Public Life appears to go out of its way to condemn the sort of distinction between a politician’s private views and his public duties – which was apparently relied upon by Senator John Kerry when questioned as to his voting record on abortion - by stating:

“The lay Catholic’s duty to be morally coherent, found within one’s conscience, … is one and indivisible. ‘There cannot be two parallel lives in their existence: on the one hand, the so-called ‘spiritual life’, with its values and demands; and on the other, the so-called ‘secular’ life, that is, life in a family, at work, in social responsibilities, in the responsibilities of public life and in culture. […] (John Paul II, Apostolic Exhortation Christifideles laici, 59.)’

Living and acting in conformity with one’s own conscience on questions of politics is not slavish acceptance of positions alien to politics or some kind of confessionalism, but rather the way in which Christians offer their concrete contribution so that, through political life, society will become more just and more consistent with the dignity of the human person.”

The problem is that - in proclaiming the right to deny the validity of democratically passed laws and in instructing Catholics, where possible, to block or impede the implementation of such laws as the Church it does not agree with - a fundamental tension is introduced into any democratic polity in which Catholics participate. The point which this teaching of the Church raises for secular society is this: which moral vision can a Catholic in public life be expected to follow and implement in carrying out his or her public duties - those of the institution in which s/he or she holds office, or those of the Church of which s/he is a member? For the distinction between the religious vision of the Rule of God and the secular perspective of the Rule of Man is one which was repeatedly emphasized by Pope John Paul II and subsequently by Benedict XVI. As John Paul II noted in Veritatis Splendor:

“Today, when many countries have seen the fall of ideologies which bound politics to a totalitarian conception of the world - Marxism being the foremost of these - there is no less grave a danger that the fundamental rights of the human person will be denied and that the religious yearnings which arise in the heart of every human being will be absorbed once again into politics. This is the risk of an alliance between democracy and ethical relativism, which would remove any sure moral reference point from political and social life, and on a deeper level make the acknowledgement of truth impossible. Indeed, ‘if there is no ultimate truth to guide and direct political activity, then ideas and convictions can easily be manipulated for reasons of power. As history demonstrates, a democracy without values easily turns into open or thinly disguised totalitarianism’ (Encyclical Letter Centesimus Annus (May 1,1991), 46: AAS 83 (1991), 850).”
7. **The Moral Vision of the Democratic State**

7.1 But democracies *do* have values. The values that Western democratic States proclaim (and seek to instantiate) are those of liberty, equality, tolerance, pluralism, and respect for human rights and the structures of the rule of law. In particular, the moral vision implicit in the Western democratic State is one based on the following propositions:

(i) that all individuals have intrinsic worth and value;

(ii) that respect for this intrinsic worth can be translated into statements of fundamental rights;

(iii) that others’ respect for the individual’s rights entails correlative obligations placed upon that individual - that of respecting the rights of other individuals as equal to one’s own and of respecting the interest of the community as a whole;

(iv) that the interests of the community as a whole are to be determined by a democratic process, under which the majority’s will prevails - subject always to the duty of the majority to give due respect to others’ fundamental rights;

(v) that the creation and maintenance of a balance of mutual respect for the rights of individuals and the interests of the community, requires that institutions for open dialogue and discussion flourish – hence the importance accorded to the principle of freedom of speech, open and honest Parliamentary or Congressional debate, and the flow of information and comments through the press, broadcasting, and the internet;

(vi) that the avoidance of tyranny and abuse of power by (or in the name of) the majority, and the due protection of the fundamental rights of minorities and individuals entails that there should be independent and impartial courts whose judgments are to be respected and accepted by all parties before them, most obviously by those entrusted with political power;

(vii) that for the institutions of power (executive, legislative and judicial) to be able to work together in maintain the structures of democratic society - in which the majority leads but does not dominate or exploit the minority - there has to be an attitude of humility and contingency of views, an acceptance that one might be wrong and a consequent readiness to be open to persuasion of the rightness of other views;
(viii) that all those who participate within civil society – and most clearly those who hold public office – do so in good faith and share those values of respect for the individual, tolerance of difference, equality of treatment, and willingness to listen upon which all the civil institutions of the society are based;

(ix) that the laws duly passed under the democratic deliberative process and which have been duly found to be in accordance with the constitution and respect for fundamental rights be respected and obeyed by all parties within society, subject always to the right to continue to press for constitutionally mandated change in such laws;

(x) that, post-Nuremberg, the possibility is recognised that, in certain rare and extreme cases, an individual may feel impelled, as a matter of conscience, to break a duly enacted law of the State in order to prevent further illegal action\textsuperscript{136} but only where –

(a) the action which is sought to prevent is in fact illegal, whether under domestic or applicable international (humanitarian) law;

(b) the individual’s action is necessary in the senses that there was no legal reasonable alternative is in fact available to the actor (for example because the relevant authorities have refused or refrained from enforcing the law in relation to the illegal act)

(c) that the individual actor could reasonably and properly expect that the actions taken would be effective in impeding the illegal act;

(d) that the individual’s actions are marked by a “fidelity to legal values”, that is to say that it is proportionate, involves no possibility of harm or violence to individuals, \textsuperscript{137} and no attempt is made to avoid detection in the doing of the act

7.2 On the basis of these propositions, civil democratic society does not differ radically from the institutional Church on the question of the substantive fundamental values which it seeks to promote: human rights discourse is common to both communities. \textsuperscript{138} And in both cases it is also recognized that one of the purposes of reference to human rights is precisely to protect minorities against the possible tyranny of the majority \textsuperscript{139}
7.3 The difference between civil democratic society and the Church lies rather in two aspects. Defined negatively, it might be said that in comparison to the Church, civil democratic society shows a lack of certainty or finality in the judgments made on how those substantive values are to be realised, and on the requirements of the common good. Defined positively, civil democratic society differs from the Church in its openness to the possibility of alternative views of the good than those which currently hold sway, and in its procedures for general consideration and popular participation in the process of deliberation and decision on how we might achieve the common good.

7.4 Civil society – in contrast, it would seem, to the Church - admits its fallibility in getting the right answer, but it has procedures and institutions to allow for continued debate, and for the possibility of change in the rules and the law in this search for the right answer. Such an admission of fallibility does not mean, as is sometimes charged, that a democratic society is therefore committed to “ethical relativism”. Ethical relativism is an assertion that there is no right answer. The structures of a democratic civil society are precisely to allow for the continued search for the right answer.

7.5 And while the tendency on the part of the institutional Church has been to claim that its moral teachings have been constant, unchanging and immutable since its foundation, there is no doubt that the Church authorities have effectively changed their position over time – reflecting perhaps developments in wider society – on such issues as the morality of wars of conquest and the processes of colonialism, on slavery, on sex discrimination, on the rights of women, on freedom of individual conscience, on freedom of religion, on capital punishment, on charging interest on a loan.

7.6 The values which the post-Nuremberg democratic State has sought to incorporate and bind its institutions (public authorities) to are based on the inestimable worth of the individual as being an end in herself and never as a means. We are then now as a matter of (positive) law heirs to the Christian tradition, to the Enlightenment and to Kant. Legal positivism – the claim that the law is no more and no less than the command of the powerful no matters its content – has been routed. We are all natural lawyers now. What the democratic State bring into the realization of those values (which the Church
does not, and hence the apparent mismatch in rhetoric and practice between the two discourses) is the idea of due process, of the rule of law, the procedural rights of the defence and the like.

7.7 A civil democratic society is one which allows that where a decision has to be taken on such issues, the decision is taken on the basis of the vote of the majority of the people (or their representatives). A civil democratic society will also be a pluralist society: that is to say one which allows for the possibility of individuals holding different views of questions of political and moral importance and having the right and opportunity to express, publicise and proselytise for those views – whether it be fox hunting or abortion regulation. A civil democratic society will also be a liberal society, that is to say one which aspires or seeks to allow individuals the greatest degree of freedom to express those views, consistent with due respect for others to express opposing views.

7.8 An essential part of what it is to hold public office in a democracy is a quality or disposition of “open-mindedness”. That is to not to say that one has to be committed to a form of relativism – that there are no objective truths – but that one is open to persuasion that the truths one holds and perceives may not be the definitive or last word. This is most clearly an essential quality for those acting as judges within civil society – without an ability for detachment from one’s initial views, a capacity to suspend one’s immediate judgment on an issue and be willing to listen to argument – there can be no true act of judging impartially. But even among members of the legislature and the executive – although sometime obscured by the party whip system - the ideal is that they too should be independently minded, willing to hear other voices and having heard them, to deliberate and come to the their decision on the requirements of the common good

7.9 Human rights within civil democratic society are based on the recognition of the value of the individual human being and on the value of democratic process and the maintenance of dialogue and free expression as the only means toward the resolution of moral and political disputes. From the viewpoint of civil democratic society, it makes no sense to seek to disentangle ideas of substantive “human rights” from the deliberative and procedural matrix in which they have been engendered.
7.10 In using the language of human rights, the Church is - from the point of view of civil society - in fact committing itself to a particular moral and political vision: one which speaks of the value of the individual but which also speaks of the value and fundamental importance of democratic processes. Dialogue within a liberal pluralist democracy involves a willingness to listen as well as a readiness to speak and an acceptance of the existence of different and dissenting voices. It involves, too, an acknowledgment of the value of the procedures existing within society for the resolution of differences on questions touching on the common good – whether this be by legislation or litigation. It necessitates respect for the “rule of law”.

7.11 Any Church teaching on the proper relationship between the civil law and the “moral law” needs to take account of the fact that in the context of the democratic State, the legitimacy of each individual law comes not from the end which it achieves, but from the fact that it has passed through the democratic process and has been found, by the institutions of the State duly charged with this task, to be in conformity with respect for the fundamental rights of those falling within the care of the State.

7.12 But laws in the democratic State are not fixed and final, and its governments are not eternal. Precisely because the ideal which democracy represents is that the law continues to be responsive to and reflective of the community, there is provision for lawful change. Lawful change is brought about by using the mechanisms of a democratic society which allow for: campaigns to be mounted; petitions gathered; public discussions initiated in the press and the broadcasting media; Parliamentary and Congressional debates sponsored; and Ministers and members of the executive and the legislature lobbied all with a view to bringing change in the law, the better for it to reflect the common good and to instantiate justice. All of these are activities in which the Church may legitimately take part.

7.13 In a democracy, the approach taken is that those who object to particular laws should campaign for their amendment or repeal by the democratic legislature in accordance with the values of the constitution. But simply to claim that there is always and everywhere a right immediately to disobey the laws which the Church considers to contravene “natural
law” is to threaten the integrity of the whole legal system which sustains the democratic State, and to seek to bring it down in anarchy and with it the very institutions which exist within a democracy to facilitate dialogue and change. 143

7.14 And it is just not good enough for any implicit comparison to be made between the legal and political systems which currently exist within Western democracies with that which existed in Nazi Germany. 144 As we have seen, the case of the German legal system from 1933 to 1945 is one of a system which was systematically corrupted in its subordination to the Nazi tyranny such that all those who participated within it (and more generally in public life) were tainted by its failings. It became truly a system of and only of State oppression, such that it became no longer worthy of the name of a “legal system” because in no sense could it be said to embody or seek the common good. The only moral response in relation to such wholesale corruption was for the just to withdraw from any participation in it and, indeed, to seek to overthrow the regime – by “unlawful” or “revolutionary” means if need be – which sustained it.

7.15 It does not seem to me that that is a situation which, on any view, could be said currently to hold within the legal systems of Western democracies. But if that is indeed the Church’s assessment of those legal systems which make provision for the possibility of procured abortion, then the only option would be for the Church to instruct its members to withdraw wholly from participation in the public lives of these societies.

7.16 The overall tenor of at least the late Pope’s remarks, however, seems to be more that while he accepts that some - indeed the majority - of the laws within Western democratic systems are indeed aimed at the common good, others – notably in relation to abortion and other issues associated with respect for human life – fail to achieve this ideal. But the proper response of the Church which continues to accept the overall legitimacy of the legal systems of Western democracies cannot be to call for revolt against the system as a whole, 145 but instead to call for change in specific aspects and laws thereof. And if such change is indeed to be legitimate within the terms of the legal system it has to be one mandated by the accepted democratic and constitutional process. Accordingly, in order
to promote such change it is necessary, to engage in debate within the market place of ideas. As one Jesuit commentator has put it:

“The willingness to subject the civil law and public policy to moral critique within ecumenical political dialogue must constitute the heart of the doctrine of the necessary conformity of the moral law and the civil law in a pluralistic society. That doctrine can be most fruitfully understood as a call for critical moral reflection on contemporary standards of civil law, rather than as a dogmatic insistence on the imposition of Christian morality on a religiously pluralistic society.” 146

8. CITY OF GOD V. CITY OF MAN?

8.1 The overall problem with the theocratic vision for society which has been articulated by some of the bishops is that while they would accept that individual have fundamental rights which fall to be respected by the community as a whole, 147 they do not seem to regard the democratic process as being fundamental in the determination of the community interest. The Church, we are so often told, is not a democracy - so why should civil society be so? 148

8.2 Similarly there is no reason in this theocratic vision for any fundamental structural importance given to freedom of speech for all, since the truth is known to and will be taught by the Church, and the spreading of erroneous views is more likely to cause harm than good by tempting people, in the words of the Catechism of the Catholic Church, “to prefer their own judgment and reject authoritative teachings”. 149

8.3 And since on the theocratic vision laws gain their legitimacy not from the consent of the people, nor by the democratic process nor by their being judged constitutional by the courts, but rather from their conformity with Natural law, then there is no intrinsic respect given under this model for legality and due process. 150 Rather the theocratic Church would require conscientious objection from all its members in respect of the application of laws which it considers to be unjust.

8.4 But the theocratic approach effectively makes it impossible for Catholics properly participate in good faith within the structures of a democratic State. By virtue of the theocratic approach, Catholics in public life are enjoined to pursue the values of the
Church rather than of the State, the legitimacy of whose actions are contingent on their conforming to Catholic values and teaching. Thus Catholic voters are told that voting for a particular candidate is “sinful” and would be incompatible with their continued full participation in the life of the Church. Catholic members of the democratic legislature are then instructed not to act or vote in a manner which may be reflective of the views of the people who actually elected them to office, but instead to use their office to promote “Catholic legislation”. Catholic members of the judiciary should use their office, not to protect and uphold the values of the constitution and laws of the State, but instead to decide cases in accordance with the dictates of “Natural law”, as these are vouched to them by the bishops. And Catholic heads of government should not consider themselves answerable and accountable to the people, but instead to God and his Church. The idea that civic magistrates and leaders of the people hold office contingently on their adherence to and being in communion with the requirements of the Godly is a model of Church-State relations which was also developed in the reformed tradition by Calvin and his followers in 16th century Geneva and in 17th century Scotland.

8.5 But if the Catholic bishops are correct in their political philosophy, and that Catholicism entails theocracy, then it would seem that the post-Reformation British State – in laws which extended to its colonies in the then British North America - got it right in seeking to exclude Catholics from public office. If a Catholic is to be a servant of God and the Church, then he cannot be a servant of the State. Catholic emancipation from the 19th century onward in the United Kingdom, and the gradual admission of Catholics to the franchise, to the universities and to the great offices of State in that country (now excepting only Head of State) would appear to have been a major constitutional error.

