

Acting on Faith-Based Conscience in a Pluralist Democracy

Fr Frank Brennan SJ

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1. The 1874-5 Exchange Between Newman and Gladstone

Smarting from the defeat of his Irish University Bill in 1873 and from the subsequent loss of the 1874 election, ex-prime minister W E Gladstone wrote to the *Contemporary Review* questioning whether “a handful of clergy are or are not engaged in an utterly hopeless and visionary effort to Romanise the Church and people of England”.¹ He lamented this time “when no one can become (Rome’s) convert without renouncing his moral and mental freedom, and placing his civil loyalty and duty at the mercy of another; and when she has equally repudiated modern thought and ancient history.”

Gladstone was convinced that the Irish bishops’ opposition to the University Bill was fuelled by directives from Rome. In England at the time, it was not only non-Catholics who were troubled by novel Roman developments such as Pius IX’s 1864 Syllabus of Errors and Vatican I’s declaration on papal infallibility, and so soon after the Catholic emancipation measures.

Gladstone then published his pamphlet *The Vatican Decrees in their bearing on Civil Allegiance: A Political Expostulation*. It sold over 145,000 copies. Among the propositions “all the holders of which have been condemned by the See of Rome during my own generation, and especially within the last twelve or fifteen years”, he listed:

- Those who maintain the liberty of the press.
- Or the liberty of conscience and of worship.
- Or the liberty of speech
- Or that any method of instruction of youth, solely secular, may be approved
- Or that knowledge of things philosophical and civil may and should decline to be guided by ... *Ecclesiastical* authority.
- Or that in “countries called Catholic”, the free exercise of other religions may laudably be allowed.
- Or that the Roman Pontiff ought to come to terms with progress, liberalism and modern civilisation.

Most Australian Catholics would now join their fellow Christians in affirming the core truth of these propositions. They would not be guided in their public life by past

¹ *Contemporary Review*, October 1874, p. 674

papal condemnations of these views. They would be ably assisted by the encyclicals of Pope John Paul II in placing these blunt, universal anathemas into a more nuanced context, often abandoning the anathemas completely, and in good faith.

Back then, John Henry Newman came to the defence of intelligent, politically engaged Catholics with his *Letter Addressed to the Duke of Norfolk on Occasion of Mr Gladstone's Recent Expostulation*. He considered the main question raised by Gladstone to be: "Can Catholics be trustworthy subjects of the State?"²

Gladstone repeated his fear that "no one can now become (a Catholic) without renouncing his moral and mental freedom, and placing his civil loyalty and duty at the mercy of another."³ Newman refuted this fear conceding that there may be "extreme cases in which conscience may come into collision with the word of a Pope, and is to be followed in spite of that word."⁴ He asserted that "infallibility alone would block the exercise of conscience" but that "the Pope is not infallible in that subject matter in which conscience is of supreme authority" and thus "no dead-lock, such as is implied in the objection ...can take place between conscience and the pope."⁵ Newman's confidence that there would be no prospect of an overlap, let alone a conflict, between the matters on which the Pope would speak infallibly and the matters on which the citizen would have to decide political and moral questions accounts for his notorious declaration:⁶

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

Neither Gladstone nor Newman perceived the extent to which the state might legislate in centuries to come about all manner of things. Newman had no idea about the range of issues on which subsequent popes and Vatican congregations would issue declarations not just on the faith but in relation to morals, law and public policy, and in considerable detail. Newman would have been surprised by some of the contemporary claims that the popes have taught infallibly on a vast range of moral issues, including contraception.⁷ He would have had no comprehension that the

² *Newman and Gladstone: The Vatican Decrees*, University of Notre Dame Press, 1962, p. 78

³ W E Gladstone, *The Vatican Decrees in Their Bearing on Civil Allegiance*, John Murray, London, 1874, p. 12

⁴ J H Newman, "A Letter Addressed to His Grace The Duke of Norfolk on Occasion of Mr Gladstone's Recent Expostulation", 1875, in *Certain Difficulties Felt By Anglicans in Catholic Teaching Considered*, Volume 2, Christian Classics, Westminster, 1969, p. 246

⁵ *ibid.* p. 257

⁶ *ibid.* p. 261

⁷ Theologians such as Germain Grisez and John Ford who advised Pope Paul VI in his preparation of *Humanae Vitae* were of the view that this teaching was infallible, declaring authoritatively the earlier irreformable papal teaching on the issue in 1930. This is no longer a widely held view, especially given the definitive wording that Pope John Paul II used in *Evangelium Vitae* declaring abortion, euthanasia and the direct, voluntary killing of an innocent human being to be grave moral disorders. No such wording was used by Paul VI in *Humanae Vitae*. In relation to abortion, John Paul II said:

By the authority which Christ conferred upon Peter and his Successors, in communion with the Bishops-who on various occasions have condemned abortion and who in the aforementioned consultation, albeit dispersed throughout the world, have shown unanimous agreement concerning this doctrine-I declare that direct abortion, that is, abortion willed as an end or as a means, always constitutes a grave moral disorder, since it is the deliberate killing of an innocent human being. This doctrine is based upon the natural law and upon the written Word of God, is transmitted by the Church's Tradition and taught by the ordinary and universal Magisterium.

Vatican's Congregation for the Doctrine of the Faith would issue very detailed guidelines on law and policy, providing guidance for Catholic politicians having to vote on vexed moral and political questions. Newman was confident that there would be little overlap between the state's law and policy, and church teaching. He thought there ought to be little overlap. He thought Gladstone was being censorious. But given that there now is overlap, there is a need to investigate the restrictions on conscience so as to determine if Gladstone's fears now have substance.

