

# US Catholics and the Presidential Election: Abortion and Proportionate Reasons

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## Introduction

A Jesuit, who is also a moral philosopher, recently remarked, “I have never before encountered, either in correspondence, after Sunday liturgies or just in casual conversation, such intense concern and confusion over faith and politics as I do nowadays.”<sup>1</sup> And a well-known archbishop recently confided to some fellow priests, “I have not taken a public position on pro-abortion politicians receiving communion and I intend to maintain that position. What many want is a simple answer to a very complex question, a simple answer which agrees with what the person thinks.”

This article aims neither to add to the widespread confusion about the relationship between faith and politics nor to provide a simple answer to a complex question.<sup>2</sup> That complex question is: what is the appropriate relationship between Catholic morality and civil law, or, more concretely, in the United States, should overturning *Roe v Wade*, the 1973 Supreme Court decision that allows abortion, be the key purpose, as some bishops have argued, for US Catholics in the most recent presidential election? In order to remain as focused as possible, certain questions, also important, will need to be excluded or, at best, only indirectly touched upon – such as what canon law has to say about such matters, the roles of religious freedom and freedom of conscience, and the extent to which the positions taken by John Kerry and George W. Bush square with Catholic teaching. A recent score card on eight issues published in the October 1<sup>st</sup> issue of the liberal *National Catholic Reporter* gives Senator Kerry a C+ and President Bush a D+; had a similar evaluation been done by a conservative Catholic newspaper, say the *National Catholic Register*, the issues chosen would not likely be all the same and the final grades would also be very different, with Kerry assigned an F and Bush an A – a difference in the opinions of some Catholics that only adds

<sup>1</sup> John F. Kavanaugh, S.J., “Catholic Consciences,” in *America*, July 19–26, 2004, p. 7.

<sup>2</sup> I am indebted to many suggestions from colleagues at the University of Dayton who have helped me improve this address, especially Una Cadegan, Ray Fitz, S.M., Bill Portier, Chris Duncan, Mary Brown, Kel Dickinson, John Stinneford, Bill Trollinger, Paul Benson, student Gary Motz, and Mark Schwehn of Valparaiso University.

to the polarization and confusion about what Catholic teaching might be, and which teachings are most important.

Even with a limited focus for this article, the task remains difficult because of inescapable complexities. First some immediate historical background is important, then a description of the roots of the sharp division that exists in much of the US Catholic community, especially the division between several bishops and pro-choice Catholic politicians, followed by a brief examination of the contribution to this issue made by John Courtney Murray, a principal architect of Vatican II's decree on Religious Freedom, and then a discussion of what US Catholics should in general think about when they cast their votes, particularly with regard to abortion and pre-emptive war, which have become, for Catholics at least, the most talked about issues in the 2004 presidential election year. The article will conclude with a few post-election reflections.

### A Brief Historical Background

While the issue of the appropriate relationship between morality and civil law has been debated almost from the beginning of Christianity, it has taken a special form in the United States where there is a separation between the Church and the State, and where currently only one quarter of the population identifies itself as Catholic. Concerns about whether Catholic candidates for the presidency could be independent in their thinking arose first with Al Smith, who competed to be a candidate for the presidency in 1924 and who was the Democratic candidate in 1928. He lost the presidency because of the strength then of the Republican Party, his wet-urban anti-Prohibition politics and, to some extent, because of his inability to convince Protestants that, in his political responsibilities, he would be truly independent of any directives from the Vatican. By 1960, however, a second Catholic candidate succeeded in his bid for the presidency, but at a considerable price. In an effort to calm the fears of the Protestant majority that worried that he, like Al Smith before him, would be too influenced by the pope in the exercise of his presidency, John Fitzgerald Kennedy offered reassurances that, in effect, secularized the presidency. For Kennedy, the issues were birth control, diplomatic relations with the Vatican and aid to private schools. Toward the end of his campaign, he told the American Society of Newspaper Editors in clear terms that

... There is only one legitimate question... Would you, as President, be responsive in any way to ecclesiastical pressures or obligations of *any kind* that might in *any fashion* influence or interfere with your conduct of that office in the national interest? My answer was – and is – no... I am not the Catholic candidate for President. I am the Democratic Party's candidate

for President who happens to be a Catholic. I do not speak for the Catholic Church on issues of public policy, and no one speaks for me.<sup>3</sup> [Emphasis in the original]

Twenty-four years later another Catholic, this time Geraldine Ferraro, the Democratic candidate for vice-president in 1984, generated considerable controversy about the appropriate relationship between a Catholic politician's responsibility to defend and promote Catholic morality on the one hand, and be responsive to the general will of a pluralistic citizenry. Since the Kennedy presidency, however, the Supreme Court had decided in 1973 to approve abortion, essentially on demand, through the second trimester.<sup>4</sup> The then New York City Cardinal O'Connor confronted Ferraro on this issue; she responded that she was personally opposed but would support a woman's constitutional right to have an abortion. At about the same time, the Governor of New York, Catholic Mario Cuomo, entered the fray when he gave a widely-cited address at the University of Notre Dame that supported Ferraro's position, citing among other authorities, John Courtney Murray, who underscored the importance of a moral consensus for a law to be enforceable, a consensus that Cuomo could find among neither citizens of the US nor its religious leaders. Consequently, Cuomo argued that it was wrong for him to impose his religious belief that abortion is immoral on a majority that did not agree.

