

FORMING THE WELL-FORMED CONSCIENCE

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I believe in an America where the separation of church and state is absolute—where no Catholic prelate would tell the President (should he be Catholic) how to act, and no Protestant minister would tell his parishioners for whom to vote

. . . .

But let me stress again that these are my views—for contrary to common newspaper usage, I am not the Catholic candidate for President. I am the Democratic Party's candidate for President who happens also to be a Catholic. I do not speak for my church on public matters—and the [C]hurch does not speak for me.

Whatever issue may come before me as President—on birth control, divorce, censorship, gambling or any other subject—I will make my decision in accordance with these views, in accordance with what my conscience tells me to be the national interest, and without regard to outside religious pressures or dictates. And no power or threat of punishment could cause me to decide otherwise.

But if the time should ever come—and I do not concede any conflict to be even remotely possible—when my office would require me to either violate my conscience or violate the national interest, then I would resign the office; and I hope any conscientious public servant would do the same.¹

The preceding quotation from John F. Kennedy, the first Catholic elected to the Presidency of the United States, was made in September of 1960 when then Senator Kennedy, as the Democratic nominee for President, gave an address to the

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¹ Senator John F. Kennedy, Address to the Greater Houston Ministerial Association (Sept. 12, 1960) [hereinafter *Kennedy Address*].

Greater Houston Ministerial Association prior to the general election. His statement, made as a man baptized in the Catholic Church who held public office, reveals something about how he, as a Catholic, as a citizen, and as an office holder, would form his conscience regarding issues having both political and moral dimensions.² While a careful investigation of his understanding of conscience, its proper formation, and its application go beyond the scope of this brief Essay in this Symposium, John F. Kennedy's perspective sets the stage for my contribution to this symposium on the November 2007 quadrennial statement of the United States Conference of Catholic Bishops, entitled *Forming Consciences for Faithful Citizenship: A Call to Political Responsibility from the Catholic Bishops of the United States* ("*Forming Consciences*").

The objective of my presentation is to provide a helpful explanation to Catholics and people of goodwill as to how the Catholic—as citizen or as holder of public office—is to form personal conscience that is well-formed and therefore consistent with the teachings of the Church.³ It is essential to note that conscience, as understood by the Church, is “the most secret core and sanctuary of a man. There he is alone with God, Whose voice echoes in his depths.”⁴ I will not investigate how conscience is to be applied to specific issues such as abortion, embryonic stem cell research, adoption, or marriage. I will simply consider the question: How is a well-formed conscience formed?

Conscience, its formation, and its exercise have long been important to the Church and its members—be they clerical, religious, or members of the laity. This point emerges several times throughout the *Forming Consciences*; moreover, the relevance of a well-formed conscience of Catholics to their political responsibility is emphasized throughout the text.⁵

² See *id.*

³ As then Joseph Cardinal Ratzinger said in his address at the Fourth Bishops' Workshop of the National Catholic Bioethics Center on “Moral Theology Today: Certitudes and Doubts” in February 1984, “[The Church's] teaching[s] bring[] conscience to expression. Conscience is seen to be valid precisely because it incorporates the inner truth of things in accord with reality, which is after all the voice of the Creator.” JOSEPH RATZINGER, ON CONSCIENCE 57 (Ignatius Press 2007).

⁴ PAUL VI, PASTORAL CONSTITUTION ON THE CHURCH IN THE MODERN WORLD *GAUDIUM ET SPES* ¶ 16 (1965).

⁵ UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *Forming Consciences for Faithful Citizenship: A Call to Political Responsibility from the Catholic Bishops of the United States* ¶¶ 14, 17–21, 30, 34, 37 (2007) [hereinafter *Forming Consciences*],

The bishops' statement reiterates at the outset the relevant conclusion of the Second Vatican Council in its *Declaration on Religious Liberty* that the minds and hearts of Catholics must be formed in such a way as to promote knowledge and practice of the "whole faith."⁶ In this context the bishops note that the Church herself has a critical, indispensable role in the formation of individual conscience so that Catholics may "hear, receive, and act upon the Church's teaching in the lifelong task of forming [their] own conscience."⁷

Mindful that the Church is open to criticism if it attempts to influence improperly the actions of the State, the bishops prudently acknowledge that they "do not intend to tell Catholics for whom or against whom to vote."⁸ Acknowledging a fundamental principle of American republican democracy, the bishops assert that it is the individual role of each citizen to make individual political choices and to participate in public life; however, they emphasize that a critical element of this individual responsibility is that the Catholic must do so "in light of a properly formed conscience."⁹ But the bishops also acknowledge their duty as apostles in union with the Pope to inform, through their teaching responsibility, each individual's conscience to assure that it is "properly formed."¹⁰ Their failure to do so would be an inexcusable abdication of their responsibility to the Church and those souls entrusted to their teaching authority.

