

Article

Conscience, Law, and Politics

Patrick Hannon

Moral Theology Department, St. Patrick's Pontifical University, W23 NX63 Maynooth, Ireland;
patrick.hannon@spcm.ie

Abstract: Of the many questions on which our title invites reflection, one in particular has again achieved prominence in the United States: how is a politician who is Roman Catholic expected to vote when a measure purports to legalise what church teaching says is morally wrong? The debate has become increasingly acrimonious, to the point where senior prelates are among those who contend that President Biden and Speaker of the House Pelosi are unfit to receive Holy Communion since they subscribe to the 'pro-choice' position of the Democratic Party. The core question has become politicised, its public discussion poisoned by association with toxic elements of the so-called 'culture wars', at an impasse that is impairing effective leadership in the US Catholic Church, and an effective Catholic contribution to the common good of American society. I shall argue that this is as unnecessary as it is regrettable, and that a way through the impasse is to be found in mainline Catholic thinking about morality, law, and politics.

Keywords: United States of America; abortion; US Supreme Court; canon law; conscience; Aquinas



Citation: Hannon, Patrick. 2022.

Conscience, Law, and Politics.

Religions 13: 1211. <https://doi.org/10.3390/rel13121211>

Academic Editor: Fáinche Ryan

Received: 8 November 2022

Accepted: 2 December 2022

Published: 13 December 2022

Publisher's Note: MDPI stays neutral with regard to jurisdictional claims in published maps and institutional affiliations.



Copyright: © 2022 by the author. Licensee MDPI, Basel, Switzerland. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (<https://creativecommons.org/licenses/by/4.0/>).

1. Introduction

If you follow politics in the United States, you will probably know that the Archbishop of San Francisco has forbidden the Speaker of the House of Representatives to receive Holy Communion. The reason is that she subscribes to the Democratic Party's option for what is called a pro-choice policy. That is, although a Catholic, she goes along with the idea that the law of the land in the United States should provide for women the possibility of having an abortion if they choose to. The full story in a sentence from a newspaper report: 'San Francisco's archbishop [Cordileone] declared May 20 that House Speaker Nancy Pelosi . . . is not "to be admitted" to Communion unless and until she publicly repudiates "support for abortion 'rights'" and goes to confession and receives absolution "for her cooperation in this evil."'.

Abortion has been the focus of attention in public debate on church and state and on morality and law in the United States for almost three decades; and the Catholic bishops have grown progressively more preoccupied with it, despite the insistence of some of them that the issue is properly seen only in the context of 'a consistent ethic of life'¹. The issue gained added prominence with the election of President Biden, a weekly Mass-goer who has often spoken of the importance of his faith to him, but who has had the sincerity of that faith called in question, since he too has declared himself 'pro-choice' as a member of the Democratic Party.

2. A Key Question

So, an obvious question under the heading *Conscience, Law, and Politics* is: how is a politician who is Roman Catholic expected to vote when a measure purports to legalise what church teaching says is morally wrong? Of course, that is only one of the issues on which our title invites reflection, and some might want to say that it is not the most important. Yet it is a recurrent issue in recent US political history, and one that has also exercised Ireland at intervals since the early 1970s; and it is likely to surface again in relation to end of life issues, focussing on assisted suicide or perhaps on euthanasia. In the United

States, it has become politicised, public discussion poisoned by association with toxic elements of the so-called culture wars, at an impasse that is impairing effective leadership in the US Catholic Church, and an effective Catholic contribution to the common good of American society.

I shall argue that this is as unnecessary as it is regrettable, and that a way through the impasse is to be found in mainline Catholic thinking: that we need go no further than to apply principles that are a staple in standard textbooks and official teaching, the fruit of the thought of two major thinkers of the Christian tradition. First, some preliminary remarks.

Ironically, it was in the United States that the problem was thought to have had a satisfactory resolution in the distinction John F Kennedy made between his personal moral beliefs and his responsibilities under the Constitution as president of a religiously pluralist people. But that distinction was rejected by the then Archbishop of New York, Cardinal John O'Connor, when it was invoked by Geraldine Ferraro, Democratic candidate for vice-president in 1984, even though it had been acceptable to the bishops in Kennedy's case. The question came to the fore again when John Kerry was a candidate for the presidency in 2004, his *bona fides* challenged by, among others, the then Archbishop Burke of St Louis, later a cardinal, who with three others wrote a letter criticising what Pope Francis said in *Amoris laetitia* about matters not unrelated.