Political, legal and moral advice are needed to inform the citizenry about law reform and public administration. Issues of law reform are not primarily moral questions; they also require prudence and political savvy best practised by those who are imbued with the local culture and who are experienced in the law and politics of that society. For this very reason, religious leaders, and especially those from other countries, are less likely to be competent no matter what their place in the hierarchy of the religious community. The more expert they are in moral and political philosophy, the more they should be attuned to the limits of their competence and the prudence of silence in the wake of the local faithful trying not just to live the individual moral life but also to contribute to public life, true to their public trust and responsive to the cultural, political and legal ethos of their society. With prudence, religious authorities can ensure that Gladstone's fears remain groundless and Newman's defence sound, toasting conscience before religious authority without reservation.

What is the role of church leaders in the political process, proclaiming the truth from their religious perspective, when that perspective is not necessarily shared by the majority? When should politicians vote for a law or social policy according to their religious convictions rather than according to the policy of their party or according to the opinion of the majority whom they represent?

In countries like Australia and the United States, these questions most often arise when Catholic bishops or Catholic politicians start talking about abortion, euthanasia or stem cell research. But they also arise when community leaders and politicians of all faiths and none buy into the question of tax reform and wealth redistribution, or ponder the morality of going to war, or wrestle with the right balance between border security and the dignity of asylum seekers. Americans become very focussed on these questions when they are electing a president or selecting a new Supreme Court judge.

2. The Vatican's 2002 Doctrinal Note on Catholic Participation in Political Life

In preparation for the 2004 US presidential election, the Vatican took the extraordinary step of issuing a "doctrinal note" setting out "some principles proper to the Christian conscience, which inspire the social and political involvement of Catholics in democratic societies."⁸ This document from Cardinal Ratzinger

At the time Cardinal Ratzinger cautioned that even these declarations were not infallible. There is no way that the bishops throughout the world would show unanimous agreement concerning Paul VI's teaching on contraception. Many would prefer a teaching consistent with the recommendations of the majority of the Commission established by Paul VI.

⁸ Congregation for the Doctrine of the Faith, *Doctrinal Note on Some Questions Regarding the Participation of Catholics in Political Life*, 24 November 2002, para 1. The note was directed "to the

mentioned conscience fifteen times, conceding that “It is not the church's task to set forth specific political solutions - and even less to propose a single solution as the acceptable one - to temporal questions”.⁹ The document saw the formed and informed conscience of the politician and church leader as critical for getting at the truth. A century ago, the Catholic Church was opposed to all forms of liberalism and very suspicious of democracy. Now even its critics would accept that the church is a leader in espousing the cause of democracy, though it rightly clings to the primacy of truth rather than the primacy of majority opinion.

The document refreshingly proclaimed, “Living and acting in conformity with one's own conscience on questions of politics is not slavish acceptance of positions alien to politics or some kind of confessionalism, but rather the way in which Christians offer their concrete contribution, so that, through political life, society will become more just and more consistent with the dignity of the human person”.¹⁰ At the time, this seemed good news for tolerant, liberal citizens living in a democracy, regardless of their religious beliefs. It did not resolve many of the old tensions which some religious believers, especially more conservative Catholics, encounter living in a society where their comprehensive view of the good and the true is not shared by the majority of their fellow citizens.

The Vatican Congregation said that political freedom could not be “based upon the relativistic idea that all conceptions of the human person's good have the same truth and value”.¹¹ That is not to deny that political freedom in a diverse, tolerant democracy must be based on the idea that all conceptions of the good are entitled to an equal hearing before the bar of reason and public opinion when our lawmakers determine the law applicable to all citizens. For example, being a Catholic seeking to form and inform my conscience, I readily agree with the Vatican Congregation asserting that “the family needs to be safeguarded and promoted”.¹² When it comes to the operation of the law rather than personal preference or moral encouragement at church, I do not see that it necessarily follows that “in no way can other forms of cohabitation be placed on the same level as marriage, nor can they receive legal recognition as such.” What about the need to protect the dignity and rights of children born of a de facto union? A lawmaker could in good and informed conscience vote for a legal measure recognising the legal effects and benefits of de facto relationships while at the same time personally encouraging people to consider matrimony.

In the democratic spirit of the age, this Vatican note was authoritative as an invitation to discussion rather than an edict on faith and morals. It did not provide any politician, judge or administrator with the answers to the moral quandaries they confront in the faithful discharge of their public office. But it did provide useful guideposts for the decision maker wanting to govern in good conscience being true to her office, to her people and to her God.

Bishops of the Catholic Church and, in a particular way, to Catholic politicians and all lay members of the faithful called to participate in the political life of democratic societies.”

⁹ *ibid.*, para. 3

¹⁰ *ibid.*, para. 6

¹¹ *ibid.*, para 3

¹² *ibid.*, para. 4

In both the United States and Australia, the Catholic bishops publish a document well before the election setting out the issues that should be considered by candidates and electors wanting to inform themselves of the Catholic position on disputed questions. The document has two purposes: to provide accurate information on the Church's position on key social and moral questions, before the electoral heat is turned up; and to excuse the bishops from the need to walk the tight rope of comment on sensitive issues during the clamour of the election campaign. Usually, some issue will arise during the campaign that draws some of the bishops into debate. This then causes a flurry of speculation about the prudence and political motivation for such intervention.

3. The US Bishops and the 2004 Election

As has been their practice for twenty years, the 281 US bishops issued *Faithful Citizenship: A Catholic Call to Political Responsibility* a year before the presidential election.¹³ They had also chosen seven senior bishops to set up a Task Force on Catholic Bishops and Catholic Politicians. This task force was to spend the election year reflecting on church-state issues. Its mandate became very difficult once the Democrats had chosen the pro-choice Catholic John Kerry from Boston as the Democrat challenger to the pro-life Methodist George W Bush. The abortion controversy has been contested and political in the United States ever since the Supreme Court's 1975 decision *Roe v Wade*. It affects every presidential election and every nomination to the Supreme Court.