The formation of a well-formed conscience must take into consideration the complementarity of faith and reason.¹¹ It is reason compatible with the Catholic faith that reinforces the Church's claim to teach and to proclaim the Gospel to the faithful and all people of good will. Consequently, it is essential that the legal system of any State, including the United States, acknowledges and protects the Church's freedom—the *libertas ecclesiae*—to exercise its proper role in civil society, especially through the instruction of the faithful regarding her teachings,

available at <http://www.usccb.org/faithfulcitizenship/FCStatement.pdf>.

⁶ *Id.* ¶ 4.

⁷ *Id.* ¶ 5.

⁸ *Id.* ¶ 7.

⁹ *Id.*

¹⁰ *See id.*

¹¹ *See id.* ¶¶ 9–10; *see also* JOHN PAUL II, ENCYCLICAL LETTER *FIDES ET RATIO* ¶ 100 (1998) [hereinafter *FIDES ET RATIO*].

including those that pertain to critical moral convictions having a bearing on the social, political, and economic issues of the day.¹²

Forming Consciences, while cautiously worded, is not reticent to state that participation in public life does not simply rely on the shaping of moral convictions based on a person's conscience, but must be founded on a well-formed conscience.¹³ A crucial distinction is required here to appreciate fully this central point of *Forming Consciences*. This essential distinction emerges from consideration of what the Supreme Court of the United States said in dicta in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, when, in discussing conscience, Justice Kennedy asserted that there is "a promise of the Constitution that there is a realm of personal liberty which the government may not enter."¹⁴ Had he concluded his remarks here instead of continuing to define "personal liberty,"¹⁵ his dicta may not have become the problem that exists today and conflicts starkly with the bishops' statement and the teachings of the Universal Church. But Justice Kennedy elaborated on what he meant by the "liberty" that is associated with individual conscience and its exercise.¹⁶ This personal liberty, according to the *Casey* plurality, is premised on additional dicta that states: "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State."¹⁷ From a Catholic perspective, there is little difficulty with Justice Kennedy's placing a limit on the state in the formulation of conscience and the exercise of liberty.¹⁸ However, his decision generates a great problem predicated on the exclusion of the roles that critical thinking, reason, and points of reference beyond the purely subjective have in determining the boundaries of personal liberty.¹⁹ Justice Kennedy offers no guidance on how

¹² See *Forming Consciences*, *supra* note 5, ¶¶ 11–12.

¹³ See *id.* ¶ 14.

¹⁴ *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 847 (1992).

¹⁵ See *id.* at 847, 851–53.

¹⁶ See *id.* at 851–53.

¹⁷ *Id.* at 851.

¹⁸ See HEINRICH A. ROMMEN, *THE STATE IN CATHOLIC THOUGHT: A TREATISE IN POLITICAL PHILOSOPHY* 603–05 (B. Herder Book Co. 1945).

¹⁹ An illustration of this problem is in the Principles released by 55 members of Congress in Congresswoman DeLauro's statements. Press Release, Congresswoman Rosa L. DeLauro, U.S. House of Representatives, House Democrats Release Historic

to resolve competing conceptions of liberty and conscience that inexorably lead to a collision course. The highly subjective *Casey* formulation of conscience is an undesirable method of finding out what conscience means and what it does not. Fortunately, *Forming Consciences* offers realistic and faithful countermeasures.

The bishops' statement reminds all faithful Catholics—lay, clerical, and religious—about the complementary roles of the Church's members in public life, including political involvement.²⁰ They note that the bishops, in particular, along with those who assist in their teaching authority, have the clear and distinct obligation “to teach fundamental moral principles that help Catholics form their consciences correctly.”²¹ Consistent with this point is the exhortation of Pope Benedict XVI that the Church desires to assist in the formation of consciences that will be exercised in political life; however, while the Church “cannot and must not replace the State,” she, at the same time, “cannot and must not remain on the sidelines.”²²

These points segue into the focus of this Essay, namely, how does the Church assist its members in the formation of a well-formed conscience? First of all, as I have mentioned, *Forming Consciences* proposes an antidote to the conundrum posed by the *Casey* method of liberty's role in the formation of conscience. The

Catholic Statement of Principles: Expresses Commitment to Dignity of Life and Belief that Government has 'Moral Purpose' (Feb. 28, 2006).

²⁰ *Forming Consciences*, *supra* note 5, ¶ 15.

²¹ *Id.*; accord PAUL VI, DOGMATIC CONSTITUTION ON THE CHURCH *LUMEN GENTIUM* ¶ 36 (1964).

Because of the very economy of salvation the faithful should learn how to distinguish carefully between those rights and duties which are theirs as members of the Church, and those which they have as members of human society. Let them strive to reconcile the two, remembering that in every temporal affair they must be guided by a Christian conscience, since even in secular business there is no human activity which can be withdrawn from God's dominion. In our own time, however, it is most urgent that this distinction and also this harmony should shine forth more clearly than ever in the lives of the faithful, so that the mission of the Church may correspond more fully to the special conditions of the world today. For it must be admitted that the temporal sphere is governed by its own principles, since it is rightly concerned with the interests of this world. But that ominous doctrine which attempts to build a society with no regard whatever for religion, and which attacks and destroys the religious liberty of its citizens, is rightly to be rejected.

