

THE CHRISTIAN CONSCIENCE IN SUPPORT OF THE RIGHT TO LIFE

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February 24, 2007

St. Thomas More is recognized in our time as one of the great defenders of human dignity and the rights of human conscience. We are all familiar with the famous lines from *A Man for All Seasons* regarding the role of conscience: in his refusal to sign the Oath, More says “what matters to me is not whether it’s true or not but that I *believe* it to be true, or rather, not that I believe it to be true, but that *I believe it*.”¹

St. Thomas More is also rightly regarded as the model Catholic government official when he says earlier in the play, “when statesmen forsake their own private conscience for the sake of their public duties...they lead their country by a short route to chaos.”² And how simply, yet profoundly, he set the standard for all those of the Christian faith who serve in government when he said at the end, “Tell the King, I die the King’s loyal servant, but God’s first.”

Perhaps we might do well to regard Thomas More as a sure guide for politicians, reminding them of his approach to government service. As *A Man for all Seasons* recounts More as saying of his work as Chancellor of England, “I wish no man harm, I speak no man harm, I do no man harm and if this be not good enough then....”

We might also regard St. Thomas More as a patron of husbands and fathers. We may recall the way in which More is depicted at the end of his trial in *A Man for All Seasons*. He declares to the court which has just condemned him that “It was not for the Oath but because I would not consent to the marriage....”

Everything we know about St. Thomas More tells us that he cared deeply for his family and that one of the reasons why he sought so desperately to avoid a confrontation with the King was to protect his family. Yet, finally, More was to sacrifice both his life and his family's security for a principle that gave an eternal meaning and an eternal unity to his family; that is, the sacramental nature of marriage. Unquestionably, in agreeing to the dissolution of the king's marriage there was also an implicit acceding to the possible dissolution of any marriage. This was a point that could not have been lost on the Chancellor of England and a lawyer of the brilliance of Thomas More. Thus, one of history's great statesman and men of conscience went to his death for a principled defense of the sacramental unity of marriage.

Having said this, we should remember the observation of Clarence Miller, one of several editors of the Complete Works of St. Thomas More. He enumerates what scholars give as the various "grounds for More's martyrdom: the integrity of the self as witnessed by an oath, the irreducible freedom of the individual conscience in the face of an authoritarian state, papal supremacy as a sign of the supra-national unity of Western Christendom, past and present." Then Miller writes, "All of these are true as far as they go. But in the last analysis More did not die for any principle, or idea, or tradition, or even doctrine, but for a person, for Christ. As Bolt himself make More say in the play: "Well...finally...it isn't a matter of reason; finally it's a matter of love."³

And so, I think it is entirely appropriate to remember St. Thomas More as we explore the richness of the encyclical *Evangelium Vitae* and its call to the Catholic people to build a culture of life and a civilization of love. We should begin with recognition that *Evangelium Vitae* rests, to a considerable extent, upon the foundation

provided by John Paul II's great encyclical on the "Splendor of Truth" and the moral conscience.

Veritatis Splendor takes up the question of the obligations which truth imposes on Catholics in democratic societies. It observes that the demands of universal and unchanging moral laws may seem to contradict "the uniqueness and individuality of the person" and even "represent a threat to his freedom and dignity" (no. 85). The encyclical also admits that "in a widely de-Christianized culture, the criteria employed by believers themselves in making judgments and decisions often appear extraneous or even contrary to those of the Gospel" (no. 88).

But then John Paul II writes what could have come from the thought or, perhaps more accurately, from the spirituality of Thomas More. He states, "It is urgent to rediscover and to set forth once more the authentic reality of the Christian faith, which is not simply a set of propositions to be accepted with intellectual assent. Rather, faith is a lived knowledge of Christ, a living remembrance of his commandments, and a truth to be lived out...It is an encounter, a dialogue, a communion of love and of life between the believer and Jesus Christ...(no. 88). Or as More had put it, "finally it's a matter of love."