Making his own long range preparation for the 2004 presidential election, Bishop Raymond Burke, a trained canon lawyer who had spent five years working in the church courts in Rome, sent letters to three Catholic legislators in his US diocese of La Crosse asking them to explain themselves on issues such as abortion. Having not received any adequate responses, he took the extraordinary step of signing a canonical declaration on 23 November 2003 calling on the legislators "to uphold the natural and divine law regarding the inviolable dignity of all human life" and declaring that "To fail to do so is a grave public sin and gives scandal to all the faithful." He decreed: "Catholic legislators who are members of the faithful of the diocese of La Crosse and who continue to support procured abortion or euthanasia may not present themselves to receive Holy Communion. They are not to be admitted to Holy Communion, should they present themselves, until such time as they publicly renounce their support of these most unjust practices."¹⁴ Burke did not extend his edict to Catholic judges who supported abortion or euthanasia. A week later it was announced that Burke had been promoted and was to become Archbishop of St Louis in the New Year. Before his installation in St Louis, he formally published the decree in his diocesan newspaper. Later in the campaign he told reporters that he would refuse communion to John Kerry if he were to visit the diocese. Archbishop Sean O'Malley,

¹³ The document was approved by the Administrative Committee of the US Catholic Bishops Conference in September 2003 and issued with this prefatory note: "Every four years since 1976, the Administrative Committee of the United States Conference of Catholic Bishops has issued a statement on the responsibilities of Catholics to society. The purpose of the statement is to communicate the Church's teaching that every Catholic is called to an active and faith-filled citizenship, based upon a properly informed conscience, in which each disciple of Christ publicly witnesses to the Church's commitment to human life and dignity with special preference for the poor and the vulnerable."

¹⁴ R. Burke, Canonical Notification in Accordance with Canon 915, 8 January 2004

Kerry's bishop in Boston, said that he would not take the same course of action. Things were getting messy.

Six months out from the presidential election, Archbishop Charles Chaput of Denver sent out his own warning shot:¹⁵

Catholics have a duty to work tirelessly for human dignity at every stage of life, and to demand the same of their lawmakers. But some issues are jugular. Some issues take priority. Abortion, immigration law, international trade policy, the death penalty and housing for the poor are all vitally important issues. But no amount of calculating can make them equal in gravity. The right to life comes first. It precedes and undergirds every other social issue or group of issues.

From the outset, bishops Burke and Chaput turned the 2004 election into a test of Catholic candidates and Catholic voters such as had never occurred before in the US. Their key issue was abortion, but others were euthanasia, stem cell research and same sex marriage. The Iraq War and the death penalty, both strongly advocated by George Bush, did not rate a mention. These bishops were adamant that they were not making political choices. They were simply highlighting the moral issues which in their opinion should be of greatest concern to Catholic politicians and Catholic voters.

By the time the election had run its course, only a handful of bishops had said they would refuse communion to pro-choice candidates. But these few attracted much media attention.

In response to the Vatican's Doctrinal Note of November 2002, Cardinal McCarrick, Archbishop of Washington DC, suggested to his fellow bishops the establishment of a group who "would consider the relationship that we as bishops and teachers in the Church should have with Catholic politicians who are not always with us on the major issues that face the Church in our time in our country".¹⁶ As chair of the Task Force on Catholic Bishops and Catholic Politicians, he gave the US Catholic Bishops Conference an interim report on 15 June 2004 plaintively noting:¹⁷

In our view the battles for human life and dignity, and for the weak and vulnerable should be fought not at the communion rail but in the public square, in hearts and minds, in our pulpits and public advocacy, in our consciences and communities.

There had been a lot of work going on behind the scenes. A report had appeared on the Catholic News Service on 4 June 2004 that Cardinal Joseph Ratzinger was proceeding cautiously on the issue and that he would like Vatican officials to meet soon with the US bishops' task force. McCarrick told his fellow bishops on 15 June 2004:¹⁸

In recent days, I have once again been in contact with Cardinal Ratzinger both by letter and telephone calls. He has offered some observations for our work which he specifically asked not be published, but which I wish to share with you.

¹⁵ C. Chaput, *Archdiocese of Denver Newsletter*, "How to tell a duck from a fox: Thinking with the Church as we look towards November", 14 April 2004

¹⁶ T McCarrick. "The Call to Serve in a Divided Society", Canisius Lecture, Boston College, 3 March 2005, p6

¹⁷ See *Origins*, Vol 34, No. 12, 2 September 2004, pp. 188-9

¹⁸ T. McCarrick, Opening Comments, Task Force on Catholic Bishops and Catholic Politicians, US Catholic Bishops' Spring Meeting, Denver, 15 June 2004

Some bishops were surprised that Ratzinger's letter was not to be shared with all the bishops. McCarrick provided a summary of his dealings with Ratzinger indicating that it was "up to us as bishops in the United States to discern and act on our responsibilities as teachers, pastors and leaders in our nation." According to McCarrick:

Cardinal Ratzinger outlines HOW a bishop might deal with these matters, including a series of precautionary measures involving a process of meeting, instruction and warning.

I would emphasize that Cardinal Ratzinger clearly leaves to us as teachers, pastors and leaders WHETHER to pursue this path.

The US Bishops decided that the Task Force should issue a statement clarifying the misunderstandings that had arisen about John Kerry's eligibility for communion. Bishop Chaput and a couple of other bishops were asked to assist the task force in its deliberations. They cobbled together a document *Catholics in Political Life* which conceded ground to all parties, being approved by the bishops 183 - 6. The document noted:¹⁹

Given the wide range of circumstances involved in arriving at a prudential judgment on a matter of this seriousness, we recognize that such decisions rest with the individual bishop in accord with the established canonical and pastoral principles. Bishops can legitimately make different judgments on the most prudent course of pastoral action.