8.6 Can the theocratic vision of (or for) the Church be reconciled with the democratic vision of the liberal pluralist State? At first glance it would seem not. For the Church, authority (and legitimacy) comes from above, God revealing his laws through his Church to the obedient and faithful people. The democratic vision is, by contrast, one in which authority (and legitimacy) comes from below: the people decide on the content of their laws, no absolute or permanent authority is conferred on those chosen to lead them, and the voice of the people is the voice of God.
8.7 Perhaps the problem is in the bishops’ implicit model for what a law is. That model seems to be one of command. A law is something telling you what to do, and if you fail to do it you will be punished. It is a demand from a superior to a subordinate, backed by threats. We may call it the “big stick theory” of legal obligation – obey or be punished. In claiming that their prescriptions as to what we ought to do will outweigh the individual’s legal obligations, what at times seems to be being offered by way of model is the “bigger stick” – obey the bishop’s prescriptions (for example in the way that you vote, either as a citizen or as a Parliamentarian) or place yourself “outside full communion with the Church and so jeopardize your Eternal salvation”, to use the language of Bishop Michael Sheridan.

8.8 The model outlined above is also a dualist (indeed almost Manichean) model. On the one hand, you have the command of the State; on the other hand you have the commands of God (as mediated through his Church) which trumps human laws. On the one hand you are a citizen of the State; on the other hand you are a citizen of the kingdom of God, to which greater loyalty is due – “we must obey God rather than men”. On the one hand you are a servant of the State; on the other hand you are a servant of God, but “no-one can serve two Masters: he will either hate the first and love the second, or treat the first with respect and the second with scorn. You cannot serve both God and Mammon”. On the one hand you may be punished by the State for disobeying its law; on the other hand far greater (eternal) punishment will come the way of those who disobey the law of God.

8.9 One possible resolution of the “two masters” problem is simply for the State to nationalise the Church and asserts the authority of the secular arm over the spiritual, with the State’s Parliament legislating for the Church, the Government making ecclesiastical (in particular Episcopal) appointments and the Head of State taking on the role of Supreme Governor of the Church. This is the model that was effectively followed in the case of the Church of England, and the Lutheran State churches of the Nordic countries. It is not a model which works so readily for a supra-national Church such as the Catholic Church, which avowedly transcends national and State boundaries.
8.10 Surely there is a way out of this impasse, because if the Church’s teaching always has primacy over one’s duties and obligations to the State, why should the State entrust any members of that Church with public office? They cannot be trusted to suborn that office to the ends of the Church? It may be that a proper understanding and presentation of the Church’s traditional Aristotelian-Thomist teaching on “natural law” - that is to say that moral prescriptions are objectively based, and may be discerned by all people of good will reflecting on the presuppositions of what it is to be human – shows us the beginnings of a way out of this deadlock? In Catholic teaching the requirements of moral action in any particular situation is not of necessity to be founded on Church dogma, or based on specific divine revelation. It is, instead, to be established by reason. And to reason in human society is to engage in discourse, to argue, to debate, to consider. The problem of course, is that the old model of “law as command” sometimes infects the Church’s pronouncement on “natural law”, such that it becomes not something which we reason and argue over as rational beings one with another, but rather simply something the Church authorities tell you to do.

8.11 But if we are to take seriously the Church’s reference to and reliance upon “natural law” as being an appeal to the rational natures of all human beings, then it may be understood as an invitation to everyone within civil society and the Church to enter into that debate – to seek in their dialogue the right answers. In remarks made on the fifth anniversary of Evangelium Vitae, there is some indication that John Paul II accepted that was not enough to insist on immediate change in civil and criminal laws which fail to conform to the Church teaching on the respect for the right to life. There must be a general campaign for hearts and minds. He stated:

“The changing of laws must be preceded and accompanied by the changing of mentalities and morals on a vast scale, in an extensive and visible way. In this area the Church will spare no effort, not can she accept negligence or guilty silence.”

8.12 Dialogue, of course, implies ground rules. Where Archbishop Burke goes wrong is that he seeks to rely on his canonical authority and issue instructions and threaten sanctions, rather than actually engage in debate with those engaged in public life. In this he turns the life issue into sectarian ones – peculiar to the Church discipline of Catholicism – rather than, as the tradition has it, of natural law, issues which all persons of good will guided by the light of reason rather than revelation will see are objectively
right. And in throwing his episcopal weight around in this way, he shows lack of respect for the democratic process and lack of appreciation that the democratic process has a moral weight *in and of itself* because it embodies the idea of the worth of each individual and seeks to reconcile individual conscience with the interests of the community.

8.13 But if the Church is indeed taking human rights seriously rather than instrumentally, it is also committed also to respecting these democratically mandated processes under which matters in dispute are resolved within civil society. This at least seems to have been accepted in principle by John Paul II when he noted in his 1991 encyclical, *Centesimus Annus*:

"The Church values the democratic system inasmuch as it ensures the participation of citizens in making political choices, guarantees to the governed the possibility both of electing and holding accountable those who govern them, and of replacing them through peaceful means when appropriate. *Thus she cannot encourage the formation of narrow ruling groups which usurp the power of the State for individual interests or for ideological ends.* Authentic democracy is possible only in a State *ruled by law*, and on the basis of a correct conception of the human person."  

9. **THE PRIMACY OF CONSCIENCE**

9.1 Perhaps the better approach in conceiving of the possibility of resolving for the individual the potentially conflicting claims of the spiritual and secular worlds would be for us to abandon altogether the language and metaphor of “masters” and “servants”, and develop instead a model which has its basis on concepts such as dialogue, mutual respect and trust and confidence. And the key to the resolution of the matter may lie once again the individual taking *responsibility* for his actions. Church and State may indeed make conflicting claims upon the individual Catholic in public life but ultimately those demands have to result in action by that individual. What is to be done and how can it be justified? We are driven inexorably back to the question of an individual’s conscience.

9.2 Traditional Catholic moral teaching has always held that individuals must be accorded the right and freedom to act in accordance with the dictates of their conscience and to be free to make a positive decision to do good and avoid evil. The whole history of salvation is one predicated on free will and the individual making a choice. The Church has also
taught that individuals have an obligation to seek to inform their consciences as to what is objectively the right thing to do. But the debate over the place of individual conscience in determining moral action seems to be bedevilled by a failure to make a distinction between the undoubted duty to inform one’s conscience, and the much more problematic question of whether an individual can properly be required to conform his conscience and actions to the demands and expectations of others.

9.3 Being a Catholic does not mean the abdication of moral responsibility for one’s own actions. As a Catholic one may be expected to have regard to authoritative texts within the Church’s tradition, including: Scripture, official Vatican pronouncements on the requirements of the moral life, and the works of theologians and exegetes. The duty to inform one’s conscience is not confined to looking at formal Church sources, however. Regard may also properly be had to, for example, the insights provided by modernity, science, medicine, psychology, philosophy, law, logic and experience. Having informed one’s conscience to the best of one’s ability, the duty of the moral agent is then to act in accordance with that informed conscience. To act contrary to that conscience is to act immorally. To purport to hand over one’s moral responsibility to another - and to act in a manner simply because told to by some external source, whether it be Archbishop Burke or Pope Benedict XVI - is to act immorally; committing, in Kantian terms, the sin of “wilful heteronomy”. As is stated in Gaudium et Spes the pastoral constitution, promulgated at the Second Vatican Council, on the Church in the modern world:

“God willed that men and women should be left free to make their own decisions, so that they might of their own accord seek their creator and freely attain their full and blessed perfection by cleaving to God. Their dignity, therefore, requires them to act out of conscious and free choice, and not by their own blind impulses or by external constraints.”

9.4 One also needs distinguish between two quite distinct concepts: namely, an individual deciding how to act morally; and an individual judging on the morality of action. In Murder in the Cathedral, T. S. Eliot has the character of St. Thomas Becket exclaim that the “greatest treason” would be “to do the right thing for the wrong reason”. This is because to act against one’s conscience is to betray oneself as a moral agent. If you act contrary to your conscience you act immorally, no matter what you do.
9.5 In Catholic tradition – and indeed to any moral philosophy which aspires to anything other than relativism - acting in accordance with conscience is not, however, sufficient to establish that an action will be judged (objectively) as being a moral one: one may well do the wrong thing, albeit in accordance with conscience and thus for the right reason. But to be judged to be moral, such action also has to be right action, that is to say action which is consonant with objective values. Ultimately then one can be said to act morally, and can be judged as having acting morally, only if one does the right thing for the right reason. The obligation to inform one’s conscience clearly seeks to ensure that one does not fall into the situation of “moral perplexity”, whereby no matter what one does, one does wrong.

9.6 As moral agents, we are impelled to try and seek a congruence between the subjective demands of conscience and the objective requirements of the good life, (commonly referred to in the Catholic Thomist tradition as “natural law”). “Natural law” cannot, however, be defined or confined simply by the terms of prescriptions contained in documents emanating from the Vatican. Instead, as Thomas Aquinas notes the natural law is “written in the hearts of mankind”. It may therefore be discerned by careful thought, reflection, and inquiry of what it is that makes sense of our lives and our human relationships, and is necessarily to be understood and determined within the particular historical context and circumstance within which we found ourselves. It is humanity’s participation - through reason and intellect - in Creation, seeking to uncover or discover the underlying “grammar of conduct” which determines how our individual lives may be rightly ordered. But it is decidedly not a mechanism for deducing exceptionless moral imperatives or rules applicable, universally, always and everywhere. What Aquinas was describing in speaking of “natural law” was, instead, an orientation or predisposition in relation to some general and axiomatic (per se nota) and obvious natural human desires. He was not seeking to read off specific principles of right (which is to say, moral) conduct from his views on what was natural to humanity.

9.7 In the Catholic (Thomist) tradition, too, natural law is distinguished from Revelation, or indeed any form of command, order or direction – whether from the civil or religious authorities – backed by sanction. It is instead a way of realising how things really are, here and now. Human beings are relational beings, and not self-sufficient. And we
begin to understand the structures and meanings of our lives together by communicating, engaging in dialogue, searching together. In theological terms, natural law describes action done in conformity with our God-given rational natures and in conformity with divine providence. Thus the natural law is realized, not in the formulation of general laws or propositions or moral precepts, but in the carrying out of things, in singular events done prudently and responsibly. For someone to “obey” the natural law (is on Aquinas’ account) not for them to implement the prescriptions of a promulgated general code: rather it is a matter of their pursuing perceived goals, fostering apprehended values, intelligently, prudently, and responsibly. And ultimately as individual moral agents we each have to make those sorts of decisions on what to do – who to vote for – ourselves, and not because an Archbishop, a Cardinal or Pope tells us what to do. As the Venerable John Henry Cardinal Newman noted:

“[C]onscience is not a judgment upon any speculative truth, any abstract doctrine, but bears immediately on conduct, on something to be done or not done. ‘Conscience,’ says St. Thomas, ‘is the practical judgment or dictate of reason, by which we judge what *hic et nunc* is to be done as being good, or to be avoided as evil.’[…]

[C]onscience being a practical dictate, a collision is possible between it and the Pope’s authority only when the Pope legislates, or gives particular orders, and the like. *But a Pope is not infallible in his laws, nor in his commands, nor in his acts of State, nor in his administration, nor in his public policy. Let it be observed that the [First] Vatican Council has left him just as it found him here.[…]*

Since then infallibility alone could block the exercise of conscience, and *the Pope is not infallible in that subject-matter in which conscience is of supreme authority, no deadlock … can take place between conscience and the Pope. … [I]ts dictate, in order to prevail against the voice of the Pope, must follow upon serious thought, prayer, and all available means of arriving at a right judgment on the matter in question. […]*

Cardinal Gousset has adduced from the Fourth Lateran [Council]; that ‘He who acts against his conscience loses his soul.’ … Of course, if a man is culpable in being in error, which he might have escaped, had he been more in earnest, for that error he is answerable to God, but still he must act according to that error, while he is in it, because he in full sincerity thinks the error to be truth.[…]

I add one remark. Certainly, if I am obliged to bring religion into after-dinner toasts, (which indeed does not seem quite the thing) I shall drink ‘the Pope’, if you please, still, ‘to Conscience first, and to the Pope afterwards’.”

9.8 Each of us will ultimately be answerable in Judgment for the actions which we ourselves do and the inaction for which we are responsible. As John Paul II stated in *Evangelium Vitae* (at paragraph 74):
“Each individual in fact has moral responsibility for the acts which he personally performs; no one can be exempted from this responsibility, and on the basis of it everyone will be judged by God himself (cf. Rom 2:6; 14:12).”

KENOSIS: THE HIERARCHY, HUMILITY AND THE BEGINNING OF DIALOGUE

10.1 The Congregation of the Doctrine of the Faith in its 2003 Communication attacking proposals for the legal recognition of same sex unions recognizes the primary importance of individual conscience, by alluding to the existence of a right (or, indeed in certain circumstances a duty) of “conscientious objection” over the demands of the law. Of necessity, that same right of informed conscientious objection has to be conceded within the institutional Church if the baptized are to remain moral agents. As the then Father Joseph Ratzinger (now Pope Benedict XVI) observed in his commentary on Article 16 of Gaudium et Spes:

“For Newman, conscience represents the inner complement and limit of Church principle. Over the Pope as the expression of the binding claim of ecclesiastical authority, there still stands one’s own conscience, which must be obeyed before all else, even if necessary against the requirements of ecclesiastical authority. This emphasis on the individual, whose conscience confronts him with a supreme and ultimate tribunal, and one in which the last resort is beyond the claim of external social groups, even of the official Church, also establishes a principle in opposition to increasing totalitarianism[…]

Conscience is made the principle of objectivity, in the conviction that careful attention to its claim discloses the fundamental common values of human existence[…]

Above all, however, conscience is presented as the meeting point and common ground of Christians and non-Christians and consequently as the real hinge on which dialogue turns. Fidelity to conscience unites Christians and non-Christians and permits them to work together to solve the moral tasks of mankind, just as it compels them both to humble and open inquiry into the truth.”

10.2 The pronouncements of the Congregation of the Doctrine of the Faith, then, may be relevant to, but are certainly not determinative on, questions as to how the individual may live a moral life, faithful to Christian values. One of the great problems with the (misuse of) natural law talk which seems to emanate from the Vatican (or Burkean bishops) is precisely its deductive certainty, its a priori-ism, its non-verifiability and non-falsifiability, its anti-empiricism. For example the official, constant refrain from Vatican approved sources that it is simply “not possible” for homosexuals to find fulfilment, complementarity or happiness within a same sex partnership because the world/Creation is so structured that that cannot be, remains unchanged even in the face of
evidence and testimony from individuals who live the life that they have found happiness and fulfilment in just such a relationship. Such testimony is dismissed as false consciousness. "Nur ein Traum war das Erlebnis, weil nicht sein kann, was nicht sein darf" as the later Benedict XVI might say.

10.3 But if the bishops are to take seriously this traditional Catholic teaching on the primacy of individual conscience and of the universal discernibility of natural law, then they are going to have to learn to:

(i) allow that individuals may, in conscience, differ as to what moral action demands of them in any particular circumstance;

(ii) allow that questions regarding how best to legislate in or regulate areas of moral dispute or controversy - where people of good will in fact reach contrary positions - are ones for the prudential judgment of the elected legislators rather than for ex cathedra pronouncements of the higher clergy;

(iii) be willing to listen and engage in dialogue within civil society and within the Church, without resorting to the use of anathema or ecclesiastical sanctions;

(iv) seek to persuade by the authority of their reasoning rather than to command obedience to their views by reason of their authority; and

(v) be willing to accept that they may themselves get it wrong.