Just before the November 2004 election, Cuomo responded to a sharp criticism of his position made by Kenneth Woodward, also a Catholic who for nearly forty years was the religion editor and now a contributing editor at *Newsweek* magazine. Woodward argued: "Catholics have every reason to repudiate the argument he (Cuomo) has bequeathed to pro-choice politicians of both parties."<sup>5</sup> In response, Cuomo returned to his 1984 address (available at [mcuomo@wilkie.com](mailto:mcuomo@wilkie.com)), and quoted this question: "When should I argue to make my religious value your morality: my rule of conduct your limitation?" He then added, now in direct response to Woodward's criticism, "As I understand my religion, it required me to accept the restraints imposed by my religion in my own life, but it did not require that I seek to impose all of them on all New Yorkers – Catholic or not – whatever the circumstances of the moment."<sup>6</sup>

<sup>3</sup> Mark Massa, S.J. *Catholics and American Culture* (Crossroads, 1990), p. 137.

<sup>4</sup> While the 1973 law permits abortion with practically no restrictions until the end of the second trimester, the acceptance of what are now called partial birth abortions leads some who are opposed to abortion to describe the present practice in the United States as abortion essentially "on demand."

<sup>5</sup> "Catholics, Politics & Abortion: My Argument with Mario Cuomo," in *Commonweal*, September 24<sup>th</sup>, 2004, p. 13. See Cuomo's response, "Persuade or Coerce: A Response to Kenneth Woodward," pp. 13–15.

<sup>6</sup> Cuomo, p. 15.

Cuomo's position was essentially repeated by John Kerry, who cited John Kennedy in response to a question posed to him in April of 2004: he said that it is "not appropriate in the United States for a legislator to legislate personal religious beliefs for the rest of the country. We have a separation of Church and state in this country. As John Kennedy said very clearly, I will be a President who happens to be Catholic, not a Catholic president."<sup>7</sup> The same sentiments were echoed again in a letter dated May 10<sup>th</sup> of 2004, written by forty-eight Catholics serving in Congress and sent to Cardinal McCarrick of Washington DC, who was and still is chairing a committee charged with presenting a report on this matter to the US bishops in mid November 2004, shortly after the election. They wrote, "... as Catholics, we do not believe it is our role to legislate the teachings of the Catholic Church." They add that they are sworn to represent all Americans, not just Catholics and that "in public life distinctions must be made between public and private morality."<sup>8</sup> And at about the same time, the wife of Senator Ted Kennedy of Massachusetts, Victoria Kennedy, stated in an OpEd piece in the *Washington Post* that bishops who wanted to excommunicate pro-choice Catholic politicians violated the Vatican II's teaching on religious freedom, a document on the "freedom of conscience," both by condemning of the politicians as well as by refusing to allow a woman to make a "private moral decision" about abortion.<sup>9</sup> And finally, simply to add one more example, Leon Panetta, the former chief of staff in the Clinton White House, stated some months before the election that "values matter, but in the end it is [Kerry's] public positions we should be paying attention to," not his private faith, adding "the decision to receive Communion is between you and God, not you and the priest."<sup>10</sup>

Before turning to the positions taken in this debate by various bishops, attention needs to be drawn to several important phrases used by these Catholic legislators and their defenders: one merely "happens to be Catholic;" one is not to "impose one's religious values" upon others; one enjoys freedom of conscience; and one is to distinguish between "public and private morality." These phrases and the assumptions underlying them constitute points of sharp disagreement. They also have much to do with an appropriate understanding of the relationship between Catholic morality and civil law.

<sup>7</sup> *The Tablet*, "Running the Catholic Gauntlet," by Julian Coman, April 10, 2004, p. 5.

<sup>8</sup> Photocopy in possession of the author.

<sup>9</sup> Victoria Reggie Kennedy, "The Altar is not a Battlefield," in the *Washington Post*, May 23, 2004, p. B07.

<sup>10</sup> *America*, August 16–23, p. 5.

## Bishops Versus Catholic Politicians?

It is important to understand not only something of the past seventy-five years in the US for the positions outlined since the 1980's by Catholic pro-choice politicians, but also to understand how some bishops have challenged this type of thinking. It was not that long ago, first in 1942 and then again in 1948 when the then Archbishop of Boston, Richard J. Cushing, opposed an effort to overturn a Massachusetts statute that forbade the purchase of contraceptives in the commonwealth. One billboard, supported by the Church if not sponsored by it, read, "Birth Control is Against God's Law."<sup>11</sup> For Cushing the relationship between Catholic morality and civil law was, in this instance, quite clear: they were to be the same. Civil law should prevent the acquisition of contraceptives.

Twenty-five years later, that relationship became more conflicted, however, when the Supreme Court ruled in its *Roe v. Wade* decision that a woman would have a constitutional right to secure an abortion. By 1980, the Democratic Party leadership had decided that it would espouse, especially at the level of its national leadership, a pro-choice position, even as the Republicans chose to espouse the pro-life position.<sup>12</sup> Democratic Catholic politicians who aspired to national leadership found themselves in a difficult position. As we have seen, most of them, including Ferraro, Cuomo and Kerry, have taken the position of being personally opposed to abortion but also supportive of the now constitutional right of a woman to an abortion.