No sooner had the bishops dispersed from their national meeting than the Italian press leaked Ratzinger's letter entitled "Worthiness to Receive Holy Communion". Ratzinger had not entertained the idea that it would be up to individual bishops to make pastoral and prudent decisions. He had counselled a uniform approach. His letter was quite consistent with the approach which had earlier been taken by Archbishop Burke. Ratzinger had said:²⁰

Not all moral issues have the same moral weight as abortion and euthanasia. For example, if a Catholic were to be at odds with the Holy Father on the application of capital punishment or on the decision to wage war, he would not for that reason be considered unworthy to present himself to receive Holy Communion.

But there is a difference between committing an abortion oneself and saying that it is not a matter for the civil law to try and deter others. Bush himself authorised the execution of 152 persons on death row, only once exercising clemency in his term as state governor.²¹ He committed the US to war. He was responsible for these acts.

¹⁹ *Catholics in Political Life* was developed by the United States Conference of Catholic Bishops (USCCB) Task Force on Catholic Bishops and Catholic Politicians in collaboration with Francis Cardinal George, Archbishop Charles Chaput, and Bishop Donald W. Wuerl. It was approved for publication by the full body of bishops at their June 2004 General Meeting

²⁰ This letter was sent to McCarrick in early June 2004 and was leaked in the Italian press on 3 July 2004.

²¹ See H. Prejean, "Death in Texas", *New York Review of Books*, Vol. 52, No. 1, p. 4, 13 January 2005. Sister Prejean writes: "When Bush left the governor's office, he had denied clemency in all cases and refused to commute from death to life imprisonment a single death sentence but one—that of Henry Lee Lucas—and that because knowledge of Lucas's innocence of the murder for which he was about to be killed had become the subject of such national scrutiny that Bush could not afford politically to

Kerry did not commit abortions nor did he commit acts of euthanasia. He simply said that these were not issues in relation to which the state should interfere with the choice made by the individual. Since 1972, Kerry has affirmed:²²

On abortion, I myself, by belief and upbringing, am opposed to abortion but as a legislator, as one who is called on to pass a law, I would find it very difficult to legislate on something God himself has not seen fit to make clear to all the people on this earth. . . . And I think, therefore, with a sense of justice in mind that one has to leave the question of abortion between a woman and her conscience and her doctor.

As far as Ratzinger was concerned, if a pro-choice Catholic candidate had been counselled and warned “and the person in question, with obstinate persistence, still presents himself to receive the Holy Eucharist, the minister of Holy Communion must refuse to distribute it”. According to Ratzinger’s prescription, Burke had followed the right canonical prescriptions, first warning the politicians privately and then taking public action only once there was no satisfactory response.

Given the pro-Burke part of the Ratzinger advice, it is no wonder that McCarrick had not published it. It was political dynamite. Conservative elements in the US Church then got to work, expressing outrage that the episcopacy had been denied the wisdom of Cardinal Ratzinger’s insights at a critical time in the US Church’s history.

McCarrick went into damage control, as did Ratzinger. In response to the formal transmission of *Catholics in Political Life* to Rome, Ratzinger replied by letter to McCarrick, and this time McCarrick published the letter immediately pointing out that he and Ratzinger had engaged in numerous discussions on this question, and not just by letter. In this second letter, Ratzinger said:²³

The statement is very much in harmony with the general principles “Worthiness to Receive Holy Communion,” sent as a fraternal service - to clarify the doctrine of the Church on this specific issue-in order to assist the American Bishops in their related discussion and determinations.

If Ratzinger’s first letter had been sent as a fraternal service to assist the American bishops, it is surprising that they were not given copies. It is even more surprising that Ratzinger had asked that it not be published, as McCarrick had advised the bishops in conference. The internal church politics of the issue were becoming very strained. As the presidential campaign grew more intense, the bishops once again started to break ranks. Diametrically opposed statements were issued even by bishops working in the same State.

The bishops had publicly disgraced themselves with no prospect of reaching agreement. The Jesuit Cardinal Avery Dulles gave the right mix of pastoral concern, reverence for the Eucharist, political pragmatism and common sense in his observation: “The church’s prime responsibility is to teach and to persuade. She tries to convince citizens to engage in the political process with a well-informed

ignore it. Besides, the Lucas case became public during the 2000 presidential campaign, when Bush had begun to portray himself as a ‘compassionate conservative.’”

²² Quoted in “Events Forcing Abortion Issue on Kerry”, *Washington Post*, 3 June 2004.

²³ Letter of J Ratzinger to T McCarrick, 9 July 2004

conscience.” He cautioned against penalties, including a public banning of communion:²⁴

In the first place, the bishop may be accused, however unfairly, of trying to coerce the politician’s conscience. Second, people can easily accuse the church of trying to meddle in the political process, which in this country depends on the free consent of the governed. And finally, the church incurs the danger of alienating judges, legislators, and public administrators whose good will is needed for other good programs such as the support of Catholic education and the care of the poor. For all these reasons, the church is reluctant to discipline politicians in a public way, even when it is clear that their positions are morally indefensible.

Two months out from the poll, Archbishop Burke, by now well installed as the Archbishop of St Louis and buoyed by the publication of the Ratzinger correspondence with McCarrick, issued another pastoral letter answering his critics and urging the Catholic voters to focus on those issues which entailed intrinsic evil. Even though a particular war might be wrong, not all wars were necessarily wrong. Even though most uses of capital punishment might be wrong, not all acts of capital punishment were necessarily wrong. Given that abortion is always wrong and given that homosexual genital activity is always wrong, he was suggesting that it was self-evident that Catholic voters would therefore focus exclusively on these issues if there were a difference between the two candidates on these issues, regardless of their political stance on other moral issues. Burke said:²⁵

Some Catholics have suggested that a candidate’s position on the death penalty and war are as important as his or her position on procured abortion or same sex marriage. This, however, is not true. Procured abortion and homosexual acts are intrinsically evil and as such can never be justified in any circumstances. One cannot justify a vote for a candidate who promotes intrinsically evil acts which erode the very foundation of the common good, such as abortion and same-sex “marriage”, by appealing to that same candidate’s opposition to war or capital punishment.