The archbishop takes his stand on a canon in the Code of Canon Law: 'Those who have been excommunicated or interdicted after the imposition or declaration of the penalty and others obstinately persevering in manifest grave sin are not to be admitted to holy communion.' (Cn 915). I am not going to deal here with the question whether this canon is a basis for denial of Holy Communion to Pelosi and Biden except to remark that the claim is controversial and, importantly, that not all members of the US Bishops' Conference support it. One of those who differ is Cardinal Wilton Gregory, archbishop of Washington, who in 2020, when bishops and others began debating whether Biden should be denied Communion, stated that he would continue to offer the President the sacrament. 'I don't want to go to the table with a gun on the table first', he said, in an apparent allusion to what is being called the weaponization of the Eucharist.²

3. 'What Would Jesus Do?' ... (And Other Questions)

A final preliminary point is this. Some people react by saying simply that denying Holy Communion in these circumstances is contrary to the way Jesus taught and acted. The Gospel is word of a merciful God who loves all creation, and especially those beings that are made in God's image notwithstanding human waywardness, Who 'pitched His tent among us'³ as the Prologue to the Fourth Gospel puts it, in the person of Jesus, who by word and example conveyed all we need to know. However, the prelates who want to deny Holy Communion to the politicians insist that they are bound by church law and maintain that the politicians are sinfully cooperating in evil and, by persisting in their sin, are putting themselves outside the reach of God's mercy. They appear to say that only by opposing a pro-choice policy can a Catholic in good faith continue in political life. What I am contending is that this is not consistent with mainstream Catholic moral theology or official Catholic teaching.

Notice that I am not here questioning the teaching that human life is sacred from conception to natural death, the teaching that is at the core of the position taken by Archbishop Cordileone. What I am saying is that it does not follow that every Catholic must always oppose legislation that allows for abortion in certain circumstances, and that it is a mistake to think that a politician or citizen who votes in favour of such a law must be denied the Eucharist.

Archbishop Cordileone is not the only prelate who takes the view that Nancy Pelosi is morally at fault, and she is not the only Catholic politician against whom this charge is made; I have mentioned Joe Biden and John Kerry, and there are others. But for convenience we can focus on the Speaker's case and let the Archbishop stand for all—laity as well as clergy—who call in question her good faith and the President's. Our purposes are served

if we take it that the nub is the charge that the politicians are morally at fault in that they are cooperating in abortion. And it happens that our theological inheritance equips us to analyse that charge for, in the words of a commentator, ‘Our Catholic tradition has a rich theology of cooperation to address the complexities of living in a world in which one’s own choices are circumscribed by, and involved with, the choices of other people. That theology was developed by St. Alphonsus Liguori in the 18th century, drawing on the theology of St. Thomas Aquinas and others, long before the challenges posed by a modern, pluralistic society came about’ (Winters 2022). We will be returning to that.

4. Law and Morality According to St. Thomas Aquinas

For a fuller picture, we begin by looking at what St Thomas says about the relationship of law to morality, and about the respective concerns of the moralist and the lawmaker. I am going to use ‘moralist’ to include the preacher and teacher, bishop and priest—anyone whose business it is to say what Catholic morality is. And for convenience I will refer to ‘lawmaker’, although what is contended is relevant also to a citizen voting in a referendum, or in an election for a candidate who stands on a pro-choice platform.