Even in 1960, before the wide distribution of the contraceptive pill and the legitimization of abortion, both Catholics and Protestant leaders criticized Kennedy's sharp distinction between being a Catholic and being a Democrat, and suggested that in fact a Christian, after the example of Thomas More, might at some point have to obey God and not just human authority, or the people they represent.<sup>13</sup>

The flash point of the current version of this conflict, however, can be traced to a comment made by the African Cardinal Francis Arinze who at the end of a press conference in Rome early in 2004 answered a question by an American reporter who asked whether a pro-choice Catholic politician should be excommunicated. He responded that the teaching of the Church is clear, and that the US bishops should deal with it. At about the same time, Bishop Raymond Burke,

<sup>11</sup> John T. Noonan, "The Bishops and the Ruling Class: The Moral Formulation of Public Policy," in *The Catholic Church, Morality and Politics* (Paulist Press, 2001), edited by Charles E. Curran and Leslie Griffin, p. 224.

<sup>12</sup> The labels "pro-choice" and "pro-life" obscure as much as they elucidate. Bush, whose wife, daughter, mother and father are pro-choice, wants to make abortion legal in the case of the life of the mother, incest and rape. Clinton, who was pro-choice, wanted to make abortion rare, legal and safe.

<sup>13</sup> "Kerry, the Catholic," an editorial in *Commonweal*, June 18, 2004, p. 5.

formerly bishop of the diocese of La Crosse, Wisconsin and now the archbishop of St. Louis, announced that Catholic politicians who support procured abortion and euthanasia could not receive communion. They were obligated, he argued, to conform themselves to the teaching of the Catholic Church on these matters and to vote accordingly. The bishop of Colorado Springs, Michael Sheridan, upped the ante by stating that any Catholic who votes in favor of a pro-choice candidate, illicit stem cell research and euthanasia “may not receive holy communion until they have recanted their positions and been reconciled with God and the church in the sacrament of penance.”<sup>14</sup>

Shortly before the June 2004 meeting of the US bishops, Cardinal Ratzinger, the head of the Vatican’s Congregation for the Doctrine of the Faith, sent a six-point memorandum to Cardinal Theodore McCarrick of Washington. Point three of that memorandum explains that not all moral issues have the same weight as abortion and euthanasia, but that if Catholics differed from the pope on the application of capital punishment or the decision to wage war, they could still present themselves for communion. Another key point in that memorandum underlines an important principle for a Catholic voter:

A Catholic would be guilty of formal cooperation in evil, and so unworthy to present himself for holy Communion, if he were to deliberately vote for a candidate’s permissive stand on abortion and/or euthanasia. When a Catholic does not share a candidate’s stand in favor of abortion and/or euthanasia, but votes for that candidate for other reasons, it is considered remote material cooperation, which can be permitted in the presence of proportionate reasons.<sup>15</sup>

Since June of 2004, various US bishops have taken a range of positions on whether such proportionate reasons exist in this presidential election, some arguing that there could be no other issues – not the death penalty, not the war in Iraq, not the gap between the rich and the poor – which issues, even taken together, could outweigh the estimated 1.3 million abortions a year in the US. For example, Archbishop John Myers of Newark, New Jersey argued in a September 17<sup>th</sup> *Wall Street Journal* OpEd piece entitled “A Voter’s Guide” that for Catholic voters no evil is “so grave or widespread” as are abortion and embryonic stem cell research.<sup>16</sup> He saw no proportionate reason for supporting any candidate who was pro-choice and supported embryonic stem cell research. On October 1<sup>st</sup> Archbishop

<sup>14</sup> “The Duties of Catholic Politicians and Voters,” in *Origins*, May 20, 2004 (Vol. 34, No. 1), p. 5.

<sup>15</sup> Cardinal Joseph Ratzinger, “Politicians and Communion,” *The Tablet*, July 10, 2004, p. 36. Formal cooperation is to will directly and support what another does, while material cooperation is to tolerate but not support the deed of another.

<sup>16</sup> “A Voter’s Guide,” *Wall Street Journal*, September 17, 2004, p. W13.

Burke also revisited his January 2004 position, in the light of Cardinal Ratzinger's memo, to explain that procured abortions and homosexual acts are intrinsically evil, whereas issues such as capital punishment, war, the environment and poverty could not be given the same importance. Hence Catholics, in his view, must vote for pro-life candidates.

At their June 2004 meeting, the US bishops reiterated official Catholic teaching on the morality of abortion, and affirmed that the separation of Church and state need not require a "division between belief and public action, between moral principles and political choices." They clarified that, as bishops, they "do not endorse or oppose candidates." Rather, as bishops, they stated that it is their duty to indicate the "wide range of circumstances" that Catholics must examine in arriving at a prudential judgment on these matters. Within individual dioceses, bishops are to decide about what course of action to take "in accord with established canonical and pastoral principles."<sup>17</sup>

After June, some bishops decided that they would not make any statements until Cardinal McCarrick's task force submitted its report in November. In the meantime, many reiterated the traditional teachings of the Church. A few, however, stated that proportionate reasons might exist to allow a Catholic to vote for a pro-choice candidate. For example, Archbishop Levada of San Francisco said that if a Catholic voted for a candidate despite his or her pro-choice stance, it would not necessarily be sinful. Several bishops, including Bishop John Kinney of St. Cloud, Minnesota, warned against denying a pro-choice candidate communion, and added that "no human is capable of judging someone else's relationship with God."