After so many years it is perhaps too easy to view the English Catholic martyrs of the sixteenth century as having a sort of determination or even a certain eagerness for their fate. But the following passage on the subject of martyrdom written by More while he was in the Tower poignantly reveals something very different. More wrote in *De Tristitia Christi* of the martyr's encounter with Christ who says this to his follower:

You are afraid, you are sad, you are stricken with weariness and dread of the torment with which you have been cruelly threatened. Trust me. I conquered the world, and yet I suffered immeasurably more from fear. I was sadder, more afflicted with weariness, more horrified at the prospect of such cruel suffering drawing eagerly nearer and nearer. Let the brave man have his high-spirited martyrs, let him rejoice in imitating of them. But you, my timorous and feeble little sheep, be content to have me alone as your shepherd, follow my leadership; if you do not trust yourself, place your trust in me. See, I am walking ahead of you along this fearful road.⁴

Few in the Church have more poignantly depicted the call to holiness and spiritual perfection than More in this brief description of the *sequela Christi* to martyrdom. But the ultimate lesson which More gives us is that for the Catholic, government service opens a horizon to a type of personal martyrdom. Certainly, this was the case in More's life and throughout much of the 16th century. It was equally true throughout much of the 20th century. And it is also true in the beginning of the Third Millennium as we increasingly face a new culture of death. Politics which too often today has been the arena of personal self-promotion and egocentrism should be understood rather by the Catholic as a following of Christ which is open to martyrdom, if not of the bloody martyrdom suffered by More, than a martyrdom of career and reputation. To think otherwise is a disservice to the Catholic community and to be dishonest with one's self.

We might say that John Paul II has a similar vision of the Catholic's struggle in the face of an increasingly hostile culture when he wrote in *Evangelium Vitae* the following:

Faced with the countless grave threats to life present in the modern world, one could feel overwhelmed by sheer powerlessness: good can never be powerful enough to triumph over evil! At such times the People of God, and this includes every believer, is called to profess with humility and courage faith in Jesus Christ, “the Word of Life.” The *Gospel of Life* is not simply a reflection, however new and profound, on human life. Nor is it merely a commandment aimed at raising awareness and bringing about significant changes in society. Still less is it an illusory promise of a better future. The *Gospel of Life* is something concrete and personal, for it consists in the proclamation of *the very person of Jesus* (no. 29).

Thus, what Thomas More had suggested was the sure hope of those suffering for the truth of the Catholic faith, John Paul II sees as the guiding star of Catholics in the pro-life movement.

We see also in the life of Thomas More the truth recognized by the Second Vatican Council when it observed in *Gaudium et Spes* that, “In the depths of his conscience man detects a law which he does not impose on himself, but which holds him to obedience” (no. 16). In commenting on this reality of the moral life, John Paul II writes in *Veritatis Splendor* that this law “serve[s] to protect the personal dignity and inviolability of man, on whose face is reflected the splendor of God” (no. 90).

As John Paul II continues, this “splendor” of God “is confirmed in a particularly eloquent way by Christian martyrdom” (no. 90) which when “accepted as an affirmation of the inviolability of the moral order, bears splendid witness both to the holiness of

God's law and to the inviolability of the personal dignity of man, created in God's image and likeness" (no. 92).

Thus, the martyr provides an invaluable and, one might even say, irreplaceable contribution to the good of society "by reawakening its moral sense" (no. 93). The moral sense to which the martyrdom of Thomas More pointed is stated precisely in *Veritatis Splendor*: "Only by obedience to universal moral norms does man find full confirmation of his personal uniqueness and the possibility of authentic moral growth" (no. 96). The seeming contradiction between individual freedom and the moral law is reconciled by the martyr with a beautiful transparency which reveals the integrity of the human conscience to society.

Evangelium Vitae suggests that the encounter between the Christian and society centers around several key "concepts" which go to the heart of the Catholic citizen's life in a pluralistic, democratic society. The Holy Father makes clear that what is at stake in the public debate regarding abortion and euthanasia, for example, is not simply a disagreement over "choices" within a pluralistic society, but is instead a grave threat to the very survival of democracy (nos. 18-20).