St Thomas had an optimistic concept of human law, for he saw it as linked not only with the moral law but with the ‘Eternal Law’, God’s design for the whole creation. In that design, each creature has its purpose, each moves toward its goal and, ‘intelligent creatures are ranked under Divine providence the more nobly because they take part in providence by providing for themselves and for others’⁴. Our goal is God, toward whom we are drawn by God’s grace but freely. The human role is therefore creative, constructive; discovering and respecting the Divine design, we are called to make something of ourselves and of our world,

Aquinas defined law as ‘an ordinance of reason, made in aid of the common good, by whomever has charge of the community, and promulgated’ (Gilby 1966, q. 90, art. 4). As regards its connection with morality he saw the lawmaker’s task as one of reasoning from the principles of the moral law to certain more ‘specific arrangements’, called human laws inasmuch as they ‘fulfil the essential conditions of law already indicated’ (Gilby 1966, q. 91, art. 3)

In Aquinas’s view, the making of law is in the service of virtue and the law reflects morality—or, as he puts it, law is ‘derived’ from morality—in two ways. ‘The first process [deduction] is *like that of the sciences* where inferences are . . . drawn from principles’. The example he gives is that from the principle ‘you should harm no-one’ we can deduce that it is wrong to murder. The second process is *like that of the arts*, he says, ‘where a special shape is given to a general idea, as when an architect determines that a house should be in this or that style’. The example here: morality requires that crime be punished but the lawmaker has a choice about what form the punishment should take (Gilby 1966, q. 95, art. 2).

There is therefore an art of law-making, and the lawmaker’s task is not the same as the moralist’s. A moralist is not necessarily competent to say what the form of a law must be, any more than a gardener is qualified to do an architect’s job. And politics is the art of the possible, to echo a famous description; law-making is an art too; and those who practise these arts are the ones who must decide. Another way of putting it is that a law, though it embody a moral insight, may not be the only way in which the insight can be concretised, leaving room for debate about the appropriateness of a piece of law-making.

Now, this does not mean that the lawmaker is immune from moral criticism. A law may be unjust, and the moralist—or anyone—may call it out, and indeed morality may sometimes require disobedience. A law might lay a burden on someone who is unable to bear it or give someone else an unfair advantage: current, and ours is not the only country of which it can be said that there’s one law for the rich and another for the poor; politicians are vulnerable to influence by the values of those who finance the party. And so on. Like all societies, we need the prophet, the advocate, the activist, if we are to move toward a more just society. And we need freedom of speech, and a place for the citizen to have a say about

the values we want our law to reflect. Still, it is with the legislator that the buck stops, and it is the experienced politician who is likely to know what will work and what will not.

So, back to St Thomas, and to the idea that the making of law is in the service of virtue; and the way he puts it is that law is one of the media which God may use to 'bring us up'⁵ in virtue. And he asks a question on point: 'is making people good an effect of law' (Gilby 1966, q. 92, art. 1), and he says yes, it is. Here he is thinking of law in general, including God's laws in its various forms, and not about the specific potential of human law though that is included, and when he addresses it specifically his expectations are modest.

As often when treating of law, Aquinas leads with a quotation from Isidore of Seville: 'Isidore says (*Etym.* v, 20): "Laws were made so that human assertiveness may be checked by their threat, and innocence safeguarded among the unruly, whose ability to do harm might be curbed by the dread of punishment."' (Gilby 1966, q. 95, art. 1). Thomas concedes that it is better that people be induced to be good willingly by means of admonitions, than against their will by means of laws (Gilby 1966, q. 95, art. 1). But not everyone is amenable to this, and so laws are needed. He illustrates his point by reference to the education of the young:

"Now for the young apt for deeds of virtue by good natural disposition or by custom or, better still, by divine gift, all that is required is the fatherly discipline of admonition. Not all the young, however, are like that; some are bumptious, headlong in vice, not amenable to advice, and these have to be held back from evil by fear and force, so that they at least stop doing mischief and leave others in peace. Becoming so habituated they may come to do of their own accord what earlier they did from fear and grow virtuous. This schooling through the pressure exerted through the fear of punishment is the discipline of human law." (Gilby 1966, q. 95, art. 1)

Law is therefore an instrument in moral education, a discipline that helps to train people in right behaviour, and in subsequent articles St Thomas asks how it should do this: should the law restrain all vice, and should it enforce every act of every virtue? As to the latter, what he says is that law does not operate in that way, and for several reasons that need not detain us, for our interest is in what he says about restraining vice.