According to Burke, the conscientious Catholic did not have a choice between candidates in a presidential election if one candidate, unlike the other, supported the recognition of same sex marriage, the constitutional right to abortion, and embryo experimentation in even very restricted circumstances. Questions of character, ability to lead, morality of commitment to a particular war, excessive reliance on the death penalty, and less equitable provision of education and health care were not relevant in these circumstances. One had no choice but to vote for Bush regardless of your view about his leadership ability or about the morality of the Iraq war.

After the US poll, 22% of voters named “moral values” as the issue that most mattered in the casting of a vote. Of that group, 80% voted for Bush and 18% for Kerry. The conservative commentator Fr Richard Neuhaus claimed that “all sensate voters understood that ‘moral values’ referred to the candidates’ clear differences on abortion, embryonic stem cell research, a marriage amendment, and, more generally the role of morality and religion in public life.”²⁶

²⁴ Quoted in *Origins*, Vol 34, No. 12, 2 September 2004, pp. 187-8

²⁵ “On our Civic Responsibility for the Common Good”, Pastoral Letter to the Church of St Louis, 1 October 2004, Para. 30

²⁶ R. Neuhaus, “The Public Square” in *First Things*, Number 149, January 2005, p. 64

4. Pope Benedict's 2005 Encyclical

In his first encyclical, Pope Benedict XVI is quite upfront about the failure of the Church leaders of the nineteenth century to adapt to new ways of thinking about morality and justice in light of the conflict between labour and capital. He says, "It must be admitted that the Church's leadership was slow to realize that the issue of the just structuring of society needed to be approached in a new way."²⁷ Our new pope is adamant that Catholic social doctrine must not "attempt to impose on those who do not share the faith ways of thinking and modes of conduct proper to faith. Its aim is simply to help purify reason and to contribute, here and now, to the acknowledgment and attainment of what is just." As pope, he is far less prescriptive than he was as Prefect of the Congregation for the Doctrine of the Faith. Having said that it "is not the Church's responsibility to make this teaching prevail in political life", he declares in *Deus Caritas Est*:²⁸

Rather, the Church wishes to help form consciences in political life and to stimulate greater insight into the authentic requirements of justice as well as greater readiness to act accordingly, even when this might involve conflict with situations of personal interest. ...

The Church is duty-bound to offer, through the purification of reason and through ethical formation, her own specific contribution towards understanding the requirements of justice and achieving them politically.

Benedict is adamant that the church "cannot and must not remain on the sidelines in the fight for justice. She has to play her part through rational argument and she has to reawaken the spiritual energy without which justice, which always demands sacrifice, cannot prevail and prosper."²⁹

In the realm of law and social policy, all religious leaders would be well advised to follow Pope Benedict's caution against attempting "to impose on those who do not share the faith ways of thinking and modes of conduct proper to faith". According to Benedict, their aim should simply be "to help purify reason and to contribute, here and now, to the acknowledgement and attainment of what is just."³⁰

Benedict's general reflections as pope are more helpful than his specific directives as Prefect for Catholic politicians and lawyers in countries such as Australia with a constitutional separation and a political chasm between Church and State. His general reflections in his first encyclical are consistent with his 1985 theological reflection when he mused on "A Christian orientation in a pluralist democracy":³¹

Catholic theology has since the later Middle Ages, with the acceptance of Aristotle and his idea of natural law, found its way to a positive concept of the profane non-Messianic state. But it then frequently loaded the idea of natural law with so much Christian ballast that the necessary readiness to compromise got lost and the state could not be accepted within the limits essential to its profane nature. Too much was fought for and as a result the way to what was possible and necessary was blocked.

²⁷ *Deus Caritas Est*, #27

²⁸ *Ibid*, #28

²⁹ *Ibid*.

³⁰ *Ibid*.

³¹ J. Ratzinger, *Church, Ecumenism and Politics*, Crossroad, New York, 1988, pp. 204-220 at p. 213

5. Acting on Conscience in Public Life

Religious people, like all citizens in a democracy under the rule of law, have the opportunity in the privacy of their own lives and in community with others to live out their comprehensive idea of the good life which includes the fullest possible compliance with the moral law as they and their own religious community discern and define that moral law to be. The civil law, government policy and administration ought to provide them with protection in the pursuit of this goal. In return, they need to respect the desire of other citizens to live out their notion of the good life, even though it not comply with theirs, and even if it be in contradiction to theirs.

There will be conflicting world views. These views can be accommodated within a democracy under the rule of law if all citizens and groups of citizens are required to respect the basic rights and freedoms of others, as these rights and freedoms are defined by law. No matter what their comprehensive world views, all citizens in the nation state are required in the public forum to respect the zone of privacy of others and to respect the communal values which in Australia include tolerance, compassion, self-determination and equal dignity of all in the exercise of their conscience.

When agitating for a particular government policy, law, or mode of administration of government policy and law, each needs to take account of the role of government, the role of law, and the practicalities of administration. Seeking a moral good as an end in itself is one thing. Seeking to have others uphold a moral good by coercion of law or government action is another. This requires an appreciation of the limits of law and the restrictions on administration. Though it may be desirable to have all citizens do a good action, the cost of attempted compliance by all may be an undermining of the rule of law or an impugning of the integrity and coherence of government and its administration.

Religious citizens, inspired by their religious authorities, are free to pursue the good amongst themselves and they are at liberty to agitate for a comprehensive law and policy imposing this perspective of the good on all. Public officials whether they are judges, ministers, public servants or elected members of parliament are free to consider the religious citizens' claims. They should reject or disregard those claims which are in conflict with the public trust which attaches to the position of the public official. They should reject those claims which, if implemented, would undermine the integrity of the law, policy and its mode of implementation. They should reject those claims which would result in an interference with the basic rights and liberties of citizens who do not share the religious viewpoint. They should also reject those claims if their implementation would run counter to the contemporary social values of equality, tolerance, compassion and dignity for all persons at all stages of the life cycle.