It has become a tenet of popular culture that the Western liberal democratic ideal has now emerged triumphant in its great struggle with totalitarian ideologies.⁵ In his address to the United Nations, John Paul II stated, "we are witnessing an extraordinary global acceleration of that quest for freedom which is one of the great dynamics of human history."⁶

However, for this pope, history does not represent some inevitable evolutionary process toward the realization of democracy. Instead, the present moment is "a turning-

point” which presents not only an opportunity to realize the “universal longing for freedom” but also an enormous threat to freedom. *Evangelium Vitae* (no. 18) points out that this threat to freedom consists in a great contradiction lurking at the center of democracy: abortion.

John Paul II begins his analysis of what he terms this “surprising contradiction” with a deeply pastoral appreciation of the “tragic situations of profound suffering” which can give rise to “decisions that go against life” (no. 18). The Pope takes note of the “suffering, loneliness, [and] total lack of economic prospects, depression and anxiety about the future” which can influence decisions regarding abortion, euthanasia and suicide. He emphasizes that such circumstances can mitigate even to a notable degree subjective responsibility and the consequent culpability of those who make these choices which in themselves are evil.”⁷

The personal tragedies which lead to decisions concerning abortion, for example, do not represent the most profound threat to democracy, however. Such acts are called “tragic” precisely because we recognize them to be *wrongful* and we know that the actor has submitted in desperation to circumstances which he or she felt unable to overcome. These tragedies, in themselves, do not constitute a threat to the foundation of democratic society because their “tragic” character testifies to the objective evil of what is done.

Instead, John Paul II observes democratic society is imperiled by the insistence that such objectively disordered acts, however subjectively mitigated, must be transformed from crimes to “legitimate expressions of individual freedom...and protected as actual rights (no. 18). It is this inversion of “wrong” actions into “right”

actions that John Paul II insists constitutes “a direct threat to the entire culture of human rights” (no. 18). This inversion is a direct threat to the future of democracy because it establishes “a perverse idea of freedom” at the very heart of democracy.

John Paul II describes this disordered freedom as one which “carries the concept of subjectivity to an extreme” (no. 19). It is a concept of freedom which “exalts the isolated individual in an absolute way, and gives no place to solidarity, to openness to others and service of them” (no. 19). In short, this concept of freedom ultimately makes democratic communities impossible and destroys the foundation of democratic structures because it erodes public consensus regarding the common good.

Evangelium Vitae thus moves the engagement between the Catholic and contemporary society on questions of abortion and euthanasia to a more dramatic and profound level. Rights advocates often claim that a true regard for pluralism and democracy requires acceptance of abortion and euthanasia. They argue that the social divisiveness surrounding these issues can only be appropriately resolved by their “privatization” or “deregulation”.

In response, John Paul II maintains that the concept of freedom implicit in abortion and euthanasia “rights” makes true respect for pluralism and enduring democratic structures impossible. He observes in *Evangelium Vitae* that such an accommodation is in reality an invitation for whole communities or classes of people to be “rejected, marginalized, uprooted and oppressed” (no. 18). Thus, the abortion freedom, which presents itself as essential to the realization of human freedom, instead becomes the vehicle by which the rights of many are denied.

John Paul II traces the cause of this contradiction to the negation of authentic freedom—when a concept of freedom is proposed which “no longer recognizes and respects its essential line with the truth” (no. 19). This separation of truth from freedom creates a culture in which “any reference to common values and to a truth absolutely binding on everyone is lost” (no. 20).

The inevitable consequence of this separation of freedom from truth is to institutionalize a destabilizing form of conflict in communities. As John Paul II writes, “If the promotion of the self is understood in terms of absolute autonomy, people inevitably reach the point of rejecting one another [and] society becomes a mass of individuals placed side by side, but without any mutual bonds” (no. 20). The impossibility of moral consensus within community ultimately makes impossible the common life of communities and the realization of the common good.