So, should law try to restrain every vice? No, says Aquinas, for 'Law is laid down for a great number of people, of which the majority have no high standard of morality. Therefore, it does not forbid all the vices, from which upright people can keep away, but only those grave ones which the average man can avoid, and chiefly those that do harm to others, and which must be stopped if human society is to be maintained, such as murder, theft, and so forth' (Gilby 1966, q. 96, art. 2). Here the notion of law as educative is maintained but there is a realism about its potential. Thomas accepts that the majority 'have no high standard of morality' and he believes that the law should be accommodated accordingly. Later he will say that as we do not expect from a child the standard of virtue of an adult, so 'many things may be let pass in people of mediocre morals which cannot be countenanced in their betters' (Gilby 1966, q. 96, art. 2). Moreover, 'the purpose of law is to bring people to virtue not suddenly but step by step. Therefore, it does not all at once burden the crowd of imperfect people with the responsibilities of folk of the highest character, nor require them to keep away from all evils, lest, not sturdy enough to bear the strain, they break out into greater wrongs' (Gilby 1966, q. 96, art. 2).

This may come across as patronising, and the comparison with children will probably offend some modern ears, and of course it is far from a modern recognition of a pluralism of moral value. In Aquinas's way of thinking, differences of moral belief and performance are rooted in waywardness, and the law's accommodations are necessitated by regrettable practical necessity. The point to notice, though, is that he does not seek to impose ideal standards, and nor does he think that law can bring about virtue. It would be wrong to insinuate that his standpoint is that of a modern, yet the spirit and tenor of his treatment are instructive. It is well to be aware that at the heart of Christian theologising on law there was considerable subtlety, founded in a sense of the practical and the humane.

To summarise: in serving morality, law's prospects are modest: goodness cannot be forced. Law-making is always open to moral criticism but the priest may not usurp the ruler's role. Nor is there a Christian warrant for making law the medium of what someone has called a tyranny of morals.

And notice especially that Aquinas has distinguished between the art and concerns of the lawmaker and those of the moralist as such. Moral value is reflected in the law, but the law's role is not a simple promotion of morals. There may be more than one way to express in concrete command and prohibition the requirements of humanity's flourishing, and it is for lawmakers to decide which is the best. They will not try to enforce every possible virtuous activity nor repress every vice.

So, again, what should law forbid? 'Chiefly those actions which do harm to others and have to be stopped if human society is to be maintained' (Gilby 1966, q. 96, art. 2). Murder and theft are the only examples Aquinas gives but perhaps they are sufficiently suggestive. Now, murder means unjustified killing, and for Archbishop Cordileone abortion is an instance of this, so we can expect him to be unhappy with a situation in which the law of the land allows it, and to challenge the law and to protest. But is he correct when he goes on to say that Nancy Pelosi is guilty of wrongful collusion in sin?⁶

5. Cooperation in Wrongdoing

When we try to answer this, it may help if we choose an issue of the same order as abortion, if somewhat less controversial. And although the issues are not identical and there are limits to the comparison, capital punishment is comparable to abortion in that it concerns the taking of life. Suppose that I am opposed to capital punishment, believing it to be an unjustified taking of life, am I, a politician, morally obliged to campaign to have it abolished?

At first, it must seem that if I believe it to be wrong, I shall surely want to have it abolished, and I shall be asking how I might use my power to this end, rather than interrogating myself upon the existence of an obligation to do so. But even if I consider myself called to work for its abolition there remains the question, what am I morally obliged to do? It would be manifestly ludicrous that I should never have anything to do with a system or party which condones behaviour which I believe to be wrong. If this were the only option, who with rudimentary integrity could engage in politics? And how, apart from revolution, could there be change?

We can acknowledge that if something is morally wrong, one ought to keep as far away from it as possible. But circumstances may make distancing impractical, sometimes even undesirable, and the measure of what might be called morally plausible cooperation can be sought through the application of some principles and rules of thumb. Of this approach, US theologian Edward Vacek has written: 'Terminology aside, this . . . is not some long-lost ancient doctrine, but a practical guide for people in dealing with everyday problems. Whenever we make a decision, we are involved in a world full of trade-offs between good and evil' (Vacek 2016).