Id.

²² BENEDICT XVI, ENCYCLICAL LETTER *DEUS CARITAS EST* ¶ 28 (2005).

statement provides a counterpoint to the dangerous subjectivism of the *Casey* formulation when the bishops correctly note, “Conscience is not something that allows us to justify doing whatever we want, nor is it a mere ‘feeling’ about what we should or should not do.”²³ The bishops also provide a constructive alternative that reflects the long tradition of the Church’s teaching regarding the importance of the transcendent and objective moral order that assists persons in making distinctions between right and wrong and forming actions based on these distinctions. Their alternative, the well-formed conscience, requires that consciences are “in accord with human reason and the teaching of the Church.”²⁴

Let me now consider each of the two elements: (1) human reason, and (2) the teachings of the Church that are constitutive of the well-formed conscience. The first raises the matter of genuine human reason and its exercise, which perceives and acts upon “the voice of God resounding in the human heart, revealing the truth to us and calling us to do what is good while shunning what is evil.”²⁵ It is insufficient to rely on mere human reason, for when a person’s reason is restricted to either what he or she thinks (feels) or what he or she thinks (feels) in consort with like-minded individuals, the problems associated with the *Casey* formulation become manifest. Senator Kennedy’s formulation is more in accord with *Casey* than with the *Forming Consciences*.

From the perspective of the exercise of the Christian, Catholic conscience, self-reliance is a problem when it is the only resource used in the formation of conscience. The conclusions of people based on consciences formed in this manner lead to conflict and adversity. A large source of this problem is that self-reliance, by itself, manufactures a deficient conscience, as the bishops’ statement would imply. The subjectively formed conscience lacks something vital to the well-formed conscience. The reason for this offered by the Church is that the faithful need

²³ *Forming Consciences*, *supra* note 5, ¶ 17.

²⁴ *Id.*

²⁵ *Id.* This point made by *Forming Consciences* reflects the counsel of Saint Paul in his letter to the Romans where he states, “Do not be overcome by evil, but overcome evil with good.” *Romans* 12:21 (New American). The bishops also rely on the fundamental doctrine of conscience that it “is a judgment of reason whereby the human person recognizes the moral quality of a concrete act In all he says and does, man is obliged to follow faithfully what he knows to be just and right.” CATECHISM OF THE CATHOLIC CHURCH ¶ 1778 (2d ed. 1997).

to transcend the subjective and relative in order to reflect on the Gospel and the Church's teachings (the latter of which will receive more discussion later in this Essay). Both the Gospel and the Magisterium come together in an organic synthesis of faith found in each person's discipleship that begins with the sacrament of Baptism and continues with the exercise of free will geared to living the virtuous life of committed discipleship. The Gospel and the Church's teachings infuse the thinking of the believer who elects to conduct himself or herself in a fashion that accords to both. For this desire to be fulfilled, Catholics must be committed to "engag[ing] their conscience and the power of their reason," as Pope John Paul II stated in his encyclical letter *Fides et Ratio*.²⁶

Pope John Paul II understood the necessary compatibility of "a sound philosophical vision of human nature and society, as well as of the general principles of ethical decision-making."²⁷ This synthesis is not compatible with the vision articulated by the Supreme Court in *Casey*. The reason for this is that the *Casey* vision of how conscience is formed is radically subjective and flawed by the whim of individual relativism that is often not inclined to the objective reality that transcends the present material moment.²⁸ In essence, the reason, which the Church encourages her members to exercise, is one that seeks objective truth and does not fear the search for it. The type of reason addressed by *Forming Consciences* is of the kind that supplies the inescapable path to objective truth and its consummation in God. The reason befitting the person of faith, then, is that which impels the search for truth, and the perfection of truth. It fears not learning and encountering what is beyond the subject who

²⁶ *FIDES ET RATIO*, *supra* note 11, ¶ 68.

²⁷ *Id.*

²⁸ Pope John Paul II explains well the problem that *Casey* generates:

Conscience is no longer considered in its prime reality as an act of a person's intelligence, the function of which is to apply the universal knowledge of the good in a specific situation and thus to express a judgment about the right conduct to be chosen here and now. Instead, there is a tendency to grant to the individual conscience the prerogative of independently determining the criteria of good and evil and then acting accordingly. Such an outlook is quite congenial to an individualist ethic, wherein each individual is faced with his own truth different from the truth of others.