Most bishops, however, sat things out until the November election was over and the McCarrick report was in. But the wide range of pre-election statements by individual bishops led one Catholic philosopher to remark: "Some Catholics have wondered whether mortal sins vary according to states and dioceses."<sup>18</sup> As diverse as some of these episcopal statements were, they did nonetheless have certain things in common: a reiteration of the Church's teaching, especially on abortion, a rejection of a sharp division between public and private morality, a call for religion to play a bigger role in society, support for laws condemning abortion, and an emphasis on the objective character of Catholic moral teaching.

Having provided a summary of the various positions of Catholic legislators and bishops before the election, it is time now to turn to one of the underlying questions in this intense debate: the appropriate relationship that should exist between Catholic morality and civil law.

<sup>17</sup> USCCB, "Catholics in Political Life," June 18, 2004.

<sup>18</sup> John Kavanaugh, "Catholic Consciences," *America*, July 19–26, 2004, p. 7.

## Catholic Morality and Civil Law

Over the last fifty years, no one has contributed more to the understanding of that relationship than John Courtney Murray, a Jesuit who died of a heart attack in 1967 at the age of 62. He was the principal influence on the Second Vatican Council's document on Religious Freedom, a document that accepted the separation of Church and state, and proclaimed that in matters of religious belief and conscience, no one should ever be coerced. This document on religious freedom was approved before the widespread use of the birth control pill in the late sixties and the 1973 Supreme Court decision legalizing abortion, and certainly before the Democratic Party, traditionally the party of most Catholics, decided that its national leaders had to be pro-choice.

In 1960, Murray once remarked that the American mind had never been clear about the relation between morality and the law. In a pluralistic society where there are different religions and religious beliefs, Murray's distinction between moral and civil law becomes especially important. Moral law, he explained, "governs the entire order of human conduct, personal and societal; it extends even to motivations and interior acts." Civil law, on the other hand, "looks only to the public order of human society, it touches only external acts, and regards only values that are formally social."<sup>19</sup> Thus civil law covers a limited scope while the moral law calls us to perfection. If the two – civil and moral law – are thought to be the same, then every evil should be prohibited by law, and conversely, whatever is legal is moral. The creates the "foolish situation that all sins ought to be made crimes," from which it is "only a step to the knavish position that, since certain acts . . . are obviously not crimes, they are not even sins."

Murray cited Thomas Aquinas, who had written that while civil law should help us move in the direction of moral virtue, it nonetheless should still recognize its limits. Civil law, Thomas tells us, ". . . does not lay upon the multitude of imperfect people the burdens of those who are already virtuous, namely, that they should abstain from all evil. Otherwise, these imperfect ones, being unable to bear such precepts, would break out into yet greater evils. . . ." <sup>20</sup> Implicit in Thomas' observation is the reality of "enforceability," that is, the necessity that a majority of the governed supports the proposed law. If that consensus on the part of the governed is lacking, then the law becomes difficult to enforce. And if most citizens disobey the law, despite efforts to enforce it, respect for law decreases.

<sup>19</sup> Cited by Richard McBrien, *Caesar's Coin* (MacMillan, 1987), pp. 164–165.

<sup>20</sup> McBrien, p. 165.

When pluralism exists in a society, Murray proposed four things that ought to characterize the attitude of any religious group that forms a part of that society. First, each group has the right to expect conformity from its own members. Second, no group should expect the government to outlaw some act if there is little support to do so in the larger society. Third, all groups have the right to try to persuade, not coerce, others of the correctness of their view. And fourth, conversely, no group has the right to force others to accept their moral views.<sup>21</sup>

Murray elaborated his views before the legalization of abortion. When he wrote, he assumed a degree of moral consensus in society that was correlated with the Christian vision of the common good, despite the fact that women's rights had yet to become an issue, the civil rights movement had only begun to emerge, and homosexuality was typically seen as a disease. Nevertheless, he also assumed in the citizenry, perhaps a bit too optimistically, a capacity for public discourse, though in his later writings he began to wonder whether these assumptions were still that well grounded. Finally, in order to make it possible for citizens who embrace different religions to come to agreement, Murray advocated that Catholics should promote a public philosophy based mainly on natural law, not a public theology based on Biblical warrants.

As explained earlier, most contemporary US Catholic politicians believe that the Church's teaching on abortion is a religious one, and therefore is binding only personally on those who are Catholic. Thus, no Catholic politician has said that he or she is personally in favor of abortion.<sup>22</sup> The US bishops, however, argued, as they should, that

<sup>21</sup> Summary by McBrien, pp. 165–166.