Vacek illustrates the point nicely: 'We turn on the lights, and we add carbon dioxide to the atmosphere because of the coal-generated electricity we use. Ordinarily, we do not consider flipping a light switch to be morally evil, and in matters far more serious, we implicitly justify ourselves through the principle of cooperation.' (Vacek 2016). One can think of another example: it probably does not occur to anyone that going to the supermarket might be morally wrong but—some of the goods we buy are the product of slave labour, and the shop's staff are almost certainly underpaid. These are 'the complexities of living in a world in which one's own choices are circumscribed by, and involved with, the choices of other people', as Winters puts it⁷.

So how distinguish between cooperation in wrongdoing that is morally plausible and cooperation that is morally wrong?

6. Legacy of the Tradition

A full account of what the textbooks say would require several distinctions but it is enough for our purposes to mention two. And the first and most important distinction is between *formal* and *material* cooperation. Formal cooperation is where you cooperate because you yourself want the outcome, want the wrongdoing to occur, even though you believe that it is morally wrong. What you are doing is no less sinful than the sin itself, and formal cooperation is always wrong.

Material cooperation is so called because one's actions are the material of some sharing in the main action or omission or situation. What you do is material to the outcome, part of a process that issues in the outcome, a contribution to the process; but you do not endorse the outcome yourself. Material cooperation is not always morally wrong; if it were, we should be always doing wrong—every time we go to the supermarket, each time we turn on the light. The morality of cooperation that is material is evaluated partly in terms of its *proximity* to the main action or *remoteness* from it, partly in terms of *the reason* for cooperating at all.

Take the example of supplying a gun to a murderer: an accomplice who hands a gun to a robber is a proximate co-operator, the act of selling the gun is more remote. When you apply this to our question, it is obvious that joining a party, or accepting a seat in the cabinet, or voting on a measure are not intrinsically connected to any immoral outcome, and all are remote from any action or omission or situation that may be enabled by our choice. *None of these actions is in itself wrong.*

We have seen that formal cooperation, where the wrongdoing is specifically and personally endorsed, can never be justified; but material cooperation may be justified by a 'proportionate reason'. Exclusion of *proximate* material cooperation is a matter of common sense; the more closely one is involved, the more difficult to avoid 'formal' engagement, and of course an onlooker would find it impossible to distinguish. And if cooperation of any kind is to make moral sense there must be a reason for it, and the reason must be what the textbooks call proportionate.

Speaking broadly, one might say that this means that one's reason must have a certain weight, and that the closer one's contribution comes to the main action, the weightier the reason must be. The concept of a proportionate reason is a technical one however, and it happens to be at the centre of another debate. The debate does not question the validity of the concept but only the range of its application. Without entering the debate, therefore, we may avail ourselves of an account of it which the debate has provided, and which may help a more precise use of it.

Recall again that we are considering the status of behaviour that in greater or lesser degree amounts to a cooperation in what we believe to be wrongdoing; considering, that is, actions or omissions tainted by what we believe to be wrong. The core point is that standard Catholic theology, whilst precluding formal cooperation, concedes that material cooperation, proximate or remote, may be justified by a proportionate reason.

7. 'Proportionate Reason'?

The late Jesuit moral theologian Richard McCormick suggested that the presence or absence of proportionality may be gauged by reference to three tests. First, he says, a value at least equal to that sacrificed must be at stake. Second, there must be no other way of protecting the value you want to protect here and now. Third, the manner of its protection must not be such as would undermine it.

So, a legislator contemplating a policy or measure which had the effect of enabling immorality would have to consider the 'proximity' of the contribution to the wrong. Then comes the question whether the contribution might nevertheless be warranted in virtue of a proportionate reason. And this might be looked at from either of two points of view: for the legislator might consider either the morality of abstaining or resigning, or the morality of going along with what is being proposed. He or she would be asking what all the values at issue were, and how these are best served now. And is there no other way? Or is there a

danger that what I propose to do now, though it secures these values for the present, carries within it the possibility of undermining them eventually?

To return to capital punishment, and suppose I am voting on a budget that makes provision for the funding of personnel and equipment, am I entitled to vote yes—or am I bound to resign? What if my abstention would bring the government down, or otherwise injure its plan for promotion of the common good? Or what if opposition must sooner or later cost me my seat? In the balance is continued cooperation in an institution which I believe to be immoral, with the good (including perhaps the abolition of capital punishment) that I may hope to achieve by staying in office, or that will come about if my party continues to govern. McCormick would nevertheless require me to look at what I am doing so as to be sure that it is not the kind of thing which on its own logic would subvert those very values.