10.4 In sum, the bishops have to learn the humility of listening to and trust the people (of God). As the Irish moral theologian, Father Seán Fagan has put it:

“The Church is not made up of two separate sections, one teaching and the other learning. In fact, the whole Church is a learning Church (including Pope and bishops), a community of believers in which we must listen to each and learn from each other. At the same time the whole Church is a teaching Church in so far as every mature Christian has, at some time or other, to play the role of teacher, magister.”

10.5 Such an approach, if adopted, would also mean that there was no longer the radical incompatibility between the principles embodied in the institutional Church and those proclaimed by Western democracies, in that both would seek to protect individual liberty of conscience, freedom of speech, equality of treatment, tolerance and pluralism. Tolerance and pluralism are not to be equated with ethical or cultural "relativism" – which is instead the claim that there is never a "right answer" to moral questions, and
that distinctions between the objectively good and evil cannot properly be made. Instead a society characterized by tolerance and pluralism is one in which it is accepted that sometimes – in areas of particular moral complexity or controversy – the right answer may not be immediately evident or clear and that individuals may, in good faith, reach different answers on these issues. It is a society which places value on the process of dialogue and discussion among differing views; one which sees that process as being necessary and valuable step for the society to seek to discern the common good for all. As was stated in *Gaudium et Spes*:

“The laity should not imagine that their pastors are always experts, that to every problem which arises, however complicated, they can readily give a concrete solution, or even that such is their mission. Rather, enlightened by Christian wisdom and giving close attention to the teaching authority of the Church, the laity need take on their own distinctive role. Often enough the Christian view of things will itself suggest some specific solution in certain circumstances. Yet it happens rather frequently, and legitimately so, that with equal sincerity some of the faithful will disagree with others on a given matter. Even against the intentions of their proponents, however, solutions proposed on one side or another may be easily confused by many people with the Gospel message. Hence it is necessary for people to remember that no one is allowed in the aforementioned situations to appropriate the Church’s authority for his opinion. They should always try to enlighten one another through honest discussion, preserving mutual charity and caring above all for the common good.”

10.6 The model for Church-State (and lay-cleric) relations which such a tolerant and pluralist society entails would be one in which neither side – Church or State – claiming to be in a relationship of hierarchy or superiority over the other. Instead, each are engaged with each other in a dialogue, a conversation in a relationship of mutual respect. But such a conversation presupposes an ability and willingness to listen and a readiness to at consider that the other may have something useful to say. It requires that neither side believe themselves to have a monopoly on the truth, because to claim such a monopoly would be to render the whole dialogue a sham and is simply a disguised reintroduction of the superiority/inferiority relationship which the model disavows from the outset.

10.7It is a model which allows members of the Church to participate fully within the public life of civil society. But crucially insofar as members of the Church do so participate, it also involves the institutional Church imposing on itself a self-denying ordinance – out of respect for the web of obligations involved in civil society and the duties of public office – to refrain from instructing its members as to how specifically they are to exercise
their responsibilities as voters or to carry out their duties as public office holders within civil society. Again Gaudium et Spes states:

“All citizens, therefore, should be mindful of the right and also the duty to use their free vote to further the common good. The Church praises and esteems the work of those who for the good of men devote themselves to the service of the State and take on the burdens of this office. If the citizens’ responsible co-operation is to produce the good results which may be expected in the normal course of political life, there must be a statute of positive law providing for a suitable division of the functions and bodies of authority and an efficient and independent system for the protection of rights.” ¹⁸⁶

The bishops (and all members of the Church exercising the office of teacher) may seek to articulate the principles of ethics and justice and the requirements of the common good, but it would be illicit for those holding office within the Church to purport to direct those holding office within civil society how to do their jobs. The duty of public office holders is to uphold the Constitution under which they hold office, not to undermine that office by seeking to further the agenda of another body or to promote values which are not compatible with the civil society in which they hold office. All that the Church can properly expect from its members participating in the public life of the polity is that they will carry out their duties in accordance with their conscience and with the civil law.

10.8Such an approach would appear to require a change of heart, a conversion experience, a metanoia, on the part of some of the hierarchy, certain of whose pronouncements in areas of particular sensitivity and complexity have perhaps not been marked out by the language of charity and humility which one might hope to see under the new model.¹⁸⁷ We may note in this regard, not only Archbishop Burke’s characterizing the commission of homosexual acts as “intrinsically evil” and as being in a more serious category of wrong-doing from imposing the death penalty or waging war, but also the more subtle intimations set out in the Congregation for the Doctrine of the Faith 2003 communication on legal recognition for same sex partnerships which bears to have been issued from the Offices of the Congregation for the Doctrine of the Faith on June 3, 2003, the “Memorial of Saint Charles Lwanga and his Companions, Martyrs”. Saint Charles Lwanga and his companions were executed - by being put to the fire and the sword - on the orders of King Mwanga of Uganda after their conversion to Christianity and, apparently, because of their refusal to submit to the King’s homosexual advances. The very dating of the document then carries with it potent images of burning, martyrdom, tyranny, homosexual desire, and denial. Is it intended to give a subliminal warning of the dangers which the
Holy Office, at least, sees as being inherent in any further social acceptance of homosexuality? It seems that for Benedict XVI - inverting St. Paul’s dictum to the Corinthians on matrimony - it would be better for homosexuals to burn than to marry.

But as the document itself notes at the outset:

“The present Considerations do not contain new doctrinal elements; they seek rather to reiterate the essential points on this question and provide arguments drawn from reason. … Since this question relates to the natural moral law, the arguments that follow are addressed not only to those who believe in Christ, but to all persons committed to promoting and defending the common good of society.”

This document is, then, inviting that its arguments be assessed and judged, not in the light of doctrine, but in the light of reason. As such it is not, and cannot be the last word on the subject. Rome may well have spoken but the particular cause (the legal recognition and regulation of same sex partnerships) is not finished, precisely because we do live in a democracy. Rather than ending discussion of the matter, the document may be seen to mark an invitation to open debate and begin a dialogue. Let us hope that this dialogue - both within and outside the Church – may be allowed to proceed in good faith and with good-will on all sides. I bear in mind the words of Saint Augustine, in a sermon (on the text of Galatians 2:11-14) which he preached in Carthage around 397 CE on the feast of Saints Peter and Paul (29 June):

“[D]on’t even think of regarding as canonical scripture any debate, or written account of a debate by anyone. In the holy writings we learn how to judge, in our own writings we are quite ready to be judged. What of course we would prefer, and this would be our choice between the two options, is that in writing or speaking we should always say what is true, never go wrong. But since this is difficult to achieve, that’s why there is this other firmament of the canon. … Let us treat scripture like scripture, like God speaking; don’t let’s look there for man going wrong. It is not for nothing, you see, that the canon has been established for the Church. This is the function of the Holy Spirit. So if anybody reads my book, let him pass judgment on me. If I have said something reasonable, let him follow, not me, but reason itself. If I’ve proved it by the clearest divine testimony, let him follow, not me, but the divine scripture. If, on the other hand, he wishes to find fault with me for something I have said quite correctly, he is not in fact acting correctly; but still I get angrier with that kind of fan of mine who takes my book as being canonical, than with the man who finds fault in my book with things that are not in fact at fault.”

The title of my paper was “Politics, power and the papacy: challenges for Catholics in a democratic age”. I hope that part of what it is to be a member of a religious body such as the Catholic Church - which claims as an expression of its universality, true Catholicity, to found its moral teaching on universal truths accessible by reason - is that we not only have the right to engage in such a dialogue, it may indeed be our
responsibility as committed (and still faithful) members of that Church to bear such witness.

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ENDNOTES:

1 Pope John Paul II Centesimus Annus (1991) at paragraph 47

2 James Cannon (1864-1944), a Methodist Bishop and the chair of the legislative committee of the Anti-Saloon League, a lobbying political movement dedicated to the maintenance of the constitutional prohibition on alcohol, quoted in Virginius Dabney Dry Messiah: the life of Bishop Cannon (Alfred Knopf, 1949) at page 181


5 John F Kennedy Address to the Greater Houston Ministerial Association, delivered 12 September 1960 at the Rice Hotel in Houston, Texas

6 See Glenn Feldman “Unholy alliance: suppressing Catholic teachings in subservience to Republican ascendance in America” (2006) 7 Political Theology 137-179

7 The five Catholic Justice are: Chief Justice Roberts, Justice Antonin Scalia, Justice Anthony Kennedy, Justice Clarence Thomas and Justice Samuel Alito. Of the remaining four Justices two are Jewish (Justice Ruth Bader Ginsburg and Justice Stephen Breyer), one Episcopalian (Justice David Souter) and one generic Protestant with no specific denominational affiliation (Justice John Paul Stevens).


9 For a period in the early 2000s all three major political parties in the United Kingdom were headed by open or crypto Catholics: Charles Kennedy (leader of the Liberal Democrats from August 1999 to January 2006); Iain Duncan Smith (leader of the Conservatives from September 2001 to October 2003); and Tony Blair (leader of the Labour party from July 1994 to June 2007)

10 See Leo XIII encyclical Immortale Dei: on the Christian constitution of States (All Saints Day, 1 November 1885) at paragraphs 45, 46, 47

“Catholics have just reasons for taking part in the conduct of public affairs. For in so doing they assume not nor should they assume the responsibility of approving what is blameworthy in the actual methods of government, but seek to turn these very methods, so far as is possible, to the genuine and true public good, and to use their best endeavours at the same time to infuse, as it were, into all the veins of the State the healthy sap and blood of Christian wisdom and virtue. … [I]t is the duty of all
Catholics worthy of the name and wishful to be known as most loving children of the Church, to reject without swerving whatever is inconsistent with so fair a title; to make use of popular institutions, so far as can honestly be done, for the advancement of truth and righteousness; to strive that liberty of action shall not transgress the bounds marked out by nature and the law of God; to endeavour to bring back all civil society to the pattern and form of Christianity which We have described. … [It] is unlawful to follow one line of conduct in private life and another in public, respecting privately the authority of the Church, but publicly rejecting it; for this would amount to joining together good and evil, and to putting man in conflict with himself; whereas he ought always to be consistent, and never in the least point nor in any condition of life to swerve from Christian virtue.”

11 See Gaudium et spes: the pastoral constitution on the Church in the modern world, promulgated by Pope Paul VI on 7 December 1965 at paragraph 76:

“It is very important, especially where a pluralistic society prevails, that there be a correct notion of the relationship between the political community and the Church, and a clear distinction between the tasks which Christians undertake, individually or as a group, on their own responsibility as citizens guided by the dictates of a Christian conscience, and the activities which, in union with their pastors, they carry out in the name of the Church.”

12 See United States Conference of Catholic Bishops Forming Consciences for Faithful Citizenship: a Call to Political Responsibility from the Catholic Bishops of the United States (19 November 2007) at paragraph 38:

“(T)he political choices faced by citizens not only have an impact on general peace and prosperity but also may affect the individual’s salvation. Similarly, the kinds of laws and policies supported by public officials affect their spiritual well-being.”

13 United States Conference of Catholic Bishops Forming Consciences for Faithful Citizenship: a Call to Political Responsibility from the Catholic Bishops of the United States (19 November 2007) at paragraphs 34-5:

“A Catholic cannot vote for a candidate who takes a position in favor of an intrinsic evil, such as abortion or racism, if the voter’s intent is to support that position. In such cases a Catholic would be guilty of formal cooperation in grave evil. … There may be times when a Catholic who rejects a candidate’s unacceptable position may decide to vote for that candidate for other morally grave reasons. Voting in this way would be permissible only for truly grave moral reasons, not to advance narrow interests or partisan preferences or to ignore a fundamental moral evil.”

14 Benedict XVI in his encyclical Spe Salvi: on Christian hope (30 November 2007) observes at paragraph 33:

“Failure to recognize my guilt, the illusion of my innocence, does not justify me and does not save me, because I am culpable for the numbness of my conscience and my incapacity to recognize the evil in me for what it is.”


“The magisterium of the Church was slow to speak about democracy, and did so even then with considerable circumspection, if not suspicion. It would in fact not be hard to dig up some embarrassing statements, using them as grounds for handing the pastors over to the court of history and convicting them of obstructing the march of humanity toward a glorious future. However, we shall let others feast on such delicacies, preferring to concentrate our time and attention on the positive contribution the magisterium has made to reflection on democracy. This reflection started at the end of the 19th century under the inspiration of Leo XIII, and it should be stressed that the way was paved by the activities of Catholics involved in the social struggles of the times as much as by the body of Christian social teaching. As has often been the case, the Church showed an openness first to social democracy, which can be summed up in the formula ‘Everything for the people’, and only later to political democracy, which can be summed up in the formula ‘Everything for the people and by the people’.”

17 Leo XIII encyclical *Immortale Dei: on the Christian constitution of States* (All Saints Day, 1 November 1885) at paragraphs 23-26


19 R. L. Burke “The Discipline regarding the denial of Holy Communion to those obstinately persevering in manifest grave sin” (2007) 96 *Periodica di Re Canonica* 3-58

20 Pope Benedict XVI *Deus Caritas Est: on Christian love* (Christmas Day 2005)

21 Pope Benedict XVI *Spe Salvi: on Christian hope* (Feast of Saint Andrew the Apostle, 30 November 2007)


24 The Vatican reported on Tuesday 15 January 2008 that the visit would be postponed due to what the Pope’s secretary of state described as a lack of the “prerequisites for a dignified and tranquil welcome”


26 In his second encyclical *Spe Salvi: on Christian hope* Benedict XVI states (at paragraph 19) “[T]he French Revolution [was] an attempt to establish the rule of reason and freedom as a political reality. To begin with, the Europe of the Enlightenment looked on with fascination at these events, but then, as they developed, had cause to reflect anew on reason and freedom. A good illustration of these two phases in the reception of events in France is found in two essays by Immanuel Kant in which he reflects on what had taken place. In 1792 he wrote *Der Sieg des guten Prinzip über das böse und die Gründung eines Reiches Gottes auf Erden* ("The Victory of the Good over the Evil Principle and the Founding of a Kingdom of God on Earth"). In this text he says the following: ‘The gradual transition of ecclesiastical faith to the exclusive sovereignty of pure religious faith is the coming of the Kingdom of God.’ [In *Werke* IV, ed. W. Weischedel (1956), p.777. The essay on *The Victory of the Good over the Evil Principle* constitutes the third chapter of the text *Die Religion innerhalb der Grenzen der bloßen Vernunft* ("Religion within the Limits of Reason Alone"), which Kant published in 1793.]