Id. ¶ 98. See his reference to JOHN PAUL II, ENCYCLICAL LETTER *VERITATIS SPLENDOR*, ¶ 57–61 (1993) [hereinafter *VERITATIS SPLENDOR*].

makes the inquiry.²⁹ Moreover, the person eventually recognizes that the exercise of reason in its more perfect form will inevitably lead to this encounter, which is a major objective of the search for truth.³⁰ The exercise of this reason makes the person who engages in the inquiry wiser, but the wisdom acquired is no longer restricted to human intelligence since it leads to the mind of God. This reason is of the sort that liberates the human person from the fetters of the world that often restrict the profoundest knowledge and wisdom of the human condition and of human destiny. As our Lord, Jesus Christ said: “[Y]ou will know the truth, and the truth will set you free.”³¹ With these few basic thoughts about reason in mind, allow me to move on to the second essential component of the formation of a well-formed conscience: the teachings of the Church, the Magisterium.

The sort of reason that I have just discussed is inextricably related to the teachings of the Church upon which the formation of the well-formed conscience relies. Through this exercise of human reason that is connected with and searches for the wisdom of God, the teachings of the Church—and the discovery of God’s wisdom—have evolved. With this synthesis, the well-formed conscience addressed by the bishops’ statement will follow; without the synthesis, a form of conscience may exist, but it will not be the well-formed one of which the bishops speak because it will often be influenced by the temptations of subjectivity and relativism—as the *Casey* dicta supports.³²

²⁹ See *FIDES ET RATIO*, *supra* note 11, ¶ 28 (“The search for truth, of course, is not always so transparent nor does it always produce such results. The natural limitation of reason and the inconstancy of the heart often obscure and distort a person’s search. Truth can also drown in a welter of other concerns. People can even run from the truth as soon as they glimpse it because they are afraid of its demands. Yet, for all that they may evade it, the truth still influences life. Life in fact can never be grounded upon doubt, uncertainty or deceit; such an existence would be threatened constantly by fear and anxiety. One may define the human being, therefore, as *the one who seeks the truth.*”).

³⁰ As John Paul asserts in *FIDES ET RATIO*:

This is to say that with the light of reason human beings can know which path to take, but they can follow that path to its end, quickly and unhindered, only if with a rightly tuned spirit they search for it within the horizon of faith. Therefore, reason and faith cannot be separated without diminishing the capacity of men and women to know themselves, the world and God in an appropriate way.

Id. ¶ 16.

³¹ *John* 8:32 (New American).

³² In this regard, Pope John Paul II, in his encyclical letter *VERITATIS SPLENDOR*, put the matter well:

The Church's teachings note that the well-formed conscience is dependent on dialogue with God, as St. Bonaventure has suggested.³³ Of course, this dialogue has gone on for centuries since Christ instituted the Church upon the Rock of Peter.³⁴ In this regard, the Second Vatican Council acknowledged and emphasized in the Decree on Religious Freedom that in forming their consciences, Catholics must exercise care in being attentive to the "sacred and certain doctrine of the Church."³⁵ The reason for this is that the subjective development and exercise of conscience can be plagued by error, but, with the solid foundation of the Church's teachings underpinning the formation of conscience and its exercise, Christ's truth—as reflected in the Church's teachings—will prevail and direct the well-formed conscience.³⁶

It is with the Church's teachings that rely on the truth, Himself, that human conscience is expanded and liberated. The

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.

As is immediately evident, *the crisis of truth* is not unconnected with this development. Once the idea of a universal truth about the good, knowable by human reason, is lost, inevitably the notion of conscience also changes. Conscience is no longer considered in its primordial reality as an act of a person's intelligence, the function of which is to apply the universal knowledge of the good in a specific situation and thus to express a judgment about the right conduct to be chosen here and now. Instead, there is a tendency to grant to the individual conscience the prerogative of independently determining the criteria of good and evil and then acting accordingly. Such an outlook is quite congenial to an individualist ethic, wherein each individual is faced with his own truth, different from the truth of others. Taken to its extreme consequences, this individualism leads to a denial of the very idea of human nature.

VERITATIS SPLENDOR, *supra* note 28, ¶ 32.

³³ See *id.* ¶ 58.

³⁴ See *Matthew* 16:18 (New American) (alluding to Christ building His church).

³⁵ PAUL VI, DECLARATION ON RELIGIOUS FREEDOM *DIGNITATIS HUMANAE* ¶ 14 (1965).

³⁶ See *id.*

liberation comes from the fact that the individual Christian is not truly free when freedom is of the sort that distances a person from the truth. When a person is free from the truth, the person often becomes enslaved either by the paralysis of exaggerated autonomy and self-centeredness or by the dictates of some external entity that is not in accord with Christ's truth as proclaimed by the Church.³⁷ Here it is important to take account of Fr. John Courtney Murray's commentary on this segment of the Declaration on Religious Freedom. While commentaries to important texts, including the documents of the Second Vatican Council, need to be considered with caution and care, Fr. Murray's perspective is conditioned by the fact that he had a major role in drafting the Decree. In his discussion of the formation of conscience, Fr. Murray observed that it would be false to conclude that a person has the right to do whatever his or her conscience tells the person to do "simply because [his] conscience tells [him] to do it."³⁸ Fr. Murray asserted, correctly in my view, that to follow this kind of conclusion as correct would be inconsistent with Catholic teachings because it is based on a perilous theory.³⁹ The core justification for the view proffered by Fr. Murray is that the centrality of the peril is its reliance on the kind of subjectivism in which a person's conscience that is based on self-reliance rather than the objective truth determines what is right or wrong, true or false.⁴⁰ The judge of what is right or wrong, true or false is solely the individual, rather than objective certainty.