Could abstention or other disengagement be an obligation ever? Yes, and that is why we have the concept of a conscience vote. Could it be that one's conscience is so compromised in a public role that the only honourable solution lies in standing down? Yes: you may remember that some years ago the King of the Belgians stood down for a day so that he would not have to sign a liberalising abortion law.

But such a decision is obviously personal, and the judgment as to when abstention or resignation may be called for is for the conscience of the person concerned. There is no need to elaborate upon the perils of subjectivism and self-delusion, and it is only common sense that in such case one will take advice. Advice can help keep objective aspects in view, including the claims of principle. But it is for the person concerned to make the final judgment.

Some may find uncongenial the kind of analysis involved in the application of this approach to cooperation or in McCormick's tests. One kind of mind will find it imprecise: where do you draw the line as between proximate and remote? Another will consider it fussy, making much ado about what is no more than an exercise in common sense. Yet another will be the unsympathetic to its distinction-making or its casuistry. It will not turn up neat answers or reduce the complexity of concrete decision; and no one would want it to be used in aid of a moral sophistry. Yet it can offer a way into the complexity of some kinds of political decision: it can help ensure attention to all morally relevant factors, avoiding both an unnuanced application of abstract principle or the collapse of principle under the weight of the situation.

Some authors note that the standard textbook account of cooperation was developed at a time when the most that was likely to be said in favour of perpetrators of what Catholic teaching considered wrong was that they might be excused owing to 'invincible Ignorance'. And they point out that this does not take account of the right to freedom of conscience acknowledged in *Dignitatis humanae*, on the basis of which a more positive valuation of another's belief is possible. This is an important point, the force of which I do not wish to minimise in the slightest. But even if the point is not granted—as apparently it is not by those who want to stop President Biden from receiving the Eucharist—the principles regarding cooperation hold. The cooperation that we are discussing is with people who *ex hypothesi* are engaged in actions which Catholic teaching says is wrong, and that is the hypothesis addressed by the standard account. My point is that the standard account will support a compromise in complex situations, and that Archbishop Cordileone and those who agree with him are mistaken.

As we move toward a conclusion, we might notice something that has been true in Ireland as well as in the United States, which is that Bishops' Conference interventions have not had the result that the bishops wanted. The Irish Conference has generally been clear that it is up to the legislator and the voter to determine what our laws should be, a point that has recently been somewhat blurred in the way the US bishops have come to set out their views in *Forming Consciences for Faithful Citizenship*:⁸. However, both Conferences have been critical of proposed legislation or—in the US—the law currently in force⁹. In only two instances has the Irish Conference's position prevailed, the first referendum on

divorce and the referendum that led to the Eighth Amendment, and in each of these cases extraneous factors may have played a part.¹⁰

Are the stances taken by the bishops the only possible ones? Are their interventions ignored because they will not countenance compromise? A first response may be that they cannot countenance compromise, for it will seem that they are admitting exceptions to principles that Catholic teaching proposes as ‘absolute’, i.e., exceptionless moral norms. And in Catholic teaching abortion is said to be ‘intrinsically evil’, by which is meant that it is never morally justifiable. It can of course be replied that what is in question is not the morality of abortion, but how abortion is best coped with in the law of the land. We have seen that Catholic teaching does not always preclude a permissive law in the case of everything that it teaches to be morally wrong, and we have also seen that one who supports such a law, a politician or citizen who votes for it, is not to be regarded as necessarily committing sin. But is what is intrinsically evil in a class of its own? That seems to be the mind of church leaders such as Archbishop Cordileone who see no possibility of compromise in their opposition to a permissive law.¹¹