He also tells us that revolutions can accelerate this transition from ecclesiastical faith to rational faith. The ‘Kingdom of God’ proclaimed by Jesus receives a new definition here and takes on a new mode of presence; a new ‘imminent expectation’, so to speak, comes into existence: the ‘Kingdom of God’ arrives where ‘ecclesiastical faith’ is vanquished and superseded by ‘religious faith’, that is to say, by simple rational faith. In 1794, in the text *Das Ende aller Dinge* ("The End of All Things") a changed image appears. Now Kant considers the possibility that as well as the natural end of all things there may be another that is unnatural, a perverse end. He writes in this connection: ‘If Christianity should one day cease to be worthy of love ... then the prevailing mode in human thought would be rejection and opposition to it; and the Antichrist ... would begin his - albeit short - regime (presumably based on fear and self-interest); but then, because Christianity, though destined to be the world religion, would not in fact be favoured by destiny to become so, then, in a moral respect, this could lead to the (perverted) end of all things.’ [I. Kant, *Das Ende aller Dinge*, in *Werke* VI, ed. W. Weischedel (1964), p.190.]”
In *Spe Salvi: on Christian hope* Benedict XVI states (at paragraph 23):

“If progress, in order to be progress, needs moral growth on the part of humanity, then *the reason behind action and capacity for action is likewise urgently in need of integration through reason's openness to the saving forces of faith*, to the differentiation between good and evil. Only thus does reason become truly human. It becomes human only if it is capable of directing the will along the right path, and it is capable of this only if it looks beyond itself. *Otherwise, man's situation, in view of the imbalance between his material capacity and the lack of judgment in his heart, becomes a threat for him and for creation.* .... *There is no doubt, therefore, that a "Kingdom of God" accomplished without God - a kingdom therefore of man alone - inevitably ends up as the "perverse end" of all things as described by Kant* [in Das Ende aller Dinge, in Werke VI, ed. W. Weischedel (1964), p.190].: *we have seen it, and we see it over and over again.* Yet neither is there any doubt that God truly enters into human affairs only when, rather than being present merely in our thinking, he himself comes towards us and speaks to us. *Reason therefore needs faith if it is to be completely itself: reason and faith need one another in order to fulfill their true nature and their mission.*”

In *Deus Caritas Est: on Christian love* Pope Benedict XVI observes at paragraph 28(a):

“*[W]hat is justice? The problem is one of practical reason; but if *reason is to be exercised properly, it must undergo constant purification, since it can never be completely free of the danger of a certain ethical blindness caused by the dazzling effect of power and special interests.* … The Church's social teaching argues on the basis of reason and natural law, namely, on the basis of what is in accord with the nature of every human being. It recognizes that *it is not the Church's responsibility to make this teaching prevail in political life.* Rather, the Church wishes to help form consciences in political life and to stimulate greater insight into the authentic requirements of justice as well as greater readiness to act accordingly, even when this might involve conflict with situations of personal interest. Building a just social and civil order, wherein each person receives what is his or her due, is an essential task which every generation must take up anew. As a political task, this cannot be the Church's immediate responsibility. Yet, since it is also a most important human responsibility, the Church is duty-bound to offer, *through the purification of reason* and through ethical formation, her own specific contribution towards understanding the requirements of justice and achieving them politically.

The Church cannot and must not take upon herself the political battle to bring about the most just society possible. She cannot and must not replace the State. Yet at the same time she cannot and must not remain on the sidelines in the fight for justice. She has to play her part *through rational argument* and she has to reawaken the spiritual energy without which justice, which always demands sacrifice, cannot prevail and prosper. A just society must be the achievement of politics, not of the Church. Yet the promotion of justice through efforts to bring about openness of mind and will to the demands of the common good is something which concerns the Church deeply.”

In his September 2007 Address to the Participants in the Conference of the Executive Committee of *Centrist Democratic International*, Benedict XVI observes:

“*[W]hen human rights are violated, the dignity of the human person suffers; when justice is compromised, peace itself is jeopardized. On the other hand, *justice is truly human only when the ethical and moral vision grounding it is centred on the human person and his inalienable dignity.* … There are some who believe that it is legitimate to destroy human life in its earliest or final stages. Equally troubling is the growing crisis of the family, which is the fundamental nucleus of society based on the indissoluble bond of marriage between a man and a woman. Experience has shown that when the truth about man is subverted or the foundation of the family undermined, peace itself is threatened and the rule of law is compromised, leading inevitably to forms of injustice and violence…. *The Church is moved only by love for humanity and the desire to work together with all people of goodwill to build a world in which the dignity and inalienable rights of all persons will be safeguarded.* For those of you who share a faith in Christ, the Church asks you to bear witness to that faith today with even greater courage and generosity. The integrity of Christians in political life is indeed more necessary than ever so that the "salt" of apostolic zeal does not lose its “flavor”, and
so that the “lamp” of Gospel values enlightening the daily work of Christians is not obscured by pragmatism or utilitarianism, suspicion or hate.”

30 In Deus Caritas Est: on Christian love Benedict XVI states at paragraph 28(a):
“Here politics and faith meet. Faith by its specific nature is an encounter with the living God - an encounter opening up new horizons extending beyond the sphere of reason. But it is also a purifying force for reason itself. From God’s standpoint, faith liberates reason from its blind spots and therefore helps it to be ever more fully itself. Faith enables reason to do its work more effectively and to see its proper object more clearly. This is where Catholic social doctrine has its place: it has no intention of giving the Church power over the State. Even less is it an attempt to impose on those who do not share the faith ways of thinking and modes of conduct proper to faith. Its aim is simply to help purify reason and to contribute, here and now, to the acknowledgment and attainment of what is just.

31 In his Speech to La Sapienza University (17 January 2008) Benedict XVI observed:
“The Pope speaks as the representative of a community of believers in which a particular wisdom about life has evolved in the course of the centuries of its existence. He speaks as the representative of a community that preserves within itself a treasury of ethical knowledge and experience important for all humanity: in this sense, he speaks as the representative of a form of ethical reasoning.”

…
[1] In the search for a set of laws embodying freedom, in the search for the truth about a just polity, we must listen to claims other than those of parties and interest groups, without in any way wishing to deny the importance of the latter.
…
Christian faith is never solely a “comprehensive religious doctrine” in Rawls’ sense, but is a purifying force for reason, helping it to be more fully itself. On the basis of its origin, the Christian message should always be an encouragement towards truth, and thus a force against the pressure exerted by power and interests.
…
[1] If reason, out of concern for its alleged purity, becomes deaf to the great message that comes to it from Christian faith and wisdom, then it withers like a tree whose roots can no longer reach the waters that give it life. It loses the courage for truth and thus becomes not greater but smaller. Applied to our European culture, this means: if our culture seeks only to build itself on the basis of the circle of its own argumentation, on what convinces it at the time, and if - anxious to preserve its secularism - it detaches itself from its life-giving roots, then it will not become more reasonable or purer, but will fall apart and disintegrate. … What should the Pope do or say at the university? Certainly, he must not seek to impose the faith upon others in an authoritarian manner - as faith can only be given in freedom. Over and above his ministry as Shepherd of the Church, and on the basis of the intrinsic nature of this pastoral ministry, it is the Pope’s task to safeguard sensibility to the truth; to invite reason to set out ever anew in search of what is true and good, in search of God; to urge reason, in the course of this search, to discern the illuminating lights that have emerged during the history of the Christian faith …”

“[T]here are also pathologies of reason, although mankind in general is not conscious of this fact today. There is a hubris of reason that is no less dangerous. Indeed bearing in mind its potential effects, it poses an even greater threat – it suffices here to think of the atomic bomb or of man as a ‘product’. This is why reason, too, must be warned to keep within its proper limits, and it must learn a willingness to listen to the great religious traditions of mankind. If it cuts itself completely adrift and rejects this willingness to learn, this relatedness, reason becomes destructive.”

33 In Deus Caritas Est: on Christian love Pope Benedict XVI at paragraph 28(a):
“The just ordering of society and the State is a central responsibility of politics. As Augustine once said, a State which is not governed according to justice would be just a bunch of thieves: “Remota itaque iustitia quid sunt regna nisi magna latrocinia?”

34 Saint Augustine De Civitate Dei, IV, 4: CCL 47, 102.
“25. With wise forethought, therefore, not a few of the advocates of philosophic studies, when turning their minds recently to the practical reform of philosophy, aimed and aim at restoring the renowned teaching of Thomas Aquinas and winning it back to its ancient beauty.

26. We have learned with great joy that many members of your order, venerable brethren, have taken this plan to heart; and while We earnestly commend their efforts, We exhort them to hold fast to their purpose, and remind each and all of you that Our first and most cherished idea is that you should all furnish to studious youth a generous and copious supply of those purest streams of wisdom flowing inexhaustibly from the precious fountainhead of the Angelic Doctor."
“Worship pleasing to God can never be a purely private matter, without consequences for our relationships with others: it demands a public witness to our faith. Evidently, this is true for all the baptized, yet it is especially incumbent upon those who, by virtue of their social or political position, must make decisions regarding fundamental values, such as respect for human life, its defense from conception to natural death, the family built upon marriage between a man and a woman, the freedom to educate one's children and the promotion of the common good in all its forms. These values are not negotiable. Consequently, Catholic politicians and legislators, conscious of their grave responsibility before society, must feel particularly bound, on the basis of a properly formed conscience, to introduce and support laws inspired by values grounded in human nature. There is an objective connection here with the Eucharist (cf. 1 Cor 11:27-29). Bishops are bound to reaffirm constantly these values as part of their responsibility to the flock entrusted to them.”


43 Compare more recently the United States Conference of Catholic Bishops’ document Forming Consciences for Faithful Citizenship: a Call to Political Responsibility from the Catholic Bishops of the United States (19 November 2007) at paragraphs 7-8, 15:

“In this statement, we bishops do not intend to tell Catholics for whom or against whom to vote. Our purpose is to help Catholics form their consciences in accordance with God’s truth. We recognize that the responsibility to make choices in political life rests with each individual in light of a properly formed conscience, and that participation goes well beyond casting a vote in a particular election. ... This statement is intended to reflect and complement, not substitute for, the ongoing teaching of bishops in our own dioceses and states. In light of these reflections and those of local bishops, we encourage Catholics throughout the United States to be active in the political process, particularly in these challenging times.... Clergy and lay people have complementary roles in public life. We bishops have the primary responsibility to hand on the Church’s moral and social teaching. Together with priests and deacons, assisted by religious and lay leaders of the Church, we are to teach fundamental moral principles that help Catholics form their consciences correctly, to provide guidance on the moral dimensions of public decisions, and to encourage the faithful to carry out their responsibilities in political life. In fulfilling these responsibilities, the Church’s leaders are to avoid endorsing or opposing candidates or telling people how to vote.”


45 Compare however the words of Pope John Paul II in Centesimus Annus (1991) at paragraph 52:

“(O)n the occasion of the recent tragic war in the Persian Gulf, I repeated the cry: ‘Never again war!’... No, never again war, which destroys the lives of innocent people, teaches how to kill, throws into upheaval even the lives of those who do the killing and leaves behind a trail of resentment and hatred, thus making it all the more difficult to find a just solution of the very problems which provoked the war.”

46 Those bishops announcing their intention to deny communion to individuals of whose voting record they disapprove claim to be relying on Canon 915 of the Code of Canon Law (1983), which refers to communion being refused to persons who have displayed an obstinate persistence in “manifest grave sin”. To qualify as “heresy” – in respect of which general excommunication from the sacramental life of the Church might be pronounced – Canon 751 requires that there be “obstinate denial or doubt, after received baptism, of a truth to be believed by Divine and Catholic faith”. Canon 750(1) provide as follows:

“Those things are to be believed by Divine and Catholic faith which are contained in the word of God as it has been written or handed down by tradition, that is, in the single deposit of faith entrusted to the Church, and which are at the same time proposed as divinely revealed either by the solemn Magisterium of the Church, or by its ordinary and universal Magisterium, which is manifested by the common adherence of Christ’s faithful under the guidance of the sacred Magisterium. All are therefore bound to shun any contrary doctrines.”

48 See *Veritatis Splendor* (1993) at paragraph 81:

“If acts are intrinsically evil, a good intention or particular circumstances can diminish their evil, but they cannot remove it. They remain ‘irremediably’ evil acts; *per se* and in themselves they are not capable of being ordered to God and to the good of the person.”

49 See Aidan O’Neill “The Supreme Court Judge and the Death Penalty” *The Tablet*, 23 February 2002, 9-10 for some reflections on the position publicly taken by Justice Antonin Scalia of the US Supreme Court in which he is highly critical of the gradual development in recent Papal teaching, notably in *Evangelium Vitae*, of the claim that imposition of the death penalty by the State, other than in the most exceptional circumstance, is incompatible with the social doctrine of the Church.

50 Cardinal Ratzinger’s memorandum to Cardinal Theodore McCarrick “Worthiness to receive Holy Communion: general principles” was published in *The Tablet* 10 July 2004 at page 36 paragraph 3 and online at http://213.92.16.98/ESW_articolo/0,2393,42196,00.html

51 Relying on *Catechism of the Catholic Church* which states at paragraph 2240:

“Submission to authority and co-responsibility for the common good make it *morally obligatory* to pay taxes, to exercise the right to vote, and to defend one’s country”


53 Mathew 7:6:

“Do not give dogs what is holy; and do not throw your pearls in front of pigs, or they may trample them and then turn on you and tear you to pieces”.

But the reference to “dogs” and “swine” in this saying would arguably here to be referring to (ritually impure) non-Jewish (Gentile) polytheists. See Matthew 15:21-28:

“Jesus went from that place and withdrew to the region of Tyre and Sidon. And behold, a Canaanite woman of that district came and called out, ‘Have pity on me, Lord, Son of David! My daughter is tormented by a demon.’ But he did not say a word in answer to her. His disciples came and asked him, ‘Send her away, for she keeps calling out after us.’ He said in reply, ‘I was sent only to the lost sheep of the house of Israel.’ But the woman came and did him homage, saying, ‘Lord, help me.’ He said in reply, ‘It is not right to take the food of the children and throw it to the dogs.’ She said, ‘Please, Lord, for even the dogs eat the scraps that fall from the table of their masters.’ Then Jesus said to her in reply, ‘O woman, great is your faith! Let it be done for you as you wish.’ And her daughter was healed from that hour.”

54 R. L. Burke “The Discipline regarding the denial of Holy Communion to those obstinately persevering in manifest grave sin” (2007) 96 *Periodica di Re Canonica* 3 at page 4

55 We may note (perhaps as a sign of the times ?) the SCOTUS 5-4 decision in *Gonzales v. Carhart*, 18 April 2007 in which the (Catholic bloc ?) majority of Chief Justice John Roberts, Justice Antonin Scalia, Justice Anthony Kennedy, Justice Clarence Thomas, and Justice Samuel Alito upheld a federal criminal ban on “partial-birth” abortions against a facial constitutional challenge which provided as follows:

“Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than 2 years, or both. This subsection does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.” 18 U.S.C. §1531(a).”

This decision marked the first time in which the Supreme Court has upheld a law regulating abortion availability which did not make an exception to preserve a woman’s health, though the reasoning of Justice Kennedy apparently left open the possibility of an individual pregnant woman or her doctor making an “as applied” challenge to the law on the basis of the need for a health exception in her particular case.
“In order to achieve their task directed to the Christian animation of the temporal order, in the sense of serving persons and society, the lay faithful are never to relinquish their participation in ‘public life’...

[The lay faithful must bear witness to those human and gospel values that are intimately connected with political activity itself, such as liberty and justice, solidarity, faithful and unselfish dedication for the good of all, a simple life-style, and a preferential love for the poor and the least.]

The fruit of sound political activity, which is so much desired by everyone but always lacking in advancement, is peace. The lay faithful cannot remain indifferent or be strangers and inactive in the face of all that denies and compromises peace, namely, violence and war, torture and terrorism, concentration camps, militarization of public life, the arms race, and the nuclear threat. ...