A significant example of authentic freedom seeking to embrace God's truth is Sir and Saint Thomas More, who was proclaimed by Pope John Paul II as the patron of statesmen and politicians in 2000.⁴¹ I use Thomas More as a counterpoint to

³⁷ *Cf. id.* (alluding to the importance of understanding the truth as Christ has taught it).

³⁸ POPE PAUL VI, *DECLARATION ON RELIGIOUS FREEDOM* (Dec. 7, 1965), reprinted in *THE DOCUMENTS OF VATICAN II* 675, ¶ 2 n.5 (Walter M. Abbott, S.J. ed., Joseph Gallagher trans., 1966) (commentary of John Courtney Murray, S.J.) [hereinafter *DECLARATION ON RELIGIOUS FREEDOM*].

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ JOHN PAUL II, APOSTOLIC LETTER *PROCLAIMING ST. THOMAS MORE PATRON OF STATESMEN AND POLITICIANS* (Oct. 31, 2000) [hereinafter *PROCLAIMING ST. THOMAS MORE PATRON*]. Pope John Paul II may well have had in mind Thomas More when the Pope stated in *Veritatis Splendor*:

The voice of conscience has always clearly recalled that there are truths

Senator John Kennedy. The former understood the notion of a well-formed conscience and practiced it even to his peril. In contrast, Senator Kennedy may or may not have understood the well-formed conscience, but his actions—or at least his words—suggested he was reluctant to follow the example of Thomas More.⁴² In the *motu proprio* proclaiming Thomas More the patron of statesmen and politicians, John Paul acknowledged that St. Thomas, distinguished in so many fields of family life, public service, and the profession of law, exemplified the conscience vital to discipleship.⁴³ As the Pope emphasized, More, in spite of pressure—both physical and psychological—remained constant in his fidelity to legitimate authority, avoided self-aggrandizement, and served “the supreme ideal of justice.”⁴⁴ St. Thomas More eschewed honor and vanity because his intentions and his deeds were characterized by the kind of sound judgment that is rooted in Christian faith.⁴⁵ Clearly, More’s martyrdom was the matchless evidence of his commitment to seeking and living the objective truth, the source of authentic Christian conscience. As Pope John Paul II stated, Thomas More embodied the well-formed moral conscience that serves as “‘the witness of God himself, whose voice and judgment penetrate the depths of man’s soul.’”⁴⁶ More understood well his duties as a citizen and public officer, but he was also keenly aware of his responsibility as a faithful son of the Church. As was attributed to him at the moment of his execution, he “‘die[d] the king’s good servant, and God’s first.’”⁴⁷

Essential to More and indispensable to any disciple who wishes to remain faithful to the dual citizenship of the City of Man and the City of God is the realization that Christ is the vine, and we humans are the branches. The quantity and quality of

and moral values for which one must be prepared to give up one’s life. In an individual’s words and above all in the sacrifice of his life for a moral value, the Church sees a single testimony to that truth which, already present in creation, shines forth in its fullness on the face of Christ.

VERITATIS SPLENDOR, *supra* note 28, ¶ 94.

⁴² See *Kennedy Address*, *supra* note 1.

⁴³ See *PROCLAIMING ST. THOMAS MORE PATRON*, *supra* note 41, ¶ 4.

⁴⁴ *Id.*

⁴⁵ See *id.*

⁴⁶ *Id.* (quoting *VERITATIS SPLENDOR*, *supra* note 28, ¶ 58).

⁴⁷ Thomas More, Last Words Before Execution (July 6, 1535), in *A THOMAS MORE SOURCE BOOK*, 357, 357 (Gerard B. Wegemer & Stephen W. Smith eds., 2004) (quoting More).

fruit that we bear in the actions of our lives is dependent on how well we embrace the vine who is Christ and His Church. This point was not forgotten at the Second Vatican Council when, in the Decree on Religious Liberty, the Fathers clearly stated that “[i]n the formation of their consciences, the Christian faithful ought carefully to attend to the sacred and certain doctrine of the Church.”⁴⁸

In 2002, the Congregation for the Doctrine of the Faith (CDF) taught that a well-formed Christian conscience imposes certain responsibilities on Catholic citizens in that it would counter this conscience to vote for or support political programs or legislation “which contradict[] the fundamental contents of faith and morals.”⁴⁹ The CDF went on to state that the faith is an integral unity and it would be incoherent for a Catholic to justify his or her action—the exercise of conscience—“to the detriment of the whole of Catholic doctrine.”⁵⁰ In essence, a well-formed conscience would not vote for a candidate, support legislation, or endorse a program on the basis of one particular element of evidence that would sacrifice the whole of the Church’s teachings that specifically include the entirety of its social doctrine.