If there be no violation of public trust, the integrity of the law and administration, basic rights and liberties, and community values, then public officials are at liberty to act in the light of a religious perspective. In such a case, religiously inspired and informed action by a legislator, judge, or public servant would be consistent with their public duty, consistent with the basic rights and liberties of all, and consistent with the community values. When this is not possible, the religious citizens, like other citizens, will accept that the nation state with its power to coerce individuals does not

exist in order to legislate and impose a particular way of acting on all citizens even if that way of acting be the overwhelming preference of the majority of citizens. The sanction of the law enforcing public policy justifies coercion on all citizens only to the extent necessary to maintain public security and peace and to uphold the basic rights and liberties of all citizens, including the most vulnerable, against each other and against the state.

A simple thought experiment illustrates the limits of the religious world view informing law and policy. Imagine a homogeneous religious community living on an isolated island. They could voluntarily enter into a social contract agreeing to order their social affairs consistent with their religious beliefs. If they were then incorporated into a nation state with the non-religious people on the adjacent island, they would have no legitimate expectation that the new nation's laws would coerce all citizens to act consistent with their religious beliefs. If the new nation state were a democracy under the rule of law, they would retain the legitimate expectation that they could continue to live their religious life publicly as well as privately provided they respected the basic rights and liberties of their fellow non-religious citizens and provided they honoured any shared community values. There will always be informed public disagreement about what constitutes basic rights and liberties and shared community values. That is why there will be not only politics but also political morality in a democracy under the rule of law.

The health of the *polis* (the political community in the life of the nation state) is threatened when one group, privately or under their breath, despair that their fellow citizens are incapable of reasoned discourse about contested moral questions because of their world view or because of their irrational prejudice. Appropriate checks and balances on all power exercised in the name of the people and a commitment to respectful public dialogue acknowledging differing world views preserve the *polis*. The religious person who participates in public life needs to respect the secular humanist who shares a common commitment to politics and political morality. The religious citizen can give such respect while still confessing, "Secular humanism is not for me." The religious citizen is entitled to similar respect from the secular humanist who confesses, "Religion is not for me." None of us can provide to all our fellow citizens a definitive and appealing explanation of love, suffering, death and the deepest purposes of human life and relationships. The reflective and articulated views of all citizens should be valued when decisions are made about laws and policies affecting same.

6. A 2006 Australian Case Study – RU486

By keeping religion and politics in place, it is possible to approach more dispassionately a public debate such as the one that occurred in the federal parliament on the Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill in 2006. RU486 is an abortion drug. It kills the foetus. It may also have some adverse health effects on the mother. In a variety of circumstances, abortion is lawful in the states and territories. The Commonwealth Parliament has no power to make laws about the lawfulness or unlawfulness of abortion. However the Commonwealth Parliament does have power to regulate Medicare payments and the importation of drugs. There is no evidence that the introduction of RU486 has increased the number of abortions performed in other

countries. There is no reason to believe that the introduction of the option of drug induced abortion in addition to surgical abortion would reduce the number of abortions.

Many surveys reveal that a majority of Australians are concerned about the high frequency of abortion in Australia. But in most circumstances, they think the decision should be made by the mother in consultation with her doctor.

The Therapeutic Goods Administration (TGA) is not the appropriate body to decide if the options for abortion should be increased to include drug induced abortion. It makes good sense for that decision to be made on a conscience vote by the Parliament. Once Parliament decided by its vote to indicate its agreement with the expansion of abortion options to include drug induced abortion, it then made good sense to entrust to the TGA the task of determining whether RU486 was safe for women.

In deciding how to vote on the conscience vote, every member of parliament was free to express their personal view on the morality of abortion. Each member then needed to consider what was the desirable law or policy. The vote was not about providing women with better and more realistic options to abortion. The vote was about increasing or restricting the range of options for how an abortion would be committed once a woman and her doctor decided on an abortion without any interference from the law.

The members who voted for the bill were voting for a measure which was unlikely to increase the number of abortions but which will definitely not decrease the number of abortions. Those who voted for the measure might appear to have endorsed the ready availability of abortion in the Australian states and territories. They might have considered in good conscience that the range of options for the performance of abortion should not be expanded until the range of realistic options other than abortion were increased. They might have considered in good conscience that a vote in favour of the bill would have obligated them to do more in the future to reduce the number of abortions chosen under the law by means of providing women with more realistic choices to proceed with their pregnancy despite the burdens.

Bishop Anthony Fisher told the Senate committee:³²

Australians are deeply concerned that the abortion rate is already too high, and clearly this new direction will not help decrease abortion. The public clearly would like to see rates decreased and therefore looks to our leaders for ways to bring that about. Above all, they should be looking to ensure the women are offered real alternatives to abortion rather than alternative methods of abortion.

All members of parliament ought be able to reply, "Hear, Hear!" to that, regardless of how they voted on the RU486 bill.