The lay faithful in working together with all those that truly seek peace and themselves serving in specific organizations as well as national and international institutions, ought to promote an extensive work of education intended to defeat the ruling culture of egoism, hate, the vendetta and hostility, and thereby to develop the culture of solidarity at every level. Such solidarity, in fact, "is the way to peace and at the same time to development". From this perspective the Synod Fathers have invited Christians to reject as unacceptable all forms of violence, to promote attitudes of dialogue and peace and to commit themselves to establish a just international and social order.”

“... The direct and intentional destruction of innocent human life from the moment of conception until natural death is always wrong and is not just one issue among many. It must always be opposed.... Racism and other unjust discrimination, the use of the death penalty, resorting to unjust war, the use of torture, war crimes, the failure to respond to those who are suffering from hunger or a lack of health care, or an unjust immigration policy are all serious moral issues that challenge our consciences and require us to act. These are not optional concerns which can be dismissed. Catholics are urged to seriously consider Church teaching on these issues. Although choices about how best to respond to these and other compelling threats to human life and dignity are matters for principled debate and decision this does not make them optional concerns...”.

“Over the years since the 1973 Roe v. Wade Supreme Court decision, the frustration of many Catholics, bishops among them, about Catholic politicians who not only ignore church teaching on abortion but actively espouse a contrary position has continued to grow.”

For a discussion of some of the issues arising see the 2006 special issue of the *University of Saint Thomas Law Journal on Catholicism and the Court: the relevance of faith traditions to jurisprudence*.
See Bernard Häring SJ The Law of Christ (1963) at page 510:
“A judge may frequently be confronted by the predicament of pronouncing ‘justice’ or ‘right’ according to an unjust law. If by some legal provision he is permitted to withdraw from the case or is in some way able to avoid making the decision, he cannot be excused from the guilt of formal cooperation if he, nevertheless, decides the case.”

As it is put in Congregation for the Doctrine of the Faith in its Doctrinal Note of 2002 Regarding the participation of Catholic in Public Life at paragraph 6:
“[T]he Church’s Magisterium does not wish to exercise political power or eliminate the freedom of opinion of Catholics regarding contingent questions. Instead, it intends as is its proper function to instruct and illuminate the consciences of the faithful, particularly those involved in political life, so that their actions may always serve the integral promotion of the human person and the common good. The social doctrine of the Church is not an intrusion into the government of individual countries. It is a question of the lay Catholic’s duty to be morally coherent, found within one’s conscience, which is one and indivisible.”


See Benedict XVI The Human Family, a community of peace, Message for the Celebration of the World Day of Peace 1 January 2008 at paragraphs 11, 13:
“For the sake of peace, a common law is needed, one which would foster true freedom rather than blind caprice, and protect the weak from oppression by the strong. The family of peoples experiences many cases of arbitrary conduct, both within individual States and in the relations of States among themselves. In many situations the weak must bow not to the demands of justice, but to the naked power of those stronger than themselves. It bears repeating: power must always be disciplined by law, and this applies also to relations between sovereign States.

Values grounded in the natural law are indeed present, albeit in a fragmentary and not always consistent way, in international accords, in universally recognized forms of authority, in the principles of humanitarian law incorporated in the legislation of individual States or the statutes of international bodies. Mankind is not lawless. All the same, there is an urgent need to persevere in dialogue about these issues and to encourage the legislation of individual States to converge towards a recognition of fundamental human rights. The growth of a global juridic culture depends, for that matter, on a constant commitment to strengthen the profound human content of international norms, lest they be reduced to mere procedures, easily subject to manipulation for selfish or ideological reasons.

“There is also present within the international community an International Criminal Court to punish those responsible for particularly serious acts such as genocide, crimes against humanity, war crimes and crimes of aggression. The Magisterium has not failed to encourage this initiative time and again.”

See The Charter of the Rights of the Family, presented by the Holy See to all persons, institutions and authorities concerned with the mission of the family in today's world (October 22, 1983) Article 4(a):
“Human life must be respected and protected absolutely from the moment of conception. Abortion is a direct violation of the fundamental right to life of the human being.”

See, too, Congregation for the Doctrine of the Faith Declaration on Procured Abortion (November 1974) at paragraphs 21-22:
“It must in any case be clearly understood that whatever may be laid down by civil law in this matter, man can never obey a law which is in itself immoral, and such is the case of a law which would admit in principle the liceity of abortion. Nor can he take part in a propaganda campaign in favour of such a law, or vote for it. Moreover, he may not collaborate in its application.”

Pope John Paul II Evangelium Vitae (March 25, 1995) para 13:
“The close connection which exists, in mentality, between the practice of contraception and that of abortion is becoming increasingly obvious. It is being demonstrated in an alarming way by the development of chemical products, intrauterine devices and vaccines which, distributed with the same ease as contraceptives, really act as abortifacients in the very early stages of the development of the life of the new human being.”

71 Pope John Paul II *Evangelium Vitae* (March 25, 1995) para 63:

“[T]he use of human embryos or foetuses as an object of experimentation constitutes a crime against their dignity as human beings who have a right to the same respect owed to a child once born, just as to every person.

This moral condemnation also regards procedures that exploit living human embryos and foetuses - sometimes specifically ‘produced’ for this purpose by in vitro fertilization-either to be used as ‘biological material’ or as providers of organs or tissue for transplants in the treatment of certain diseases. The killing of innocent human creatures, even if carried out to help others, constitutes an absolutely unacceptable act.”

See, too, *The Charter of the Rights of the Family*, presented by the Holy See to all persons, institutions and authorities concerned with the mission of the family in today's world (October 22, 1983) Article 4(b):

“Respect of the dignity of the human being excludes all experimental manipulation or exploitation of the human embryo.”


“From an ethical point of view, the simple replication of normal cells or of a portion of DNA present no particular ethical problem. Very different, however, is the Magisterium’s judgment on cloning understood in the proper sense. Such cloning is contrary to the dignity of human procreation because it takes part in the total absence of an act of personal love between spouses, being agamic and asexual reproduction. In the second place, this type of reproduction represents a form of total domination over the reproduced individual on the part of the one reproducing it. The fact that cloning is used to create embryos from which cells can be removed for therapeutic use does not attenuate its moral gravity, because in order that such cells may be removed the embryo must first be created and then destroyed.”

73 Pope John Paul II *Evangelium Vitae* (March 25, 1995) para 14:

“The various techniques of artificial reproduction, which would seem to be at the service of life and which are frequently used with this intention, actually open the door to new threats against life. Apart from the fact that they are morally unacceptable, since they separate procreation from the fully human context of the conjugal act, these techniques have a high rate of failure: not just failure in relation to fertilization but with regard to the subsequent development of the embryo, which is exposed to the risk of death, generally within a very short space of time. Furthermore, the number of embryos produced is often greater than that needed for implantation in the woman's womb, and these so-called ‘spare embryos’ are then destroyed or used for research which, under the pretext of scientific or medical progress, in fact reduces human life to the level of simple ‘biological material’ to be freely disposed of.”


“All reproductive techniques – such as the donation of sperm and ova, surrogate motherhood, heterologous artificial fertilisation – that make use of the uterus of another woman or of the gametes of persons other than the married couple, injuring the right of the child to be born of one father and one mother who are father and mother both from a biological and from a legal point of view are ethically unacceptable. Equally unacceptable are methods that separate the unitive from the procreative act by making use of laboratory techniques, such as homologous artificial insemination or fertilisation, such that the child comes about more as the result of an act of technology than the natural fruit of a human act in which there is full and total giving of the couple.”
See Congregation for the Doctrine of the Faith Declaration on Euthanasia (May 1980):

“[N]othing and no one can in any way permit the killing of an innocent human being, whether a fetus or an embryo, an infant or an adult, an old person, or one suffering from an incurable disease, or a person who is dying. Furthermore, no one is permitted to ask for this act of killing, either for himself or herself or for another person entrusted to his or her care, nor can he or she consent to it, either explicitly or implicitly. nor can any authority legitimately recommend or permit such an action. For it is a question of the violation of the divine law, an offense against the dignity of the human person, a crime against life, and an attack on humanity. It may happen that, by reason of prolonged and barely tolerable pain, for deeply personal or other reasons, people may be led to believe that they can legitimately ask for death or obtain it for others. Although in these cases the guilt of the individual may be reduced or completely absent, nevertheless the error of judgment into which the conscience falls, perhaps in good faith, does not change the nature of this act of killing, which will always be in itself something to be rejected.”


“Unfortunately the conditions under which prisoners serve their time do not always foster respect for their dignity; and often prisons become places where new crimes are committed.”

Pope John Paul II Evangelium Vitae (March 25, 1995) para 56:

“[T]here is a growing tendency, both in the Church and in civil society, to demand that [the death penalty] be applied in a very limited way or even that it be abolished completely.

… [T]he nature and extent of the punishment [meted on offenders] must be carefully evaluated and decided upon, and ought not go to the extreme of executing the offender except in cases of absolute necessity: in other words, when it would not be possible otherwise to defend society. Today however, as a result of steady improvements in the organization of the penal system, such cases are very rare, if not practically non-existent.”

See The Charter of the Rights of the Family, presented by the Holy See to all persons, institutions and authorities concerned with the mission of the family in today's world (October 22, 1983) Article 3:

“The spouses have the inalienable right to found a family and to decide on the spacing of births and the number of children to be born, taking into full consideration their duties towards themselves, their children already born, the family and society, in a just hierarchy of values and in accordance with the objective moral order which excludes recourse to contraception, sterilization and abortion.


“So often Catholics fail to act against abortion or euthanasia with the appropriate energy, because they have compromised the Church’s teaching on the procreative end of marriage by accepting artificial birth control … The port of entry for the culture of death in our society has been the abandonment of the respect for the procreative meaning of the conjugal act. It is the contraceptive way of thinking, the fear of the life-giving dimension of conjugal love, which very much sustains that culture.”


“It is of fundamental importance for the balanced growth of children that they are taught in an orderly and progressive manner the meaning of sexuality and that they learn to appreciate the human and moral values connected with it. ‘In view of the close links between the sexual dimension of the person and his or her ethical values, education must bring the children to a knowledge of and respect for moral norms as the necessary and valuable guarantee for responsible personal growth in human sexuality’. Parents have the obligation to inquire about the methods used for sexual education in educational institutions in order to verify that such an important and delicate topic is dealt with properly.”
See too *The Charter of the Rights of the Family*, presented by the Holy See to all persons, institutions and authorities concerned with the mission of the family in today's world (October 22, 1983) Article 5(c):

“Parents have the right to ensure that their children are not compelled to attend classes which are not in agreement with their own moral and religious convictions. In particular, sex education is a basic right of the parents and must always be carried out under their close supervision, whether at home or in educational centers chosen and controlled by them.”

80 Pope John Paul II *Evangelium Vitae* (March 25, 1995) para 13:

“It is frequently asserted that contraception, if made safe and available to all, is the most effective remedy against abortion. The Catholic Church is then accused of actually promoting abortion, because she obstinately continues to teach the moral unlawfulness of contraception. When looked at carefully, this objection is clearly unfounded. It may be that many people use contraception with a view to excluding the subsequent temptation of abortion. But the negative values inherent in the 'contraceptive mentality' - which is very different from responsible parenthood, lived in respect for the full truth of the conjugal act - are such that they in fact strengthen this temptation when an unwanted life is conceived. Indeed, the pro-abortion culture is especially strong precisely where the Church's teaching on contraception is rejected.”

81 Pope John Paul II *Discourse to the Roman Rota on Divorce* (28 January 2003):

“[There must be] resolute opposition to any legal or administrative measures that introduce divorce or that equate de facto unions - including those between homosexuals - with marriage”

See, too, *The Charter of the Rights of the Family*, presented by the Holy See to all persons, institutions and authorities concerned with the mission of the family in today's world (October 22, 1983) Article 1(c):

“The institutional value of marriage should be upheld by the public authorities; the situation of non-married couples must not be placed on the same level as marriage duly contracted.”

82 See Cardinal Ratzinger *On the Future of Europe*, lecture reported at [www.zenit.org](http://www.zenit.org) on 17 May 2004:

“Marriage and the family are threatened, on one hand, because of the emptying of its indissolubility through ever-more easy forms of divorce; on the other, because of a new behavior that is spreading increasingly: a man and woman living together without the juridical form of marriage”

See, too, *The Charter of the Rights of the Family*, presented by the Holy See to all persons, institutions and authorities concerned with the mission of the family in today's world (October 22, 1983) Article 6(b):

“The family has the right to exist and to progress as a family. …b) Divorce attacks the very institution of marriage and of the family.”

83 Pope John Paul II *Discourse to the Roman Rota on Divorce* (28 January 2003):

“One must overcome the view of indissolubility [of marriage] as a restriction of the freedom of the contracting parties, and so as a burden that at times can become unbearable. Indissolubility, in this conception, is seen as a law that is extrinsic to marriage, as an "imposition" of a norm against the "legitimate" expectations of the further fulfillment of the person. Add to this the widespread notion that indissoluble marriage is only for believers, who cannot try to 'impose' it on the rest of civil society. … Indissolubility is not an ideal but a natural law requisite of universal applicability. … In this perspective, it is meaningless to speak of an 'imposition' by human law, because human law should reflect and safeguard the natural and divine law, that is always a freeing truth


“The feminine genius is needed in all expressions in the life of society, therefore the presence of women in the workplace must also be guaranteed. The first indispensable step in this direction is the concrete possibility of access to professional formation.

…

The persistence of many forms of discrimination offensive to the dignity and vocation of women in the area of work is due to a long series of conditioning that penalises women who have seen 'their
prerogatives misrepresented’ and themselves ‘relegated to the margins of society and even reduced to servitude. … An urgent need to recognise effectively the rights of women in the workplace is seen especially under the aspects of pay, insurance and social security.”


“The rights of persons with disabilities need to be protected with effective and appropriate measures. ‘It would be radically unhealthy of man, and a denial of our common humanity, to admit to the life of the community, and thus admit to work, only those who are fully functional. To do so would be to practise a serious form of discrimination, that of the strong and healthy against the weak and sick’. Great attention must be paid not only to the physical and psychological work conditions, to a just wage, to the possibility of promotion and the elimination of obstacles but also to the affective and sexual dimensions of people with disabilities. ‘They too need to love and to be loved, they need tenderness, closeness and intimacy’, according to their capacities and with respect for the moral order, which is the same for the handicapped and the non-handicapped alike.”

86 See Congregation for the Doctrine of the Faith, Some considerations concerning the response to legislative proposals on the non-discrimination of homosexual persons (July 24, 1992) at paragraphs 14, 17 where the Congregation warns that:

“[T]here is a danger that legislation which would make homosexuality a basis for entitlements could actually encourage a person with a homosexual orientation to declare his homosexuality or even to seek a partner in order to exploit the provisions of the [anti-discrimination] law. … [W]here a matter of the common good is concerned, it is inappropriate for church authorities to endorse or remain neutral toward adverse legislation even if it grants exceptions to church organizations and institutions. The church has the responsibility to promote family life and the public morality of the entire civil society on the basis of fundamental moral values, not simply to protect herself from the application of harmful laws”

87 See Congregation for the Doctrine of the Faith Considerations regarding proposals to give legal recognition to unions between homosexual persons (June 2003) at paragraphs 6, 8

“Laws in favour of homosexual unions are contrary to right reason because they confer legal guarantees, analogous to those granted to marriage, to unions between persons of the same sex. … The principles of respect and non-discrimination cannot be invoked to support legal recognition of homosexual unions. Differentiating between persons or refusing social recognition or benefits is unacceptable only when it is contrary to justice. The denial of the social and legal status of marriage to forms of cohabitation that are not and cannot be marital is not opposed to justice; on the contrary, justice requires it.”