<sup>22</sup> Other than saying that he is personally opposed to abortion, Kerry did not say anything else about his reasoning on this important issue. The editors of *Commonweal* invited Kerry to explain his position by suggesting a variety of possible positions he might in fact defend: "Opposition to abortion is not, of course, a uniquely Catholic view, or necessarily even a religious one. Many secularists as well as religious believers see abortion as an unjustified taking of innocent human life, an act that civilized society should permit only in the most extreme cases. You, on the other hand, are a supporter of the most permissive abortion law in the world. Perhaps it is your position, Senator Kerry, that abortion is a constitutional question, one that judges, not legislators, will decide, and that legislation such as the partial-birth abortion ban is therefore futile. Or perhaps you reason that if Roe were overturned, abortion would quickly be legalized by state legislatures and thereby would remain widely available; in short, doing away with Roe would do little to reduce the number of abortions. Or perhaps you are convinced that the law is an inappropriate tool to use in changing hearts and minds about a question as deeply personal as a woman's decision to terminate a pregnancy. Or is it that you think the church's opposition to abortion in all circumstances (even in cases of rape or incest), is so rigid and abstract that it is an affront to rape or incest victim's fundamental dignity? Perhaps you are convinced that translating the church's teaching into law would indeed violate the religious beliefs of Jews and others who have traditionally put the mother's health before the life of the fetus. Perhaps, most of all, you think that opposing abortion without seriously understanding the consequences of overturning Roe is an empty gesture, one that does not really address the cultural and moral circumstances that compel women to choose abortion rather than to welcome life" (*Commonweal*, "Dear Senator Kerry," August 13, 2004, p. 5).

abortion is intrinsically evil, basing their argument on natural law, which they believe can be understood by anyone, regardless of one's religion or faith. Therefore, the bishops believe that there is a sound basis for all people, regardless of their religious faith, to come to see the evil in abortion, which, as a consequence of that consensus, should then be banned by law. Thus, they find little merit in the position of any Catholic politician who claims, with regard to abortion, that he or she is against it "personally," but supports a woman's right to one. Similarly, just as they would not find satisfactory John F. Kennedy's statement that he only happened to be a Catholic, they would say to today's Catholic politicians that their Catholicism requires them to work to protect the unborn, stop embryonic stem cell research, continue to further Catholic morality, at least that part of Catholic morality they understand as founded on natural law, for the entire country. In a 1984 statement, the US bishops affirmed that they

...reject the idea that candidates satisfy the requirements of rational analysis in saying their personal views should not influence their policy decisions: the implied dichotomy – between personal morality and public policy – is simply not logically tenable in any adequate view of both.<sup>23</sup>

The US bishops have put their weight behind the effort to overturn *Roe v. Wade*, though few seem to have given much thought to what criminal penalties should be assigned to whom once abortion again becomes illegal.<sup>24</sup>

At this point, it could be asked, as many in modern society do, what competence bishops have to address issues of public policy, particularly on the matter of abortion. Except for a possible obscure reference to abortion in Galatians 5:20, *pharmakeia*, which could refer to an abortion by the use of drugs, there is no mention of abortion in the New Testament. Though Jesus never seems to have addressed public policy as such, nor said anything directly about the Romans who then occupied Palestine, he did welcome outcasts, sinners and the powerless to table with him and defended the importance of every human being, to the point of laying down his life for each of them. The *Didache*, an apostolic document dated around 150

<sup>23</sup> Cited by Robert Drinan, "... Or the Exhortation to Consider Abortion Above All?" in *The Catholic Church, Morality and Politics*, p. 240.

<sup>24</sup> The *Commonweal* editorial referred to earlier (note 22) also addresses the bishops: "One thing is clear about the abortion debate in the United States: There is no consensus for making all abortions illegal. Nor is there a consensus for subjecting women or doctors involved in abortions to criminal penalties. Are the bishops advocating the recriminalization of all abortions – or something short of that? If criminalization were the goal, what penalties would you think just for the guilty? Would the father be subject to criminal penalties as well as the mother and doctor? You have a responsibility to grapple with the practical as well the moral dimensions of public-policy issues you seek to influence" (August 13, 2004, p. 6).

AD explicitly condemns abortion. The opposition of the early Christians to abortion, as well as to idolatry and serving in the military, singled them out from others in the Roman Empire. Drawing upon this long-standing condemnation of abortion, the Christian position underscores the sacredness of life, and following the psalmist, even that life which grows silently in the womb. And though the Church has never infallibly defined when human life begins, it has, for over a century now, made the prudential judgment that human life begins at conception.<sup>25</sup>

Therefore, despite the lack of explicit directives from the New Testament, the Church has drawn for nearly two millennia from the Bible and the teachings and example of Jesus, and has also wrung from its long human experience, a body of wisdom that supports a claim for at least a moral certitude when it addresses issues that affect the common good, the welfare of more than just Catholic Christians. Of course, it must be noted that despite claims that all citizens of good will can come to a basic understanding of right and wrong through natural law, it took more than 1900 years for most of western society, including the leadership of the Catholic Church in the US, to condemn slavery. Hence, it is most appropriate in these matters to speak only of a moral certitude, not any infallible wisdom that the Church has about what public policy in a pluralistic society ought to be.