Religious persons are as entitled as anyone else to engage in the legal and political processes agitating their policy preferences in light of their comprehensive world

³² Transcript, Senate Community Affairs Committee, 6 February 2006, p. CA13

view. As Tony Abbott said during the RU486 debate, “Religious faith is not some kind of contaminant to be driven out of our public life.”³³

7. The Primacy of Conscience Over Against the Dictates of Prelates in the Public Forum

Religious authorities are free to press their viewpoint with their co-religionists, even threatening them with exclusion from the religious group. That is their prerogative. Such a threat could even include a demand that the individual forego the following of his conscience and comply with the dictate of the religious authority. That would be an internal matter for the religious community. But even in the Catholic community, there are good grounds for rejecting such a claim. The formed and informed individual conscience is the primary means for the believing community arriving at the truth in novel and uncertain circumstances. The committed Catholic cannot be satisfied that his conscience is properly formed and informed simply by pledging adherence to Vatican declarations. Authoritative church teaching is a privileged guide to be discounted only after mature reflection and prayerful discernment. History is replete with examples of religious authorities mistaking the moral good in times of changing uncertainty. A living tradition is the fruit of inter-generational affirmation of the primacy of conscience as the means for reaching truth, the primary end for which we strive.³⁴

Even if a religious community permitted coercion of conscience within its own religious domain, religious leaders in the democratic nation state who demand such wooden compliance in the public forum are at the least guilty of violating the community value of equal respect for the dignity of all citizens. It is not just an issue of political efficacy but also of political morality. It is wrong in the democratic nation state with a plurality of citizens constituting a multi-cultural and multi-religious *polis* to demand compliance with religious authority rather than personal conscience on matters of civil law and government policy. Insistence on the primacy of church

³³ 2006 CPD (HofR) 75; 15 February 2006

³⁴ There is a conflict in the Australian Catholic community about the primacy of conscience. It may simply be a difference of perspective, some seeing the glass half-full and warning against the limits of conscience in coming to truth, and others seeing the glass half-empty and espousing the potential of conscience in living the truth. For some years now, Archbishop George Pell has been eloquently blunt suggesting that the notion be ditched. In his 1999 Acton Lecture he said:

Catholics should stop talking about the primacy of conscience. This has never been a Catholic doctrine (although this point generally cuts little ice). Moreover, such language is not conducive to identifying what contributes to human development. It is a short cut, which often leads the uninitiated to feel even more complacent while “doing their own thing”.

Then in May 2003, Cardinal Pell took his assault on the primacy of conscience one step further when he said:³⁴

In the past I have been in trouble for stating that the so called doctrine of the primacy of conscience should be quietly dropped. I would like to reconsider my position here and now state that I believe that this misleading doctrine of the primacy of conscience should be publicly rejected. (“From Vatican II to today - Address to Catalyst for Renewal's Bishops Forum”, 30 May 2003)

The Cardinal has been rightly anxious to avoid the situation in which “conscience would become personal preference – a polite term for ‘doing it my way’, and clear thinking and past wisdom would be repudiated and ridiculed.”³⁴ (“Address to the National Press Club”, 21 September 2005)

authority in the public forum has a chilling effect on any humble and open inquiry into truth when the majority of interlocutors are not subject to that church authority.

In his recent book, *A Church that Can and Cannot Change*, Judge John T Noonan surveys the history of the changing church teaching on slavery, usury, and religious freedom through the centuries and concludes:³⁵

If the faithful do not comprehend the reason of the law and how it comports with their obligation in conscience to God, the law will lapse as it did in the case of the sixteenth century commands on usury. *Cessante ratione, cessat ipsa lex*, 'When the reason for the law ceases, the law itself ceases.' The old canonical maxim applies when consciences, bound to obey God, cannot grasp the law's rationale. Capacity to receive does not extend to receiving what is contrary to conscience.

Coercion of conscience even within the confines of the religious community is no longer defensible. Benedict XVI put the position well for Catholics when he said prior to his becoming pope: "The true law of God is not an external matter. It dwells within us. It is the inner direction of our lives, which is brought into being and established by the will of God. It speaks to us in our conscience."³⁶

Religious leaders were seriously wrong to suggest during the 2004 US election that the choice was between the politician who had committed intrinsically evil acts and the one who had not. At most, John Kerry was stating that the law is not the appropriate instrument for trying to restrain others from committing intrinsically immoral acts. George W Bush was saying that he would do what he could to appoint persons to the bench who may be able to have the matter referred back to the states where they may or may not decide that the criminal law could be used to restrain some persons from committing intrinsically immoral acts. He would have been content to see Harriet Miers appointed to discharge that commitment to the religious right. Kerry had indicated that he was not so willing to engage in war or to apply the death penalty as was Bush. In good conscience, every citizen had to choose between a rock and a hard place. They were not helped by religious leaders arguing that the choice was between a rock and a soft place. There are no soft places for religious citizens looking for selectable and electable candidates in a modern democracy.

At the most recent US Catholic bishops' conference, the retiring Cardinal McCarrick presented to the US Catholic conference of Bishops, the final and very inconclusive report of the Task Force on Catholic Bishops and Catholic Politicians:³⁷

³⁵ John T Noonan, *A Church that Can and Cannot Change*, University of Notre Dame Press, 2005, pp.203-4

³⁶ J. Ratzinger, *God is Near Us*, Ignatius Press, San Francisco, 2003, p. 105

³⁷ Cardinal Theodore McCarrick, Oral Report to the US Bishops' Conference, Task Force on Catholic Bishops and Catholic Politicians, 15 June 2006. In his parting remarks to the Conference, McCarrick said, "My concern is the fear that the intense polarization and bitter battles of partisan politics may be seeping into broader ecclesial life of our Catholic people and maybe even of our Conference. We are called to teach the truth, to correct errors and to call one another to greater faithfulness. However, there should be no place in the Body of Christ for the brutality of partisan politics, the impugning of motives, or turning differences in pastoral judgment into fundamental disagreements on principle. Civility and mutual respect which we must witness are not signs of weakness or lack of commitment, but solid virtues which reflect confidence and faith."

Every bishop has to respond to the call of his own conscience and circumstances. This is a time for respect for our common duties and different pastoral judgments as bishops, but most of all for building our unity as a body of bishops, recognizing how our individual actions affect other bishops and our entire community of faith.

Then, thank God, a week later, on the feast of St Thomas More, Archbishop Pietro Sambi, apostolic nuncio to the United States, gave communion to John Kerry at the installation mass for the new Archbishop of Washington DC who had shaken hands with Kerry and Senator Edward Kennedy as he entered the cathedral.