“The Christian vision of creation makes a positive judgment on the acceptability of human intervention in nature, which also include other living beings, and at the same time makes a strong appeal for responsibility. … [T]he human person does not commit an illicit act when, out of respect for the order, beauty and usefulness of living beings, and their function in the eco-system, he intervenes by modifying some of their characteristics or properties. Human interventions that damage living being or the natural environment deserve condemnation, while those that improve them are praiseworthy. The acceptability of biological and biogenetic techniques is only one part of the ethical problem: as with every human behaviour, it is also necessary to evaluate accurately the real benefits as well as the possible consequences in terms of risks. …

Politicians, legislators and public administrators are responsible for evaluating the potential benefits and possible risks connected with the use of biotechnologies. It is not desirable for their decisions, at the national or international level, to be dictated by pressure from special interest groups. Public
authorities must also encourage a correctly informed public opinion and make decisions that are best suited to the common good.

… The temptation to fall into superficial information, fuelled by overenthusiasm or unjustified alarmism must be avoided.”

89 Cardinal Joseph Ratzinger: Crises of Law an address was delivered on the occasion of being conferred the degree of Doctor Honoris Causa by the LUMSA Faculty of Jurisprudence in Rome, Nov. 10, 1999.

“[J]uridical positivism … has taken on the form of the theory of consensus: if reason is no longer able to find the way to metaphysics as the source of law, the State can only refer to the common convictions of its citizens’ values, convictions that are reflected in the democratic consensus. Truth does not create consensus, and consensus does not create truth as much as it does a common ordering. The majority determines what must be regarded as true and just. In other words, law is exposed to the whim of the majority, and depends on the awareness of the values of the society at any given moment, which in turn is determined by a multiplicity of factors. This is manifested concretely by the progressive disappearance of the fundamentals of law inspired in the Christian tradition. … Because in modern States metaphysics, and with it, Natural Law, seem to be definitely depreciated, there is an ongoing transformation of law, the ulterior steps of which cannot yet be foreseen; the very concept of law is losing its precise definition.”

90 Pope John Paul II Evangelium Vitae (March 25, 1995) para 70-71

91 Cardinal Joseph Ratzinger “That which holds the world together: The Pre-political Moral Foundations of a Free State” a talk given at the Catholic Academy of Bavaria in January 2004 reprinted in his Europe today and tomorrow: addressing the fundamental issues (Ignatius Press: San Francisco 2007) at page 70

92 See Leo XIII’s encyclical Libertas: on the nature of human liberty (20 June 1888) at paragraph 15 “[O]nce man is firmly persuaded that he is subject to no one, it follows that the efficient cause of the unity of civil society is not to be sought in any principle external to man, or superior to him, but simply in the free will of individuals; that the authority in the State comes from the people only; and that, just as every man’s individual reason is his only rule of life, so the collective reason of the community should be the supreme guide in the management of all public affairs. Hence the doctrine of the supremacy of the greater number, and that all right and all duty reside in the majority. But, from what has been said, it is clear that all this is in contradiction to reason. To refuse any bond of union between man and civil society, on the one hand, and God the Creator and consequently the supreme Law-giver, on the other, is plainly repugnant to the nature, not only of man, but of all created things.”

93 See Congregation for the Doctrine of the Faith Considerations regarding proposals to give legal recognition to unions between homosexual persons (June 2003) at paragraph 6

94 Pope John Paul II Evangelium Vitae (March 25, 1995) paragraph 72

95 Summa Theologiae IaIIae q. 95 aa 4, 5

96 In Applications nos. 41340/98, 41342/98, 41343/98 and 41344/98 Refah Partisi (the Welfare Party) v. Turkey, ECHR (Grand Chamber), 13 February 2003, the European Court of Human Rights held that a political programme seeking the introduction of Shari’a law for Muslims in Turkey was incompatible with the European Convention on Human Rights and hence with the conception of European democracy which was said to be based on pluralism, freedom of speech and the separation of Church/Mosque and State. The Court noted in this regard that the Convention guarantee under Article 9 ECHR to freedom of “thought, conscience and religion” applied not only to religious believers but also to “atheists, agnostics, sceptics and the unconcerned” and observed:

[T]he principle of secularism is certainly one of the fundamental principles of the State which are in harmony with the rule of law and respect for human rights and democracy. An attitude which fails to respect that principle will not necessarily be accepted as being covered by the freedom to manifest one’s religion and will not enjoy the protection of Article 9 of the Convention.[…]
No-one must be authorised to rely on the Convention’s provisions in order to weaken or destroy the ideals and values of a democratic society. Pluralism and democracy are based on a compromise that requires various concessions by individuals or groups of individuals, who must sometimes agree to limit some of the freedoms they enjoy in order to guarantee greater stability of the country as a whole. See, generally, Mustafa Koçak and Esin Örücü “Dissolution of Political Parties in the name of democracy: cases from Turkey and the European Court of Human Rights” (2003) 9 European Public Law 399.

97 Thus the Pontifical Council for Justice and Peace A Compendium of the Social Doctrine of the Church (2004) states at paragraph 84:

“[E]very conscience and mind is in a position to grasp the human depths of meaning and values expressed in [the Church’s social doctrine] and the potential of humanity and humanization contained in its norms of action. It is to all people – in the name of mankind, of human dignity which is one and unique, and of humanity’s care and promotion of society – to everyone in the name of the one God, Creator and ultimate end of mankind, that the Church’s social doctrine is addressed. This social doctrine is a teaching explicitly addressed to all people of good will, and in fact is heard by members of other Churches and Ecclesial Communities, by followers of other religious traditions and by people who belong to no religious group.”

98 Pope John Paul II Veritatis Splendor (1993) at paragraphs 96-97


100 See Archbishop Silvano Tomasi, the Holy See’s permanent observer to the United Nations offices in Geneva, addressing the 60th session of the UN Human Rights Commission in April 2004 (www.zenit.org)

“An emerging subtle form of religious intolerance is opposing the right of religion to speak publicly on issues concerning forms of behavior that are measured against principles of a moral and religious nature. While respecting a healthy sense of the state’s secular nature, the positive role of believers in public life should be recognized. This corresponds, among other things, to the demands of a healthy pluralism and contributes to the building up of authentic democracy. Religion cannot be relegated to a corner of the private sphere of life and in this way risk losing its social dimension and its charitable action toward vulnerable people it serves without any distinction.”

101 See Pope John XXIII’s encyclical Pacem in terris (11 April 1963):

“60. It is generally accepted today that the common good is best safeguarded when personal rights and duties are guaranteed. The chief concern of civil authorities must therefore be to ensure that these rights are recognized, respected, co-ordinated, defended and promoted, and that each individual is enabled to perform his duties more easily. For ‘to safeguard the inviolable rights of the human person, and to facilitate the performance of his duties, is the principal duty of every public authority.’ (Pius XII’s broadcast message, Pentecost, June 1, 1941, AAS 33 (1941) 200.)

61. Thus any government which refused to recognize human rights or acted in violation of them, would not only fail in its duty; its decrees would be wholly lacking in binding force. (Pius XI’s encyclical letter Mit brennender Sorge, AAS 29 (1937) 159, and his encyclical Divini Redemptoris, AAS 29 (1937) 79; and Pius XII’s broadcast message, Christmas 1942, AAS 35 (1943) 9-24.)”

102 The Catechism of the Catholic Church, paragraph 2242

103 Pope John Paul II Evangelium Vitae (March 25, 1995) paragraph 72-73.

104 Pope John Paul II Evangelium Vitae (March 25, 1995) para 74


“Unjust laws pose dramatic problems of conscience for morally upright people: when they are called to co-operate in morally evil acts they must refuse. Besides being a moral duty, such a refusal is also a basic human right which precisely as such, civil law is obliged to recognize and protect.”
Thus in *Pichon and Sajous v. France*, ECtHR, admissibility decision of 2 October 2001, the European Court of Human Rights rejected as “manifestly ill-founded” a complaint by two licensed pharmacists that their criminal conviction resulting from their refusal, on religious grounds, to supply women with contraceptives prescribed them by their doctors contravened their Convention rights to freedom of thought, conscience and religion guaranteed under Article 9 ECHR. The Court held that:

“As long as the sale of contraceptives is legal and occurs on medical prescription nowhere other than in a pharmacy, the applicants cannot give precedence to their religious beliefs and impose them on others as justification for their refusal to sell such products, since they can manifest those beliefs in many ways outside the professional sphere.”


As is noted in *Veritatis Splendor* (1993) at paragraph 72:

“[H]uman activity cannot be judged as morally good merely because it is a means for attaining one or another of its goals, or simply because the subject’s intention is good (Cf. Saint Thomas Aquinas, *Summa Theologicae*, Ila-IIae, q.148, a. 3.)

The EU Charter of Fundamental Rights provides in Article 10(2) as follows:

“The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.”

See for example, Pope John Paul II *Evangelium Vitae* (March 25, 1995) para 18:

“(T)he various declarations of human rights and the many initiatives inspired by these declarations show that at the global level there is a growing moral sensitivity, more alert to acknowledging the value and dignity of every individual as a human being, without any distinction of race, nationality, religion, political opinion or social class.”

And Pope John Paul II *Centesimus Annus* (1991) at paragraph 22:

“In the course of the 1980s … there began a difficult but productive transition towards more participatory and more just political structures. An important, even decisive, contribution was made by the Church's commitment to defend and promote human rights. In situations strongly influenced by ideology, in which polarization obscured the awareness of a human dignity common to all, the Church affirmed clearly and forcefully that every individual whatever his or her personal convictions bears the image of God and therefore deserves respect.”

See too the Pontifical Council for the Family Presentation on *The Family and Human Rights*” (1998) per Alfonso Cardinal López Trujillo

“(T)he *Universal Declaration of Human Rights*… was certainly a conquest for humanity: it is based on the dignity of the person, and promotes and defends respect for peoples and for every one of their members. … The Declaration has surely not eliminated the many attacks and violations of human rights that have been perpetrated during its 50 years in force. However, *there is no doubt that recognition of its principles is always a notable stimulus for the spirit and practice of justice, both within nations and in relations between States, when its true ‘universality’ is preserved and when it is not subject to fragmentation that can take away its original spirit.”

The Holy See does have “Observer Status” before the Council of Europe, the regional international organization currently consisting of some 46 European countries (consisting of all 25 members of the European Union as well as Turkey, and a further 20 European countries, including Russia, many formerly part of the Soviet bloc – Belarus’s application being at the time of writing under consideration) which was set up to “defend human rights, parliamentary democracy and the rule of law” – see www.coe.int. Among the institutions set up under the auspices of the Council of Europe is the European Court of Human Rights which adjudicates on the proper interpretation of the European Convention of Human Rights.

*Code of Canon Law*: Canon 747(2)

In Application no. 30882/96 *Pellegrini v. Italy*, ECtHR 20 July 2001 the European Court of Human Rights found that the procedures operated by the Roman Rota, the ecclesiastical appeal court charged with determining
marriage annulment applications, failed to reach the standards required for a fair trial under Article 6(1) of the European Convention and therefore its judgments could not properly be recognised and enforced in Italian law. The procedural failings of the Rota included:
- that witness statements were not provided to parties so that they were deprived of the opportunity to comment upon them;
- that parties were not advised that they could appoint lawyers to appear for them;
- that parties were not advised of the terms of the legal submissions made by the canon lawyer appointed by the court to argue against annulment (defensor vinculis); and
- that parties were refused sight of a full copy of the Church court’s judgment setting out its reasoning.

In the circumstances, the Strasbourg court took the view that justice was not seen to have been done in the annulment proceedings before the Church courts.


115 The text of the Fundamental Law of the State of the Vatican City which was promulgated on 26 November 2000 may be found at www.vatican.va/vatican_city_state/legislation/documents/scv_doc_20001126_legge-fondamentale-scv_it.html. Article 1(1) of this law confirms the essentially monarchical nature of the Vatican’s constitution by stating that “The Supreme Pontiff, as sovereign power of the Vatican State, holds full executive, legislative and judicial power”. Article 3 provides that legislative power, except where reserved to the Pontiff himself or to others, is exercised by a Commission consisting in a presiding Cardinal and other Cardinals all nominated by the Pope to serve for a five year term.

116 Nuremberg “Case 3” or United States v. Altstötter and others concerned the prosecution of a selection of some 16 jurists (public prosecutors, presiding judges and officials and ministers in the Ministry of Justice) who had assisted in the administration of the legal system during the Nazi era. They were presented by those putting them on trial as being representative of the judicial system for the administration of “what passed for justice in the Third Reich” and were put on trial as regards their involvement in or complicity with war crimes, organised crime and crimes against humanity, in particular

“judicial murder and other atrocities which they committed by destroying law and justice in Germany and by utilising the empty forms of legal process for persecution, enslavement and extermination on a vast scale”.


120 See Case Note in (1951) 64 Harvard Law Review 1005-1007 on the case of a woman who, with a view to effecting a swift end to her marriage, denounced her husband to the authorities for slandering Hitler which resulted in his imprisonment and sentence of death (later commuted to military service on the Russian Front) who was subsequently convicted in the post-War period by German courts for her reliance, in bad faith, on these patently unjust laws of the Nazi system. See, too, the commentary on this and similar cases in H. O. Pappe “On the validity of Judicial Decisions in the Nazi Era” (1960) 23 Modern Law Review 260-274. See also the Zyklon B Case decision of the British Military Court of March 1946 – a prosecution of the industrialists who
produced and delivered the poison gas used for mass extermination of Jews and others interned in death camps – which has the following commentary at 1498:

“The decision of the Military Court in the present case is a clear example of the application of the rule that the provisions of the laws and customs of war are addressed not only to combatants and to members of state and other public authority, but to anybody who is in a position to assist in their violation

The activities with which the accused in the present case were charged were commercial transactions conducted by civilians. The Military Court acted on the principle that any civilian who is an accessory to a violation of the laws and customs of war is himself also liable as a war criminal.”

122 See R (Daly) v. Secretary of State for the Home Department [2001] 2 AC 532, HL per Lord Cook of Thorndon at 548 paragraph 30:

“[T]his case has arisen in a jurisdiction where the European Convention for the Protection of Human Rights and Fundamental Freedoms applies, and while the case is one in which the Convention and the common law produce the same result, it is of great importance, in my opinion, that the common law by itself is being recognised as a sufficient source of the fundamental right to confidential communication with a legal adviser for the purpose of obtaining legal advice. Thus the decision may prove to be in point in common law jurisdictions not affected by the Convention. Rights similar to those in the Convention are of course to be found in constitutional documents and other formal affirmations of rights elsewhere. The truth is, I think, that some rights are inherent and fundamental to democratic civilised society. Conventions, constitutions, bills of rights and the like respond by recognising rather than creating them.”

123 The 27 Member States of the European Union: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the United Kingdom. There are now 23 official (and equally authentic) languages of the European Union: Bulgarian, Czech, Danish, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Dutch, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and English

124 This text, taken from the first preamble and Article 2(1) of the Treaty on European Union as amended by the 2007 Lisbon Reform Treaty.