However, early this year an article by a moral theologian who is also a member of the Pontifical Academy for Life, Gregorian professor Carlo Casalone SJ, offers a different way of looking at these questions.¹² The context of his contribution was the situation brought about by the decriminalisation of assisted suicide under certain conditions by the Italian Constitutional Court, a change which requires the Italian Parliament to legislate on the issues. There are two options: one is to authorise assisted suicide subject to a number of conditions, the second is to hold a referendum to abolish the prohibition in Italian law of ‘murder of a consenting person’, thereby opening the way to euthanasia. Either way the law will be enshrining something contrary to Catholic teaching. Casalone suggests however that it may be better that church leadership support the first option, given that there will in any case be a law; and he argues that the first option provides a better chance of limiting the evils involved.¹³

Casalone’s treatment is cautious, and he makes it clear that he is dealing only with the situation in Italy. However, a couple of weeks later, Marie-Jo Thiel, professor of Ethics and Moral Theology at Strasbourg University and a member of the Pontifical Academy also, suggested in *Le Monde* that Casalone’s article signalled a broader change in the Catholic position.¹⁴ The wording of a recent statement by Archbishop Lori, chairman of the US Pro-life Committee, seems to confirm this: ‘Whereas the Church always seeks the protection of all unborn children, it is licit to support legislation that falls short of this goal, if it advances protections and limits harm. *Evangelium Vitae*, Sec. 73: “This does not in fact represent an illicit cooperation with an unjust law, but rather a legitimate and proper attempt to limit its evil aspects”. The USCCB supports legislation that seeks to limit the harm of abortion, including some legislation that includes exceptions.’¹⁵ This is striking: *Forming Consciences for Faithful Citizenship* cites *Evangelium vitae* too, but is less than explicit about its applicability to the situation in the United States. One must wonder what Archbishop Cordileone makes of it, and whether it will find its way into the next version of *Forming Consciences for Faithful Citizenship*; whether indeed it will be reflected in a future statement of the universal Magisterium.

Funding: This research received no external funding.

Institutional Review Board Statement: Not applicable.

Informed Consent Statement: Not applicable.

Data Availability Statement: Not applicable.

Conflicts of Interest: The author declares no conflict of interest.