Before concluding, something ought to be said about a Catholic view of the relationship between Catholic morality and civil law. First, while obviously not the same, they are related.<sup>26</sup> Sometimes, despite that oft-repeated comment that “you can’t legislate morality,” morality nonetheless is legislated, particularly when there is a consensus. For example, the laws against perjury, murder and theft, all form part of the Ten Commandments. However, the lower the degree of moral consensus in a society is, the fewer are the issues that can be

<sup>25</sup> Some biologists estimate that nearly 50% of fertilized eggs are spontaneously discharged by women. A growing body of literature has raised questions about when life begins by noting the phenomenon of twinning, which can occur before, during and as late as a week after implantation. What is the moral status of the zygote before twinning? If that question can be answered with confidence, the answer may have a bearing on the debate over embryonic stem cell research. While advances in medicine have made it clearer in the last thirty years that late term abortions are clearly the destruction of a human being, other research has raised questions of when it should be said that human life begins. Science does not determine theological and moral conclusions, but theology and morality need to pay attention to well founded scientific discoveries.

<sup>26</sup> See Murray: “Law and morality are indeed related, even though differentiated. That is, the premises of law are ultimately found in the moral law. And human legislation does look to the moralization of society. But, mindful of its own nature and mode of action, it must not moralize excessively; otherwise it tends to defeat even its own more modest aims, by bring itself into contempt” (quoted in “What Would John Courtney Murray Say?” by Todd David Whitmore in *The Catholic Church, Morality and Politics* (Paulist, 2001) edited by Curran and Griffin, p. 303.)

legislated effectively. There are also a number of moral behaviors – lying to one’s spouse, outbursts of irrational anger directed at one’s children, callousness to the needs of one’s neighbor – that are not legally prohibited. Thus, moral behavior that is legislated should be enforceable, but not all moral behaviors that are desirable need to be legislated.

Second, to the extent that a persuasive case in a pluralistic society can be made for a teaching of Catholic morality, Catholics may well hope that such a teaching (e.g., against abortion) may be translated into civil law.<sup>27</sup> Therefore, it is not sufficient for US Catholic legislators to say about abortion only that they are personally opposed to it; they are also obliged to find ways, even while supporting the current legislation that protects the constitutional right of women to abortion, to lessen the number of abortions, if not eliminate them completely. John Paul II’s *Evangelium Vitae* seems to support this course of action when it notes that while it is not possible for Catholics to promote abortion or vote for laws that do, Catholic legislators who have made clear their opposition to abortion and find it neither possible nor timely to try to overturn a law that supports abortion, may nonetheless “support proposals aimed at limiting the harm done by such a law and at lessening its negative consequences at the level of general opinion or public morality.”<sup>28</sup>

What then should Catholic legislators in the US say about abortion, if stating their own personal opposition is unacceptable? If they were to say, “I am personally opposed to abortion, but I support a woman’s *moral* right to an abortion,” they would, according to Catholic teaching, be flatly wrong. If instead they were to say, “I am personally opposed to abortion, but I support a woman’s *constitutional* right to an abortion,” they would be on surer ground, but still would not have said enough. If they would say, “I am opposed to abortion, and while I will support a woman’s constitutional right to abortion, I will in the meantime do all I can to reduce the number of abortions, and persuade as many citizens as I can to oppose abortion with me,” then they would be responding to a grave moral issue in an appropriate way, and reflecting the wisdom expressed above in the citation from *Evangelium Vitae*.<sup>29</sup>

Third and finally, US Catholic voters who vote for pro-choice candidates should not be excluded from communion, especially if

<sup>27</sup> There seems to be a growing consensus that there are too many abortions, and that were certain exceptions to be made (e.g., for a threat to the life of the mother, pregnancy due to rape and incest, and cases of severe fetal deformity), more people would be willing to support a law that would restrict more abortions than those now permitted (*Commonweal*, August 13, 2004, p. 6).

<sup>28</sup> *Evangelium Vitae*, no. 73.

<sup>29</sup> When I expressed these three possible statements to a highly placed once Democratic and now Republican politician in Boston, I was told that taking the third position would today mean suicide for any Democratic candidate.

they cast their vote for sound (“proportionate”) reasons. Only a few of the over two hundred American bishops asserted that there can be no proportionate reasons that would justify a Catholic to vote for a pro-choice candidate. Most bishops, however, did not make such claims. Fr. Augustine DiNoia, the undersecretary of the Vatican’s doctrinal congregation, that is, the person who works directly under Cardinal Ratzinger, explained in an interview before the election that defining what constitutes “proportionate” reasons is extremely difficult, and at this time in history, at least concerning issues related to voting and politics, the process of definition remains mostly “terra incognita” for moral theologians. Referring to the six-point document of Cardinal Ratzinger mentioned earlier, an unsigned staff document that only begins to explore the difficult issue of voting and sin, Fr. DiNoia said that “the only thing we could say is, a person might come to be in the state of mortal sin and therefore unworthy to receive Communion if they voted precisely with the moral object of extending abortion or the provision of abortion, but that would be the only case where that would happen.”<sup>30</sup> In other words, issues which require a person to employ proportionate reasoning on the issue of voting are matters of prudence on which people of good will might well differ. Catholic morality on abortion for the individual Catholic is clear, but how to vote when one presidential candidate is pro-choice and one pro-life is not equally clear. One can only imagine the moral discernment Catholics and other pro-life people would need to undertake if both candidates for the presidency were pro-choice.