125 Vatican II Declaration on Religious Freedom: Dignitatis Humanae - on the right of the person and of communities to social and civil freedom in matter religious, promulgated by Pope Paul VI on 7 December 1965 which stated:

“In all his activity a man is bound to follow his conscience in order that he may come to God, the end and purpose of life. It follows that he is not to be forced to act in manner contrary to his conscience. Nor, on the other hand, is he to be restrained from acting in accordance with his conscience, especially in matters religious. ... Injury therefore is done to the human person and to the very order established by God for human life, if the free exercise of religion is denied in society, provided just public order is observed.”

126 In Congregation for the Doctrine of the Faith Doctrinal Note on some questions regarding the participation of Catholics in political life (November 24, 2002 - Solemnity of Christ the King) the following is stated (at paragraph 8):

“[T]he right to freedom of conscience and, in a special way, to religious freedom, taught in the Declaration Dignitatis Humanae of the Second Vatican Council, is based on the ontological dignity of the human person and not on a non-existent equality among religions or cultural systems of human creation. Reflecting on this question, Paul VI taught that ‘in no way does the Council base this right to religious freedom on the fact that all religions and all teachings, including those that are erroneous, would have more or less equal value; it is based rather on the dignity of the human person, which demands that he not be subjected to external limitations which tend to constrain the conscience in its search for the true religion or in adhering to it’. The teaching on freedom of conscience and on religious freedom does not therefore contradict the condemnation of indifferentism and religious relativism by Catholic doctrine; on the contrary, it is fully in accord with it.”
In *R (Williamson) v. Secretary of State for Education and Employment* [2003] QB 1300, CA per Arden LJ at 1371 paragraph 258. These remarks were approved on appeal to the House of Lords: see *R (Williamson) v. Secretary of State for Education and Employment* [2005] 2 WLR 590, HL per Lord Nicholls at paragraph 23.


Congregation for the Doctrine of the Faith *Doctrinal Note on some questions regarding the participation of Catholics in political life* at paragraph 6.

The official Church position is otherwise very much in favour of “the European project”. See Aidan O’Neill “The Holy Roman European Union?” *The Tablet*, 23 March 2002, 4-5 for some critical reflections on that stance.


Congregation for the Doctrine of the Faith: *Doctrinal Note Regarding the participation of Catholic in Public Life* (November 2002) at paragraph 6.


See, to like effect, John Paul II “Address to the Italian Association of Judges” (31 March 2000), 4:

“In defining the proper relationship between the legislative, executive and judicial powers, the Constitutions of modern States guarantee the judicial power the necessary independence in the realm of law.”

*Francôme v. Mirror Group of Newspapers Ltd.* [1984] All ER 415 per Sir John Donaldson MR at 412h-413b:

“Parliamentary democracy as we know it is based on the rule of law. That requires all citizens to obey the law unless and until it can be changed by due process. … The right to disobey the law is not obtainable by the payment of a penalty or licence fee. It is not obtainable at all in a parliamentary democracy, although different considerations arise under a totalitarian regime.

In saying this, I nevertheless recognise that, in very rare circumstances, a situation can arise in which the citizen is faced with a conflict between what is, in effect, two inconsistent laws. The first law is the law of the land. The second is a moral imperative … Yielding to the moral imperative does not excuse a breach of the law of the land, but it is understandable and in some circumstances may even be praiseworthy.”

Compare, too, with the *Catechism of the Catholic Church* at paragraph 2036:

“Those who renounce violence and bloodshed and, in order to safeguard human rights, make use of those means of defence available to the weakest, bear witness to evangelical charity, provided that they do so without harming the rights and obligations of other men and societies. They bear legitimate witness to the gravity of the physical and moral risk of recourse to violence, with all its destruction and death.”

Thus in *Centesimus Annus* (1991) Pope John Paul II stated (at paragraph 47):

“[T]oday we are witnessing a predominance, not without signs of opposition, of the democratic ideal, together with lively attention to and concern for human rights. But for this very reason it is necessary for peoples in the process of reforming their systems to give democracy an authentic and solid foundation through the explicit recognition of those rights. Among the most important of these rights, mention must be made of the right to life, an integral part of which is the right of the child to develop in the mother’s womb from the moment of conception; the right to live in a united family and in a moral environment conducive to the growth of the child’s personality; the right to develop one’s intelligence
and freedom in seeking and knowing the truth; the right to share in the work which makes wise use of
the earth’s material resources, and to derive from that work the means to support oneself and one’s
dependents; and the right freely to establish a family, to have and to rear children through the
responsible exercise of one’s sexuality. In a certain sense, the source and synthesis of these rights is
religious freedom, understood as the right to live in the truth of one’s faith and in conformity with one’s
transcendent dignity as a person.”

states at paragraph 169:
“[T]he democratic State, where decisions are usually made by the majority of representatives elected
by the people, those responsible for government are required to interpret the common good of their
country not only according to the guidelines of the majority but also according to the effective good of
all the members of the community, including the minority.”

140 See Pope John Paul II Evangelium Vitae at paragraphs 69-70:
“[I]n the democratic State, where decisions are usually made by the majority of representatives elected
by the people, those responsible for government are required to interpret the common good of their
country not only according to the guidelines of the majority but also according to the effective good of
all the members of the community, including the minority.”

70. At the basis of all these tendencies lies the ethical relativism which characterizes much of
present-day culture. There are those who consider such relativism an essential condition of
democracy, inasmuch as it alone is held to guarantee tolerance, mutual respect between people and
acceptance of the decisions of the majority, whereas moral norms considered to be objective and
binding are held to lead to authoritarianism and intollerance. But it is precisely the issue of respect
for life which shows what misunderstandings and contradictions, accompanied by terrible practical
consequences, are concealed in this position.

It is true that history has known cases where crimes have been committed in the name of ‘truth’. But
equally grave crimes and radical denials of freedom have also been committed and are still being
committed in the name of “ethical relativism”.

141 C.f. Richard John Neuhaus The Best of the Public Square – Book 2 (2001) in “Encountered by the Truth” at
pages 177, 178-179:
“The dismal truth is that generations of moderns were miseducated to think that religion, and
Christianity in particular, claims to be ‘objectively’ true in a manner that eliminates the subjectivity of
experience and perspective. Regrettably that miseducation was and is abetted by Christians who
confuse orthodoxy with the exclusion of intellectual inquiry. In this habit of mind the truth is an
object, a thing possessed, which must be assiduously protected from any thought that is not certified by
Christian copyright. The alternative is to understand that truth is personal, less a matter of our
possessing than of our being possessed in service to the one who is the way the truth and the life. As
St. Paul reminds the Corinthians, our apprehension of that truth is always partial, something seen
through a glass darkly in anticipation of the time when we will know even as we are known.

Few things have contributed so powerfully to the unbelief of the modern and post-modern world as the
pretension of Christians to know more than we do. In reaction to unwarranted claims of knowledge
certain and complete, modern rationalists constructed their religion of scientism, and post-moderns, in
reaction to both claim that nothing can be known.[…]
If Christians exhibited more intellectual patience, modesty, curiosity and sense of adventure, there would be fewer atheists in the world, both of the modern rationalist and post-modern irrationality varieties. I have never met an atheist who rejects the God in whom I believe. I have met many who decline to commit intellectual suicide, and maybe spiritual suicide as well, by accepting a God proposed by Christians who claim to know more than they can possibly know.”

142 See John T. Noonan Jr. The Church that can and cannot change: the development of Catholic moral teaching (Notre Dame: University of Notre Dame Press, 2005)

143 Compare See Gaudium et spes: the pastoral constitution on the Church in the modern world, promulgated by Pope Paul VI on 7 December 1965 at paragraph 75:

“[T]he people who come together in the political community are many and diverse, and they have every right to prefer divergent solutions. If the political community is not to be torn apart while everyone follows his own opinion, there must be an authority to direct the energies of all citizens toward the common good, not in a mechanical or despotic fashion, but by acting above all as a moral force which appeals to each one’s freedom and sense of responsibility.

It is clear, therefore, that the political community and public authority are founded on human nature and hence belong to the order designed by God, even though the choice of a political regime and the appointment of rulers are left to the free will of citizens.

It follows also that political authority, both in the community as such and in the representative bodies of the state, must always be exercised within the limits of the moral order and directed toward the common good-with a dynamic concept of that good-according to the juridical order legitimately established or due to be established. When authority is so exercised, citizens are bound in conscience to obey. Accordingly, the responsibility, dignity and importance of leaders are indeed clear.

But where citizens are oppressed by a public authority overstepping its competence, they should not protest against those things which are objectively required for the common good; but it is legitimate for them to defend their own rights and the rights of their fellow citizens against the abuse of this authority, while keeping within those limits drawn by the natural law and the Gospels.”

144 See Archbishop Raymond Burke On Our Civic Responsibility for the Common Good (October 2004) published at www.archstl.org/letters/100104pastoral_letter.pdf paragraphs 2, 3:

“[S]ome months ago … another native of Germany, who grew up during the Third Reich commented to me on the accusation made against a number of Catholic bishops of Germany of the time of not having done enough to teach against the evils of Nazism.

…I think how much weightier the individual responsibility for the common good is in a democratic republic like our own nation, in which we elect the officials of our Government. As a Bishop I think of the tremendous responsibility which is mine to teach clearly the moral law to all the faithful so that, in turn, we all have a clear understanding of our civic responsibility for the common good.”

145 The Catechism of the Catholic Church makes the following assertions at paragraphs 2242-2243:

“[W]hen citizens are under the oppression of a public authority which oversteps its competence, they should still not refuse to give or to do what is objectively demanded of them by the common good; but it is legitimate for them to defend their own rights and those of their fellow citizens against the abuse of this authority within the limits of the natural law and the Law of the Gospel.

Armed resistance to oppression by political authority is not legitimate, unless all the following conditions are met: 1) there is certain, grave, and prolonged violation of fundamental rights; 2) all other means of redress have been exhausted; 3) such resistance will not provoke worse disorders; 4) there is well-founded hope of success; and 5) it is impossible reasonably to foresee any better solution.”
Gregory Kalscheur SJ “John Paul II, John Courtney Murray and the relationship between civil law and moral law: a constructive proposal for contemporary American pluralism” Journal of Catholic Social Thought (Summer 2004) 231 at 268

Vatican II Gaudium et esps – pastoral constitution on the Church in the modern world (1965) at Article 27: All offences against life itself, such as every kind of murder, genocide, abortion, euthanasia and willful suicide; all violations of the integrity of the human person, such as mutilation, physical and mental torture, undue psychological pressures; all offences against human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the selling of women and children, degrading working conditions where men are treated as mere tools for profit rather than free and responsible persons; all these and the like are certainly criminal: they poison human society; and they do more harm to those who practice them than those who suffer from the injury. Moreover, they are a supreme dishonour to the Creator’.

Compare however Pope John Paul II Centesimus Annus (1991) at paragraph 29: “In the totalitarian and authoritarian regimes, the principle that force predominates over reason was carried to the extreme. Man was compelled to submit to a conception of reality imposed on him by coercion, and not reached by virtue of his own reason and the exercise of his own freedom. This principle must be overturned and total recognition must be given to the rights of the human conscience, which is bound only to the truth, both natural and revealed. The recognition of these rights represents the primary foundation of every authentically free political order.”

The Catechism of the Catholic Church states (at para 1783): “Conscience must be informed and moral judgment enlightened. A well-informed conscience is upright and truthful. It formulates its judgment according to reason, in conformity with the true good willed by the wisdom of the Creator. The education of conscience is indispensable for human beings who are subjected to negative influences and tempted by sin to prefer their own judgment and reject authoritative teachings.”

See Pope John Paul II Evangelium Vitae (March 25, 1995) n 62d: “No circumstances, no purpose, no law whatsoever can make licit an act which is intrinsically illicit, since it is contrary to the law of God which is written in every human heart, knowable by reason itself and proclaimed by the Church.”

Thus Archbishop Raymond Burke: On the Dignity of Human Life and Civic Responsibility published at www.wf-f.org/Burke-Life-CivicRespons.html (November 2003) stated: “Catholic politicians have the responsibility to work against an unjust law, even when a majority of the electorate supports it. When Catholic politicians cannot immediately overturn an unjust law, they must never cease to work toward that end. At the very least, they must limit, as much as possible, the evil caused by the unjust law.”

In England the following oath - as prescribed by The Test Act 1678 (30 Car. II., Stat. II., c. 1) - was required of individuals occupying civil or military offices within the State, and from those sitting or voting in or for Parliament:

“I, A.B., do solemnly and sincerely, in the Presence of God, profess, testify, and declare that I do believe that in the Sacrament of the Lord’s Supper there is not any Transubstantiation of the Elements of Bread and Wine into the Body and Blood of Christ at or after the Consecration thereof by any Person whatsoever; and that the Invocation or Adoration of the Virgin Mary or any other Saint, and the Sacrifice of the Mass, as they are now used in the Church of Rome, are superstitious and idolatrous: And I do solemnly, in the Presence of God, profess, testify, and declare that I do make this Declaration, and every Part thereof, in the plain and ordinary Sense of the Words read unto me as they are commonly understood by English Protestants, without any Evasion, Equivocation, or mental Reservation whatsoever, and without any Dispensation already granted me for this Purpose by the Pope or any other Authority or Person whatsoever, or without any Hope of any such Dispensation from any Person or Authority whatsoever, or without thinking that I am or can be acquitted before God or Man, or absolved of this Declaration, or any Part thereof, although the Pope or any other Person or Persons
or Power whatsoever should dispense with or annul the same, or declare that it was null and void from the Beginning.”

In Scotland the Claim of Right of 1689 - a Declaration of the Parliament of Scotland – was to the effect that James VII of Scotland (and II of England) had, by his conduct and religion, forfeited the right to the Crown in Scotland and that the throne had become vacant, thereby allowing the pre-Union Scottish Parliament to offer the Scottish Crown to the King and Queen of England, William and Mary and complained:

“That the disarming of Protestants and employing papists in the places of greatest trust both Civil and military the thrusting out Protestants to make room for papists and the entrusting papists with the forts and magazines of the Kingdom are Contrary to law”

A fuller account of the penal laws against Catholics holding public office in the British State (and its colonies) may be found at www.newadvent.org/cathen/11611c.htm

153 See St. Alcuin of York writing to Charlemagne c. 800 CE:

“You should not listen to those people who say ‘the voice of the people is the voice of God’, since the tumult of the crowd is always close to insanity.”

154 Acts 5:29

155 Matthew 6:24

156 This is a position also taken by Hugo Grotius, father of international law and (Arminian) Calvinist humanist and theologian who, in the Prolegomenon to his De Iure Belli ac Pacts (On the laws of war and peace) (1625), famously asserted that the natural law was binding on all, regardless of religious belief or even on the existence of God. He stated:

“[W]hat we have been saying [about the existence of a natural law of justice] would have a degree of validity even if we should concede [etiamsi daremus] that which cannot be conceded without the utmost wickedness, that there is no God, or that the affairs of men are of no concern to Him.”

157 See James Alison On being liked (2003) in Chapter 6 “Being wrong and telling the truth” at page 95:

“[N]atural law is the way verifiability challenges metaphysical a prioris, and this saves our Church from becoming a sacred sect, defined by bizarre and anti-rational taboos.”