8. Conclusion

If we are to forestall the claims by fundamentalist Muslims to implement Sharia law in a democratic nation state where they are in the majority or at least an influential minority, we need to set right the terms on which Christians and their churches bring their religious perspective to bear on questions of law, policy and political agitation. Our contemporary need to be more attentive to the religious aspirations and thinking of Australian Muslims has provided the opportunity to reflect publicly on the place of religion in our law and politics. The enactment of broad-sweeping anti-terrorism laws likely to be targeted at those of Middle Eastern background, especially Muslims, has highlighted the continuing shortfall in Australia's checks and balances requiring popular governments to justify the infringement of civil liberties despite the popular appeal of such measures in a climate of fear.

Muslims and other members of minority faiths in Australia should have the same opportunity and be subject to the same constraints as Christians from the major denominations when contributing to public debate, occupying positions of public trust and living a communal life in accordance with their comprehensive world view. It should be no insult to Muslims to insist that they follow the same rules and enjoy the same rights as other Australians. It should be no disrespect to Muslims to insist that Australians exercise their rights including free speech without legal restraint but with due regard for the sensitivity of others.

There is a need to set right the parameters for religious participation in public life. Religious leaders who insist that conscience can err and therefore should be subject to church edict risk creating a situation in which their candidates are unelectable. John Henry Newman still needs to be able to refute Gladstone's concern that Catholics are trouble for democracy. The Vatican has expanded the scope and particularity of church teaching. The state legislates about more moral issues. They are no longer independent realms. Thus the need for a stronger insistence on the primacy of the individual conscience in the performance of civic duties. Religious authorities can assist the citizen or public official seeking to form and inform conscience. But they can provide little assistance to those wanting to know what is the most desirable law or policy, let alone how it should be administered. They cannot determine what priority should be given to the resolution of one particular moral issue over against all the other moral questions confronting the government, courts and administration of the nation state.

Religious authorities must respect the primacy of the conscience of every citizen and the primacy of their civic duty in the public forum. They may instruct their co-religionists on the content of the moral law. They not only may, but should, state

their religious ideals including those moral teachings which are normative for their religious adherents. But they may not enforce a particular means of the moral law being achieved through civil law, policy, or administration of the law which applies to all citizens regardless of their commitment to the moral law. They may not set a hierarchy within the moral law as to which matters are more or less important in the political disputes of the day (abortion v Iraq war; stem cell research v death penalty; gay marriage v equitable health and education policy). Christian leaders in the US would fulfil their tasks as religious leaders and as faithful citizens if they were to urge the election of a candidate who, unlike his opponent was of proven good character, was committed to reducing the number of abortions, was opposed to a defence policy based on pre-emptive strikes, was opposed to the creation of human embryos only for experimentation and destruction, was committed to non-discrimination against gays and lesbians while being committed to laws and policies which ensured adopted children and children created through assisted reproductive technology had access to a mother and a father, and who espoused greater equity in the provision of health and education services. The problem is that there is never such an ideal candidate nor such an intolerable opponent. Thus the need for religious leaders to avoid the endorsement or scratching of any candidate in a two horse race.

Newman was right to express the hope that “in centuries to come, there may be found some way of uniting what is free in the new structure of society with what is authoritative in the old, without any base compromise with ‘Progress’ and ‘Liberalism’.”³⁸

Preaching to the Knights of Malta a week before the 2004 US election, Archbishop John Quinn of San Francisco concluded: “The voting booth, like the confessional, admits only one person at a time. There each of us stands before our conscience. But not alone. We hope that the charioteer of the virtues, prudence, stands with us.”³⁹ Religion once again has a place at the table of public discussion on law and policy. That place is subject to constitutional constraints. Members of parliament, judges, ministers and public servants have discrete functions to perform. Each of them, like every voter, has a conscience which must be accorded primacy. As the now Pope Benedict XVI said in his 1969 commentary on the Second Vatican Council’s Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes*:⁴⁰

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

Religious citizens can still answer directly Gladstone’s concern as did Newman. Maybe Newman was too sanguine about the issues which in time could be under the purview of the State and which at the same time could be declared acceptable or not by the teaching authority of the bishops. More than ever, it is necessary that all citizens be assured that they retain their moral and mental freedom, and that they do not have to place their civil loyalty and duty at the mercy of another who is not a citizen of the State.

³⁸ Quoted in Ker, I., *John Henry Newman: A Biography*, Oxford University Press, 1988, p. 685

³⁹ Quoted in *Origins*, Vol 34, No. 21, 4 November 2004, p. 335

⁴⁰ J Ratzinger, “The Dignity of the Human Person” in *Commentary on the Documents of Vatican II*, Volume V, Burns & Oates, 1969, p. 115 at 136

You can be a religious person without renouncing your moral and mental freedom, and without having to place your civil loyalty and duty at the mercy of another. You may well be ably assisted in the discharge of your civil loyalty and duty with the wise guidance and teaching of another who happens to be a religious authority. In the public forum, all religious authorities need to acknowledge the primacy of the citizen's conscience over the teaching authority of the citizen's church when it comes to the church's and the citizen's participation in the law and policy making of the State. The wise religious authority will acknowledge that "experience, especially experience enlarged by empathy, adds to the force of a teaching."⁴¹

The citizen who is appointed to a position of public trust in the State is obligated to fulfil that trust in good conscience without renouncing his moral and mental freedom to any church authority, and without placing his civil loyalty and duty at the mercy of any church authority. In the exercise of his moral and mental freedom as a state official, he may be assisted by the teachings of his church but those teachings like all utterances would need to be scrutinised and freely adopted by the state official as being consistent with the proper discharge of his public trust.

Good law and sound public policy in a pluralist democracy must be spared much of the Christian ballast of internal Episcopal declarations so that conscientious Catholics can engage with the necessary readiness to compromise within the workings of the essentially profane State.

⁴¹ John T Noonan, *A Church that Can and Cannot Change*, University of Notre Dame Press, 2005, p.204