Archbishops Myers and Burke have said that there can be no proportionate reasons to abortion and embryonic cell research. Even if they are right about the moral gravity of these acts, and I believe that they are, it does not necessarily follow that voting for a pro-life candidate, for such reasons, makes the most sense. It should be recalled that in the United States abortion is now a matter of constitutional right, and not an action that legislators can authorize. The eminent legal scholar and judge, John Noonan, a life-long opponent of abortion, recently wrote in a letter to the *Wall Street Journal* that Archbishop Myers’ argument gravely misunderstands the legal status of abortion:

No president can prevent abortion so long as it enjoys this constitutional status. A constitutional amendment to change the law could only be effected by Congress and 36 states. It is very unlikely to happen. The only other way abortion’s protected status could change would be to replace five members of the present Supreme Court. It is almost equally unlikely that in a presidential term any president would have such an opportunity.<sup>31</sup>

<sup>30</sup> “Signs of the Times,” *America*, October 4<sup>th</sup>, 2004, p. 4.

<sup>31</sup> Judge John T. Noonan, Jr., Letter to the Editor, *Wall Street Journal*, September 21<sup>st</sup>. 2004.

Noonan's caution suggests that voters who are intent on changing the constitution need to think about more than whether electing a pro-life president will in fact achieve their goal. Noonan concludes his letter with a sobering judgment: "Whichever candidate wins, the number of abortions in the United States is not going to diminish."<sup>32</sup> Abortion and abortion rights are not at issue in this presidential campaign." Noonan seems to be saying that if voters understand that neither candidate has given evidence that this issue will be a major one for him, and that it is very unlikely that any single president can turn this hugely difficult moral issue in the opposite direction, then voters should take more seriously those things that a candidate is likely on the practical level to effect. In this light, it is instructive to recall that seven of the nine current justices on the Supreme Court have been appointed by Republicans, that the majority of the House and the Senate is Republican, and that the majority of states have Republican governors. And apart from partial birth abortion and federal funding questions, almost no real political capital has been spent on this issue by Republicans.<sup>33</sup>

A second observation concerning proportionate reasoning is the scope of the issues that should be taken into consideration by voters. US Catholics can and should be proud citizens of the United States, and such Catholics, despite their own flaws, should love their country, despite its flaws. But Catholics are first and foremost Catholics. This means that when they think about these issues, they should think about more issues than only those within the national borders of the US. Consequently, they also should think more widely than current formulations of American foreign policy. They should feel compelled to do so not just because the United States is the only super power in the world at the present time and that therefore its economic decisions have global consequences, but also, and primarily, since one is a Catholic Christian. Needless to say, more people than Catholic Christians can and do think this way.

The American media gave full play to Pope John Paul's recent warnings to President Bush when the latter visited Rome in June of

<sup>32</sup> Actually, the number did diminish some during the presidency of Bill Clinton. Mark W. Roche, Notre Dame's dean of the College of Arts and Letters, reports that for the eight years Reagan was president the number of abortions increased by 8%, but that during the eight years Clinton was president, they dropped by 36%. While clearly condemning abortion, Roche nonetheless notes that "Those who view abortion as the most significant issue in this campaign may well want to supplement their abstract desire for moral rectitude with a more realistic focus on how best to ensure that fewer abortions take place." However, it is difficult to know for sure whether Clinton's social policies were the major factor contributing to fewer abortions, or whether an improved economy made the major difference. (See "Voting our Conscience, Not our Religion," an OpEd in the *New York Times*, October 11, 2004.)

<sup>33</sup> It is also worth reading James Kelly's "A Catholic Votes for John Kerry," in *America*, September 27, 2004. Kelly, a pro-life Democrat, argues that the Republican party is not as pro-life as most people think, once their record while in office is examined.

2004. But few Americans learned from the US media what the pope said just before his warnings about the right to life. He called Bush to a greater responsibility for the effects of globalization and underscored the huge gap that exists between wealthy nations and the billions of people who are living still in abject poverty. He said, “respect for human dignity and belief in the equal dignity of all the members of the human family demands policies aimed at enabling all peoples to have access to the means required to improve their lives. . . .”<sup>34</sup> Literally millions of people, our brothers and sisters in poor countries, die annually of malaria, measles<sup>35</sup> and AIDS, the first two of which could be prevented at minimal cost per person were it not for the control that international pharmaceutical companies exercise through patents over the cost of their drugs. How to resolve this international problem is well beyond this author’s competence. But it is sad to note that neither presidential candidate in the 2004 election seemed to have had his eye squarely on the global common good. And that global common good is precisely what all thoughtful Catholics and especially US Catholics have an obligation to promote.