Notes

- ¹ A concept introduced in 1983 by the late Cardinal Bernardin of Chicago. Underlying it is the insight that '[t]he credibility of our advocacy of every unborn child's right to life will be enhanced by a consistent concern for the plight of the poor of the world'. Bernardin (1998, p. 45).
- ² Cf. Patrick Hannon, 'The Eucharist as Weapon' in Whelan and Tracey (2015, pp. 257–73). If it is asked how there can be disagreement among the members of the US Bishops' Conference, an answer is to be found in a statement of the Conference following discussion of the question 'whether denial of Holy Communion to some Catholics in political life is necessary because of their public support for abortion on demand'. The Conference's reply was: 'Given the wide range of circumstances involved in arriving at a prudential judgment on a matter of this seriousness, we recognise that such decisions rest with the individual bishop in accord with established canonical and pastoral principles. Bishops can legitimately make different judgments on the most prudent course of pastoral action'. (<https://www.usccb.org/issues-and-action/faithful-citizenship/church-teaching/catholics-in-political-life>). Last accessed 1 October 2022.
- ³ Literal translation of the Greek word usually translated 'dwelt'.
- ⁴ All quotations in the paragraph are from *Summa Theologiae* (hereinafter *STh*), 1a 2ae, q. 91, art. 2. Translation, lightly edited, is from vol. 28 of the 1966 Blackfriars edition, ed. Thomas Gilby OP, see Gilby (1966).
- ⁵ *STh* q. 90, Prologue (Gilby 1966). The word used is 'instruit', sometimes translated 'instructs'.
- ⁶ What follows adapts and reproduces some material from my *Church, State, Morality, and Law*, See Hannon (1992) (Dublin: Gill and Macmillan, 1992, Westminster MD: Christian Classics, 1992).
- ⁷ Cf. fn 4 *supra*.
- ⁸ Current title of a document for the guidance of Catholic voters, published every four years since 1976 in the run-up to presidential elections. Full text is at <https://www.usccb.org/issues-and-action/faithful-citizenship/forming-consciences-for-faithful-citizenship>. Last accessed 1 October 2022.
- ⁹ The legal situation in the United States has changed radically with the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* (24 June 2022) which overturned *Roe v. Wade* (1973) and *Planned Parenthood v. Casey* (1992), both of which upheld a Constitutional right to abortion. Abortion law is now a matter for each State, but there is also a move to enshrine a right to abortion in federal law.
- ¹⁰ In the case of the Eighth Amendment, both government and opposition members campaigned in its favour; as to divorce, public discussion evinced dissatisfaction with a lack of clarity regarding questions of maintenance and custody of children and of succession rights. The difficulty of securing an effective hearing in the public square is not confined to Ireland or the United States. In September 2021 in Rome, Archbishop Eric de Moulins-Beaufort, president of the French Conference said: 'Every time there is a law of bioethics we are asked for our opinion. We are very kindly listened to. And everyone, beginning with ourselves, knows exactly what we are going to say, and we know quite well that it won't make any difference. We have been put in a corner'. *La Croix International*, 12 August 2022.
- ¹¹ Support for this view is arguably found in *Faithful Citizenship*, especially in par. 37: '... all issues do not carry the same moral weight and ... the moral obligation to oppose policies promoting intrinsically evil acts has a special claim on our consciences and our actions'. Sentences such as this contribute to the blurring of principle adverted to above.
- ¹² 'La discussione parlamentare sul "suicidio assistito"', *Civiltà Cattolica* 14 January 2022 (Ceccanti 2022). An English translation appeared in the English language edition on 3 February 2022, accessible at www.laciviltacattolica.com/the-italian-parliamentary-debate-on-assisted-suicide. (Last accessed 1 October 2022). This is reported with some commentary in *La Croix International*, 12 August 2022, accessible at <https://international.la-croix.com/news/ethics/assisted-suicide-the-vaticans-strategic-turn-on-bioethics/15607> (last accessed 28 October 2022).
- ¹³ *La Croix International*, *loc. cit.* What amounts to a gloss on Casalone's proposal was later provided by Mgr Renzo Pegoraro, a physician who has been Chancellor of the Pontifical Academy since 2011: 'We are in a specific context, with a choice to be made between two options, neither of which—assisted suicide or euthanasia—represents the Catholic position. In any case, there will be a law, and of the two possibilities, assisted suicide is the one that most restricts abuses because it would be accompanied by four strict conditions: the person asking for help must be conscious and able to express it freely, have an irreversible illness, experience unbearable suffering, and depend on life-sustaining treatment such as a respirator'. (*La Croix International*, *loc. cit.*).
- ¹⁴ 'L'Eglise catholique s'interroge sur l'opportunité de l'assistance au suicide', *Le Monde* 31 January 2022 (Thiel 2022). The report in *La Croix International* adds that Thiel's piece was published with Casalone's approval. (*loc. cit.*).
- ¹⁵ <https://www.usccb.org/news/2022/us-bishops-pro-life-chairman-affirms-church-teaching-dignity-human-life>. Last accessed 26 October 2022.

References

- Bernardin, Joseph. 1998. *A Moral Vision for America*. Edited by John P. Langan. Washington, DC: Georgetown, p. 45.
- Ceccanti, Stefano. 2022. La discussione parlamentare sul "suicidio assistito". *Civiltà Cattolica*, January 14. Available online: <http://www.laciviltacattolica.com/the-italian-parliamentary-debate-on-assisted-suicide> (accessed on 1 October 2022).

-
- Gilby, Thomas Gen, ed. 1966. *Summa Theologiae*. 60 vols. Oxford: Blackfriars.
- Hannon, Patrick. 1992. *Church, State, Morality, and Law*. Dublin: Gill and Macmillan.
- Thiel, Marie-Jo. 2022. L'Église catholique s'interroge sur l'opportunité de l'assistance au suicide. *Le Monde*, January 31.
- Vacek, Edward. 2016. When Cooperation Is Not Complicity. *La Croix International*, August 15.
- Whelan, Thomas R., and Liam M. Tracey, eds. 2015. *Serving Liturgical Renewal: Pastoral and Theological Questions. Essays in Honour of Patrick Jones*. Dublin: Veritas.
- Winters, Michael Sean. 2022. With his Communion ban, Cordileone harms the church more than Pelosi does. *National Catholic Reporter*, May 25.