158 See Thomas Shaffer “Jurisprudence in the light of Hebraic faith” (1984) 1 Journal of Law, Ethics and Public Policy 77 at 87:

“When natural law measures positive law, natural law is likely to take the form of positive law. How else are the two to be compared? This way of thinking leads towards codification of natural law – statements of it in hornbook form. And of course hornbooks have authors; they have institutional authorities who promulgate and enforce them. And the institutional authority which stands behind these codifications of natural law can become a god. There are examples of this in ... Roman Catholic moral theology.”

159 There are, however, some indications in the latter writings of John Paul II of an apparent retreat from this teaching which exposes the moral truths which the Church seeks to expound to the potentially dangerous scrutiny of reason, in favour of the impregnable certainty of Revelation. Thus in Veritatis Splendor (1993) Pope John Paul II states (at paragraphs 36, 44):

“In response to the encouragement of the Second Vatican Council (Cf. Pastoral Constitution on the Church in the Modern World Gaudium et Spes, Articles 40 and 43) there has been a desire to foster dialogue with modern culture, emphasizing the rational “and thus universally understandable and communicable” character of moral norms belonging to the sphere of the natural moral law. (Cf. Saint Thomas Aquinas, Summa Theologica, I-II, q. 71, a. 6; see also ad Sum.) There has also been an attempt to reaffirm the interior character of the ethical requirements deriving from that law, requirements which create an obligation for the will only because such an obligation was previously acknowledged by human reason and, concretely, by personal conscience.

Some people, however, disregarding the dependence of human reason on Divine Wisdom and the need, given the present state of fallen nature, for Divine Revelation as an effective means for knowing moral truths, even those of the natural order (Cf. Pius XII, Encyclical Letter Humani Generis (August
(1950): _AAS_ 42 (1950), 561-562.) have actually posited a _complete sovereignty of reason_ in the domain of moral norms regarding the right ordering of life in this world.

... Man is able to recognize good and evil thanks to that discernment of good from evil which he himself carries out by his _reason, in particular by his reason enlightened by Divine Revelation and by faith_, through the law which God gave to the Chosen People."

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160 See, too, Pope John Paul II _Evangelium Vitae_ (1995) at paragraph 90:

“[I]t is not enough to remove unjust laws. The underlying causes of attacks on life have to be eliminated, especially by ensuring proper support for families and motherhood. A family policy must be the basis and driving force of all social policies. For this reason there need to be set in place social and political initiatives capable of guaranteeing conditions of true freedom of choice in matters of parenthood. It is also necessary to rethink labor, urban, residential and social service policies so as to harmonize working schedules with time available for the family, so that it becomes effectively possible to take care of children and the elderly.”


162 Pope John Paul II _Centesimus Annus_ (1991) at paragraph 46

163 _Catechism of the Catholic Church_ at paragraph 1781:

“Conscience enables one to assume _responsibility_ for the acts performed. If man commits evil, the just judgment of conscience can remain within him as the witness to the universal truth of the good, at the same time as the evil of his particular choice. The verdict of the judgment of conscience remains a pledge of hope and mercy. In attesting to the fault committed, it calls to mind the forgiveness that must be asked, the good that must still be practiced, and the virtue that must be constantly cultivated with the grace of God.”

164 _Catechism of the Catholic Church_ at paragraph 1798:

“A well-formed conscience is upright and truthful. It formulates its judgments according to reason, in conformity with the true good willed by the wisdom of the Creator. Everyone must avail himself of the means to form his conscience.”

165 See, to similar effect, the Pontifical Council for Justice and Peace _A Compendium of the Social Doctrine of the Church_ (2004) at paragraph 78:

“A significant contribution to the Church’s social doctrine comes also from human sciences and the social sciences. In view of that particular part of the truth that it may reveal, no branch of knowledge is excluded. The Church recognizes and receives everything that contributes to the understanding of man in the ever broader, more fluid and more complex network of his social relationships. It is aware of the fact that a profound understanding of man does not come from theology alone, without the contributions of many branches of knowledge to which theology itself refers.”

166 As is stated, too, in _Veritatis Splendor_ (1993) at paragraph 44:

“[O]bedience to God is not, as some would believe, a _heteronomy_, as if the moral life were subject to the will of something all-powerful, absolute, extraneous to man and intolerant of his freedom. If in fact a heteronomy of morality were to mean a denial of man’s self-determination or the imposition of norms unrelated to his good, this would be in contradiction to the Revelation of the Covenant and of the redemptive Incarnation. Such a heteronomy would be nothing but a form of alienation, contrary to divine wisdom and to the dignity of the human person.”

167 _Gaudium et Spes_ (7 December 1965) at Article 17

168 _Catechism of the Catholic Church_ at paragraph 1790:

“A human being must always obey the certain judgment of his conscience. If he were deliberately to act against it, he would condemn himself.”

169 As is noted by Pope John Paul II in _Veritatis Splendor_ (1993) at paragraph 32
“Certain currents of modern thought have gone so far as to exalt freedom to such an extent that it becomes an absolute, which would then be the source of values. This is the direction taken by doctrines which have lost the sense of the transcendent or which are explicitly atheist. The individual conscience is accorded the status of a supreme tribunal of moral judgment which hands down categorical and infallible decisions about good and evil. To the affirmation that one has a duty to follow one's conscience is unduly added the affirmation that one's moral judgment is true merely by the fact that it has its origin in the conscience. But in this way the inescapable claims of truth disappear, yielding their place to a criterion of sincerity, authenticity and 'being at peace with oneself', so much so that some have come to adopt a radically subjectivistic conception of moral judgment.”

170 Thomas Aquinas *Summa Theologiae* IaIIae, q 94, a 6

171 Thus the Pontifical Council for Justice and Peace *A Compendium of the Social Doctrine of the Church* (2004) states at paragraph 85:

“In its constant turning to history and in engaging in the events taking place, the Church’s social doctrine shows a capacity for continuous renewal. Standing firm in its principles does not make it a rigid teaching system, but a Magisterium capable of opening itself to new things without having its nature altered by them. It is a teaching that is ‘subject to the necessary and opportune adaptation suggested by the changes in historical conditions and by the unceasing flow of the events which are the setting of the life of people and society’ (John Paul II, Encyclical letter *Sollicitudo Rei Socialis*, 3: AAS 80 (1988) 515.”

172 See, on this point, Professor Nicholas Lash “Natural Law”, unpublished paper presented to the “‘D’ Society’, Cambridge University, 26 January 1979 (copy on file with the present writer)


174 Congregation for the Doctrine of the Faith *Considerations regarding proposals to give legal recognition to unions between homosexual persons* (June 2003) at paragraph 5:

“Those who would move from tolerance to the legitimization of specific rights for cohabiting homosexual persons need to be reminded that the approval or legalization of evil is something far different from the toleration of evil. In those situations where homosexual unions have been legally recognized or have been given the legal status and rights belonging to marriage, clear and emphatic opposition is a duty. One must refrain from any kind of formal cooperation in the enactment or application of such gravely unjust laws and, as far as possible, from material cooperation on the level of their application. In this area, everyone can exercise the right to conscientious objection.”

175 *Gaudium et Spes - the Pastoral Constitution on the Church in the Modern World* (1965) states at Article 16:

“In the depths of his conscience, man detects a law which he does not impose upon himself, but which holds him to obedience. Always summoning him to love good and avoid evil, the voice of conscience when necessary speaks to his heart: do this, shun that. For man has in his heart a law written by God; to obey it is the very dignity of man; according to it he will be judged. Conscience is the most secret core and sanctuary of a man. There he is alone with God, Whose voice echoes in his depths. In a wonderful manner conscience reveals that law which is fulfilled by love of God and neighbor. In fidelity to conscience, Christians are joined with the rest of men in the search for truth, and for the genuine solution to the numerous problems which arise in the life of individuals from social relationships. Hence the more right conscience holds sway, the more persons and groups turn aside from blind choice and strive to be guided by the objective norms of morality. Conscience frequently errs from invincible ignorance without losing its dignity. The same cannot be said for a man who cares but little for truth and goodness, or for a conscience which by degrees grows practically sightless as a result of habitual sin.”

177 “The experience was only a dream, as that which should not be [true] cannot be [true].”

178 As Thomas Aquinas notes in Summa Theologiae IaIIae q.96 a.2: “[L]aws should be appointed to men according to their condition; St. Isidore remarks how law ‘should be possible both according to nature and the custom of the country. 
... Law is laid down for a great number of people, of which the majority have no higher standard of morality. Therefore it does not forbid all the vices, from which upright men can keep away. But only those grave ones which the average man can avoid, and chiefly those which do harm to others and which have to be stopped if human society is to be maintained, such as murder and theft and so forth.”

179 See James Alison On being liked (2003) in “Introduction” at page xiv: “We have yet to develop a courteous and rational discourse about the fallibility of the Church. Infallibility makes no sense at all unless it is a very particular sort of exception in a massive sea of fallibility and there is a realistic way of telling the difference between the two.”

180 See Sermon 198 of St. Augustine (Dolbeau 198, Mainz 62) Discourse of Augustine the Bishop against the Pagans as translated and annotated by Edmund Hill in The Complete Works of Saint Augustine: a translation for the 21st century - Volume III/11 Sermons discovered since 1990 (New City Press: Hyde Park New York, Second release, 1997) at page 220 paragraph 52: “Parmenian, who was once a bishop of the Donatists, had the audacity to state in one of his letters that the bishop is the mediator between the people and God. You can see that they are putting themselves forward in the place of the bridegroom [Christ]; they are corrupting the souls of others with a sacrilegious adultery. This is no mean case of presumption, one that would strike me as totally incredible had I not read it! You see, if the bishop is the mediator between the people and God, it follows that there must be many mediators since there are many bishops. So then in order to read the letter of Parmenian let us censor the letter of the apostle Paul, where he says ‘For there is one God, and one mediator of God and men, the man Christ Jesus (1 Timothy 2:5). But between whom is he the mediator, if not between God and his people. So between God and his body, because the Church is his body. Truly monstrous, therefore, is that pride which has the audacity to set up the bishop as mediator, guilty of the adulterous fallacy of claiming for itself the marriage of Christ”

181 Seán Fagan SM Does Morality Change ? (Dublin, 2003) at page 18. See, too, the Pontifical Council for Justice and Peace A Compendium of the Social Doctrine of the Church (2004) at paragraph 79: “The social doctrine belongs to the Church because the Church is the subject that formulates it, disseminates it and teaches it. It is not a prerogative of a certain component of the ecclesial body, but of the entire community; It is the expression of the way that the Church understands society and of her position regarding social structures and changes. The whole of the Church community – priests religious and laity – participates in the formulation of this social doctrine, each according to the different tasks, charisms and ministries found within her.”

182 Compare the Congregation for the Doctrine of the Faith Doctrinal Note on some questions regarding the participation of Catholics in political life (November 24, 2002): “A kind of cultural relativism exists today, evident in the conceptualization and defense of an ethical pluralism, which sanctions the decadence and disintegration of reason and the principles of the natural moral law. Furthermore, it is not unusual to hear the opinion expressed in the public sphere that such ethical pluralism is the very condition for democracy. As a result, citizens claim complete autonomy with regard to their moral choices, and lawmakers maintain that they are respecting this freedom of choice by enacting laws which ignore the principles of natural ethics and yield to ephemeral cultural and moral trends, as if every possible outlook on life were of equal value. At the same time, the value of tolerance is disingenuously invoked when a large number of citizens, Catholics among them, are asked not to base their contribution to society and political life through the legitimate means available to everyone in a democracy on their particular understanding of the human person and the common good. The history of the twentieth century demonstrates that those citizens were right who recognized
the falsehood of relativism, and with it, the notion that there is no moral law rooted in the nature of the human person, which must govern our understanding of man, the common good and the State.”

183 *Gaudium et Spes* (7 December 1965) at paragraph 43

184 Compare, however, the language used in *Veritatis Splendor* (1993) at paragraph 104

“...it is quite human for the sinner to acknowledge his weakness and to ask mercy for his failings; what is unacceptable is the attitude of one who makes his own weakness the criterion of the truth about the good, so that he can feel self-justified, without even the need to have recourse to God and his mercy. An attitude of this sort corrupts the morality of society as a whole, since it encourages doubt about the objectivity of the moral law in general and a rejection of the absoluteness of moral prohibitions regarding specific human acts, and it ends up by confusing all judgments about values.”

185 Compare, however, with Pope John Paul II’s encyclical *Veritatis Splendor* (August 1993) at paragraph 4:

“[...] it seems necessary to reflect on the whole of the Church’s moral teaching, with the precise goal of recalling certain fundamental truths of Catholic doctrine which, in the present circumstances, risk being distorted or denied. In fact, a new situation has come about within the Christian community itself, which has experienced the spread of numerous doubts and objections of a human and psychological, social and cultural, religious and even properly theological nature, with regard to the Church’s moral teachings. It is no longer a matter of limited and occasional dissent, but of an overall and systematic calling into question of traditional moral doctrine, on the basis of certain anthropological and ethical presuppositions. At the root of these presuppositions is the more or less obvious influence of currents of thought which end by detaching human freedom from its essential and constitutive relationship to truth. Thus the traditional doctrine regarding the natural law, and the universality and the permanent validity of its precepts, is rejected; certain of the Church’s moral teachings are found simply unacceptable; and the Magisterium itself is considered capable of intervening in matters of morality only in order to ‘exhort consciences’ and to ‘propose values’, in the light of which each individual will independently make his or her decisions and life choices.”

186 *Gaudium et Spes* - the Pastoral Constitution on the Church in the Modern World (1965) at paragraph 75

187 Contrast the position of Pope John Paul II as stated in *Incarnationis mysterium* (November 29, 1998), the Bull of Induction of the Holy Year 2000:

“As the successor of Peter, I ask that in this year of mercy the Church, strong in the holiness which she receives from her Lord, should kneel before God and implore forgiveness for the past and present sins of her sons and daughters.”

See, too, the Apostolic Letter for the Millennium *Tertio Millennio Adveniente* where John Paul II indicated to the Church the path forward for purifying her memory regarding the faults of the past and for giving an example of repentance to individuals and civil societies. Thus, John Paul II, addressing himself to the Moravians, has asked ‘forgiveness, on behalf of all Catholics, for the wrongs caused to non-Catholics in the course of history’ (cf. Canonization of Jan Sarkander in the Czech Republic, May 21, 1995). John Paul II has also stated his wish to undertake ‘an act of expiation’ and ask forgiveness of the Indians of Latin America and from the Africans deported as slaves (*Message to the Indians of America*, Santo Domingo, October 13, 1992, and *General Audience Discourse* of October 21, 1992). Ten years earlier he had already asked forgiveness from the Africans for the way in which they had been treated (*Discourse* at Yaoundé, August 13, 1985).

188 1 Corinthians 7:9

“It is better to marry than to burn”

189 As some would have it, in contrast to the position taken by St. Augustine of Hippo in the last days of the Roman Empire – a polity not known latterly for its democratic leanings – in a sermon given in Carthage in September 417 CE when he wrote: *Roma locuta est causa finita est.*

190 See, for an example of the beginning of just such debate, Gareth Moore OP *A question of truth: Christianity and Homosexuality* (2003).

191 Sermon 162C ((Dolbeau 10, Dolbeau 26, Mainz 27) Sermon of the Blessed Augustine on the words of the Apostle to the Galatians where Paul takes Peter to task as translated and annotated by Edmund Hill in *The