The CDF was very clear to express the role the Church has in forming the well-formed conscience of the citizen or public official. As the Note of the CDF asserts, the Church and, therefore, its teachings do not themselves exercise political power, nor do they wish to abolish the freedom of Catholics, who must preserve their proper role in civil affairs.⁵¹ At the same time, the Church’s teaching role on issues that involve the public life of its members, who are also citizens of the State, must not be silenced. The Church has and must retain its proper function “to instruct and illuminate the consciences of the faithful, particularly those involved in political life, so that their actions

⁴⁸ *DECLARATION ON RELIGIOUS FREEDOM*, *supra* note 38, ¶ 14. As Fr. Murray noted in his commentary on this point appearing in the Decree, “[Catholics] are urged, in particular, to form their consciences under the guidance of the authority of the Church.” *Id.* ¶ 14 n.58. Fr. Murray goes on to clarify his point by stating that the formation of conscience of which he—and therefore the Council—is speaking of is conscience and freedom in the civil order. *Id.*

⁴⁹ CONGREGATION FOR THE DOCTRINE OF THE FAITH, DOCTRINAL NOTE *THE PARTICIPATION OF CATHOLICS IN POLITICAL LIFE* ¶ 4 (2002) [hereinafter *CATHOLICS IN POLITICAL LIFE*].

⁵⁰ *Id.*

⁵¹ *See id.* ¶ 6.

may always serve the integral promotion of the human person and the common good.”⁵²

An element of the Church’s teaching on this is that its hierarchical and clerical members have the primary duty to teach the faithful; however, the lay faithful have the principal responsibility of applying and implementing the principles of the Church’s social doctrine in the temporal order.⁵³ The CDF’s Note reiterates a point I made earlier: “The branch, engrafted to the vine which is Christ, bears its fruit in every sphere of existence and activity.”⁵⁴ The intention of the Church to promote and preserve its role as teacher is to insure that Catholics will be able through proper government structures to contribute to the improvement of society as a more just one that protects the dignity of the human person.⁵⁵

Some might argue that the positions contained in this dicta in the *Casey* decision represent the natural and proper evolution of the liberal and democratic state and the exercise of conscience,⁵⁶ but others—perhaps keeping in mind the counsel of Thomas More who suggested that “when statesmen forsake their own private conscience for the sake of their public duties . . . they lead their country by a short route to chaos”⁵⁷—can reasonably argue that this is incorrect.

If American society today would applaud the doctor who, in the exercise of his conscience, refused to conduct some morally-problematic scientific experiment encouraged or required by a totalitarian state on persons without their consent, why would that same society disapprove of the doctor who, also in the exercise of conscience, refused to terminate human life at its early stages as permitted by a democratic state that considers itself liberal or progressive? Put simply, this society’s action would indicate that it is, in spite of political rhetoric to the contrary, not supportive of the well-formed conscience. This society would be guided by a dangerous subjective whim and

⁵² *Id.*

⁵³ See, e.g., JOHN PAUL II, APOSTOLIC EXHORTATION *CHRISTIFIDELES LAICI* ¶ 59 (1988).

⁵⁴ *CATHOLICS IN POLITICAL LIFE*, *supra* note 49, ¶ 6.

⁵⁵ See *id.*

⁵⁶ As Professor Steven D. Smith notes, the *Casey* decision “invoked the sanctity of conscience as a central rationale for a right to abortion.” Steven D. Smith, *The Tenuous Case for Conscience*, 10 ROGER WILLIAMS U. L. REV. 325, 325 (2005).

⁵⁷ ROBERT BOLT, *A MAN FOR ALL SEASONS* 22 (Vintage Books 1990) (1961).

caprice that demands uniformity rather than diversity of opinion. It would, notwithstanding its democratic claims, be a totalitarian society. As John Paul II once said, “the value of democracy stands or falls with the values which it embodies and promotes.”⁵⁸ What values are being promoted today by liberal democracies that undermine the well-formed consciences of its citizens?