Besides these great global problems, there is another reality with global ramifications, a reality that tax dollars of every US citizen support<sup>36</sup> – the war in Iraq – that both the pope and the American bishops have opposed. And while Catholics and others might well disagree with their bishops’ judgment, it should be recalled that the launching of this “preventive” war has had global ramifications. If Jeffrey Sachs, formerly the head of the Harvard Centre for International Development and now at Columbia, is correct, then the money that will be spent on the war in Iraq could have been used to save 80 million people from premature deaths due to easily preventable diseases.<sup>37</sup>

As morally offensive as 1.3 million abortions a year are in the United States, many more millions die annually on this planet, people who could be helped if the vision of the wealthy and powerful were deep and broad. Abortion is a major moral issue in the US, but it is not the only issue that demands attention. More American Catholics

<sup>34</sup> Cited by Lisa Sowle Cahill, “Realigning Catholic Priorities: Bioethics and the common good” in *America*, September 13, 2004, p. 12.

<sup>35</sup> Gary Motz, a University of Dayton student who has for over a year led a “Measles Initiative,” estimates that 450,000 children a year in Africa alone die of measles. At the mere cost of 80 cents, a person can be vaccinated against measles.

<sup>36</sup> More moral analysis must be done on a collective deed, such as the war in Iraq, which is an action of the US government and therefore directly and collectively implicates all US citizens on the one hand, and on the other abortion which the government permits but does not perform.

<sup>37</sup> See Jeffrey Sachs, “Weapons of Mass Salvation,” in *The Economist*, October 24, 2002. His estimate of 80 million people saved is based on an updated figure given last month of the cost of the Iraq war. Simply to assume, however, that money saved by not waging war would then be directed to such purposes, is naïve. Nevertheless, what most people think is naïve is not a reason for us not to promote such initiatives.

must also learn to see beyond the borders of the US if they are to discern the common good as they are called to do.

### Concluding Observations

In this last presidential election, Catholics were politically homeless.<sup>38</sup> To some extent, this is inevitable in a country with only a two-party system. The positions adopted by both candidates had, from a Catholic perspective, serious deficiencies. While fifty-two percent of Catholics voted for Bush, over eighty percent of Evangelicals did. Some post-election analysts believed that the “family values” and “moral issues” (abortion, homosexual marriage and stem cell research) won the election for Bush. Others pointed out that no American president has been voted out of office during a war. How much influence those bishops who explicitly supported a pro-life candidate had on Catholics voting is more difficult to tell. Before the election, Republicans made much of a survey that indicated that the more frequently people went to Church, the more frequently they voted Republican. That survey may well indicate less about the moral sensitivity of church-goers than it does about what version of the gospel is preached in white affluent suburbs. Whatever the correct analysis of why people voted the way they did, a number of Catholic leaders continue to argue Catholics in the United States need a broader understanding of what should be included in the category of “moral issues” and a fuller support for the global common good.

When the US bishops met just a few weeks after the election, they held a private “executive session” amongst themselves concerning the election and their responsibilities as moral teachers. Being an “executive session,” there is no public record of what was talked about. At that same meeting, Cardinal McCarrick issued a public statement calling for less polarization among Catholics, exaggerated, he suggested, by the media. He reiterated for the assembled bishops a wide range of moral issues as important:

While we do not believe that all issues have equal moral claims, we will work to protect those whose lives are destroyed by abortion and those who are dying of hunger, we will strive to protect human life from the moment of conception until the moment God call us home and we will strive to pursue peace. We will work for human life and dignity, for justice and peace. This is who we are and what we believe.<sup>39</sup>

He also said that the Task Force will study further the matter of Church teaching concerning who is worthy to receive communion,

<sup>38</sup> James L. Heft, S.M., “Catholics Politically Homeless,” *Dayton Daily News*, August 4, 2004, p. A11.

<sup>39</sup> “Task Force on Bishops and Politicians Report,” in *Origins* (Dec. 2<sup>nd</sup>, 2004, Vol. 34, No. 25, pp. 397).

continue to consult on the “complex theological and canonical aspects” of the issues within the bishops’ conference and with the Holy See, and will prepare a “Reader on Catholics in Public Life”, among other initiatives. Thus he provided no final report at the November meeting on just how Catholic legislators should discharge their moral responsibilities within a pluralistic society. That report will have to wait till sometime in the future.

Many of the issues discussed in this article are of rather recent vintage. In terms of the historical background on Catholic morality and modern democracy, the Vatican resisted any modern accommodation on the issue of religious liberty until the 1960s, and consequently a lot of intellectual work that simply did not get done in the United States before then has yet to be done. Even the great contribution of John Courtney Murray must now be re-evaluated given the profound changes in the moral consensus in the United States. Forty years in Catholic time is pretty short. Catholics must proceed carefully to learn how to weigh the variables that ought to be taken into consideration so that they can vote thoughtfully for the common good. It should be obvious that Catholics need to focus on more than just electoral politics to achieve a more just society. They also need to make the moral arguments more persuasive, broaden their vision of the common good, and never lose hope.

And concerning the significant moral issue of abortion in particular, one could not conclude more effectively than by returning to eminent Catholic scholar and historian of moral law, Judge John Noonan, who wrote: “It is the command of charity not to turn the campaign to eliminate abortion into a crusade against those who in necessity and sorrow, or in sincere conviction and good conscience, practice abortion or promote its cause.”<sup>40</sup> Faithful Catholics are called not to destroy them but to persuade them, to work to create a broader consensus for life than currently exists – one that is global and not just national.

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<sup>40</sup> Noonan, “The Bishops and the Ruling Class,” p. 237.