If some are prepared to cheer the physician depicted in the film *The Cider House Rules* who, in the exercise of his ether-molded “conscience,” would abort the babies of young, unwed mothers,⁵⁹ why could they not also commend the physician who, in the exercise of his conscience, refused to associate himself with such actions when the regulatory mechanisms of the state require the doctor to terminate innocent life that has not given its consent? Perhaps because, as Dr. Edmund Pellegrino, a physician and ethicist, has cautioned, this kind of society offers an “immediate utopianism of a man-made heaven on earth” where there is no world—nothing beyond the here and now.⁶⁰

Thomas Aquinas’ first principle of the law, to do good and avoid evil, offers an initial answer to this important question.⁶¹ Of course it is critical to this principle that the good identified and the associated conscience that is its natural companion of religious belief be well and properly defined. Otherwise, as Dr. Pellegrino states, errors of conscience can occur when individuals or groups relying on the conscience defense misidentify the good.⁶² If the good is misidentified, the subsequent acts based on conscience can also be flawed, and, in societies that pride themselves on being diverse and pluralistic, such as the United States, the good identified and the conscience claimed in its support can be mistaken.

Recognizing that there is a potential problem in justly dealing with claims of conscience, some cases offer clear

⁵⁸ JOHN PAUL II, ENCYCLICAL LETTER *EVANGELIUM VITAE* ¶ 70 (1995). In his earlier encyclical letter *Centesimus Annus* of 1991, he made a related observation: “As history demonstrates, a democracy without values easily turns into open or thinly disguised totalitarianism.” JOHN PAUL II, ENCYCLICAL LETTER *CENTESIMUS ANNUS* ¶ 46 (1991).

⁵⁹ *THE CIDER HOUSE RULES* (Miramax Pictures 1999).

⁶⁰ Edmund D. Pellegrino, *The Physician’s Conscience, Conscience Clauses, and Religious Belief: A Catholic Perspective*, 30 *FORDHAM URB. L.J.* 221, 224 (2002).

⁶¹ ST. THOMAS AQUINAS, *SUMMA THEOLOGIAE*, pt. I-II, Q. 94, art. 2 (1st ed. 1993) (1266–1273).

⁶² Pellegrino, *supra* note 60, at 227.

distinctions about competing claims to the good that may underlie the exercise of conscience. For example, in 1973, the highest court of the United States declared in *Roe v. Wade*⁶³ that the physician, in the exercise of professional judgment, could determine if nascent human life could be sacrificed. Some would celebrate this as a legitimate exercise of conscience. Others, however, would assert that this exercise of conscience is flawed because the result being mistakenly identified as a good is in fact not a good from the perspective of the child who is destroyed. What would happen to the second physician who, in the exercise of her professional judgment and conscience, concluded, “I cannot take this life.” Does the “mystery of life” passage of *Casey* supply the sole solution to this predicament? Or, might there be some search for a solution that goes beyond *Casey*’s endorsement of exaggerated personal liberty, which takes little or no recognition of others into the exercise of conscience and religious belief?

If *Casey* remains the solution, would the second physician, like Thomas More, be compelled to bend to the mother’s demand for terminating the pregnancy? If not, it could be said that the society and its law respect the conscience of all, rather than some. If, on the other hand, the doctor who objects is in some manner compelled to participate in the practice to which she objects—for example, referring the patient to a doctor who will perform the abortion—this society has begun its metamorphosis toward totalitarianism. In this case, the admonition attributed to Edmund Burke needs to be taken into account: “The only thing necessary for the triumph of evil is for good men to do nothing.”⁶⁴

The problem does not end here. In the early twenty-first century we believe that we are remote from the attitude of the German concentration camp commander who replied that he was simply following orders when asked, “where was your conscience?” In fact, we may not be so removed from this circumstance as we might like to think. Dr. Pellegrino has noted that some ethicists of the present day have begun to suggest that physicians “must separate their personal moral beliefs from their professional lives if they wish to practice in a secular society and

⁶³ 410 U.S. 113 (1973).

⁶⁴ This quotation is often attributed to Edmund Burke but not found in any of his works. Respectfully Quoted: A Dictionary of Quotations, <http://www.bartleby.com/73/560.html> (last visited July 6, 2008).

remain licensed [by the state].”⁶⁵ He points out that health care is beginning to merge with death care.⁶⁶ Thus, physicians may begin to wonder, if they raise objections about specific procedures, are they only entitled to a limited license to practice the healing arts?⁶⁷ This question can be taken a step further: Would they be given a license at all? And, if they have a license, would it be stripped from them when they refuse, out of conscience or religious belief, to engage in these procedures?

Today’s reality demonstrates this point. In the context of abortion, euthanasia, assisted suicide, morning-after cocktails, or same-sex unions, there are others willing to comply—sometimes in the name of conscience or something like it.⁶⁸ There is no need to coerce all citizens with state sanction—imprisonment, denial of licenses, or fines—to perform acts to which they object in good conscience and faith, based not on feeling but on sound and reasoned views of rightness and wrongness, as *Forming Consciences* asserts.

In the past experience of the twentieth century, one totalitarian state demanded adherence to the view that not all persons are equal on fundamental points of human nature—some are subhuman and can be annihilated. But reasoned opinion said otherwise. To have been a law-abiding citizen in that state, one had to hold and practice the view advanced by the state or suffer dire consequences. In the past, another totalitarian state required its citizens to proclaim that there is no God, even when contrary to reason and belief. If a person held and expressed the state’s view, he or she was a comrade and patriot. But if one did not, that person became a traitor and would risk calamity. So, what should one do?

From the observations and conversations of Will Roper, More’s son-in-law, who was present at More’s trial, we learn that More was simultaneously a principled and pragmatic individual.⁶⁹ This combination made for a remarkable person: clever in dealing with and confounding adversaries, but straightforward enough to let the honest listener understand

⁶⁵ Pellegrino, *supra* note 60, at 233.

⁶⁶ *See id.* at 233–34.

⁶⁷ *See id.*

⁶⁸ *See* Nina Totenberg, *Harry A. Blackmun: The Conscientious Conscience*, 43 AM. U. L. REV. 745, 748–49 (1994) (discussing the conscience of Justice Blackmun who authored the majority opinion in *Roe v. Wade*).

⁶⁹ *See generally* WILLIAM ROPER, A MAN OF SINGULAR VIRTUE (1980).

why he did what others would or could not. Thomas More, a man of profound faith in God, often spoke of conscience, well-formed, and used the term in his correspondence that was written after his arrest and prior to his trial. During his trial, writing and sending correspondence became difficult; however, Roper was able to capture the essence of More and his final understanding of conscience. Roper noted that at the end of More's trial, when the Lord Chancellor pressed him with the fact that "all the bishops, universities and best learned of this realm" had agreed to the Act of Succession and that More stood by himself by not joining his voice with theirs, More spoke from conscience.⁷⁰

In doing so, he began his reply to this question as the astute lawyer: With this abundance of evidence that the Act of Succession was lawful as demonstrated by such overwhelming endorsement of so many distinguished persons, what need was there for one final endorsement by Thomas More? As More expressed, he saw little cause "why that thing in my conscience should make any change."⁷¹ His comment rhetorically asked if the legitimacy of the Act were truly in question, what could his humble opinion offer at this late stage? He made the distinction between all those alive that had subscribed to oath and those in heaven who might have thought otherwise.⁷² If he were to be in the second category rather than the first, would it matter? It mattered a great deal, apparently. Yet, More persisted in his tack, and so the Lord Chief Justice declared, "I must needs confess that if the act of Parliament be not unlawful, then is not the indictment in my conscience insufficient[?]"⁷³ With that, More's condemnation was sealed.

The man who returned More to the Tower where he would await his execution had this to say to Roper: "I was ashamed of myself, that, at my departing from your father, I found my heart so feeble, and his so strong, that he was fain to comfort me, which should rather have comforted him."⁷⁴ By this time, the condemned man—an ordinary man who, nonetheless, has become

⁷⁰ *Id.* at 91.

⁷¹ *Id.*

⁷² *See id.*

⁷³ *Id.*

⁷⁴ *Id.* at 92.

a man for all seasons—had been fortified by a remarkable synthesis of conscience and faith. In a letter sent to his daughter Margaret from his Tower cell, he explained how his conscience guided him: He would take precaution not to deny outright what the act of Parliament required, but the oath itself must be avoided—for by taking it he would condemn himself to a much higher authority, namely God. As he said, “[I]n good faith my conscience so moved me in the matter that though I would not deny to swear to the succession, yet unto the oath . . . I could not swear, without the [jeopardizing] of my soul to perpetual damnation.”⁷⁵ More demonstrated graciously and courageously the essence of his identity as a prudent man, but, in doing so, he maintained that he was also a man of well-formed conscience. On the one hand, he searched for ways of remaining the faithful citizen, but on the other, he knew well there was a boundary beyond which he could not pass, for if he did, a far more basic law binding all humanity would be crossed.

It was the style of More to keep his exercise of conscience a quiet matter. But on the other hand, his life was a very public act. His silence proclaimed to the realm where he stood when the law demanded what his conscience would not permit: to profess the oath. Because of his well-formed conscience, he also knew he must be prepared to meet his final judge who is not of this world. Conscience was not exercised for the convenience of the continuation of his earthly life; it was exercised to determine the righteousness of how he would live this life as he prepared for the eternal one.

The memories of Thomas More vividly remain with us today. American society is richer, better, and more just because of who he was: a man of conscience well-formed and filled with faith in God and His Church. As I have attempted to demonstrate, there still remain challenges in exercising conscience and religious liberty today. Will there be new scaffolds to mount and new jail cells to inhabit as a result of the exercise of conscience and religious freedom? If so, may those who choose this path because of their well-formed conscience remember this extraordinary and

⁷⁵ ST. THOMAS MORE: SELECTED LETTERS 217 (Elizabeth Frances Rogers ed., 1961) (quoting a letter from Thomas More to his daughter Margaret on April 17, 1534).

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wise predecessor in faith? His guidance offered through the manner in which he lived and confronted the imposing challenges of his times may just be what the world and our beloved country need to avert the falsely-formed conscience that beckons and tempts the present age.