The separation of freedom from truth also has implications for the role of reason in public discourse. The greatest of these implications is the marginalization of reason as the foundation of society. Thus, *Evangelium Vitae* observes, the community is increasingly unable to maintain itself “as a community in which the ‘reasons of force’ are replaced by the ‘force of reason’” (no. 19). The result is that society is increasingly unable to achieve consensus on important moral questions.

Too often this cultural transformation is hidden when the abortion/euthanasia debate is seen as simply a contest between the freedom of the individual and the imposition of morality by the State. *Evangelium Vitae* re-focuses this discourse by opening up a more fundamental issue. The encyclical views the abortion debate as not

primarily an argument over morality or even over the question of when human life begins or ends.

Instead, the most basic issue is a fundamental conflict over the nature and the dignity of the human person. In reformulating the discussion in this way, *Evangelium Vitae* underscores the fact that contemporary man, for the first time, finds his freedom unhinged not only from the truth of an objective, external moral order, but also from the moral truth of his own nature and dignity. This distortion at the center of the human person has diminished the possibility of authentic human communion and community. It has left the human person increasingly defenseless to accelerating threats from the anti-life culture of nihilism and death.⁸

This anti-life culture threatens not only the life of the human person; it threatens the life of the human conscience. Indeed, this anti-life society, in the name of freedom of choice, threatens human life precisely because it distorts and diminishes the human conscience. Thus, the encounter between the culture of life and the culture of death takes place primarily within the human conscience.

The culture of death has made Thomas More not just “a man for all seasons”, but a “man for all Catholics.” The culture of death challenges all of us to bear witness to the splendor of the Catholic conscience.

We should not be surprised that *Evangelium Vitae* calls for “a general mobilization of consciences and a united ethical effort to activate a great campaign in support of life” (no. 95). This mobilization of consciences in defense of life by “the people of life and the people for life” (no. 6) is at the center of the encyclical’s vision of evangelization. It is also the foundation of John Paul II’s approach to social justice and

the law. In this way, *Evangelium Vitae* provides an extraordinary response to the “demoralization” of conscience brought about by the widespread practice of abortion and euthanasia.

However, *Evangelium Vitae* was not the first time the Holy Father proposed such a role for conscience in the transformation of society. In reviewing the reasons for the collapse of Marxism throughout Eastern Europe, John Paul II wrote in *Centesimus Annus* that “the fundamental error of socialism is anthropological in nature,” since socialism rejected “the concept of the person as the autonomous subject of moral decision” (no. 13). *Centesimus Annus* makes clear the confrontation between the Church and any political order which systematically denies human rights must be focused within the conscience of each person. Like *Evangelium Vitae*, this earlier encyclical asserts that the mission of the Church in confronting such a culture is “to increase the sensitivity of consciences” (no. 52).

Centesimus Annus observed that the collapse of communism behind the Iron Curtain occurred because “the consciences of workers have re-emerged in a demand for justice” (no. 26). For example, in Poland in 1980, Fr. Jozef Tischner defined the Solidarity movement as inherently linked to a “human dignity that is based on the conscience of human beings.” In a series of sermons given in Krakow to the leaders of Solidarity, Fr. Tischner explained that “the deepest solidarity is the solidarity of consciences.”⁹

The “solidarity of consciences.” which *Centesimus Annus* understood was capable of bringing down the anti-life culture of Marxist totalitarianism, is now proposed in *Evangelium Vitae* as capable of bringing down the culture of death.

If, as it has been said, truth is the first victim of violence, then the culture of death is also, and inescapably, a culture at war with the truth. In fact, the culture of death can only continue in existence by hiding the truth regarding the nature and dignity of the human person. One of the most obvious falsehoods undergirding the culture of death is its refusal to recognize the humanity of the child before birth.

Supreme Court Justice Harry Blackmun gave legal standing to this masking of the truth when he wrote in *Roe v. Wade*—the case which legalized abortion throughout pregnancy—that:

We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy and theology are unable to arrive at any consensus...¹⁰

When the culture of death is expressed in a legal system in this way it surrounds the citizen and his conscience with a social environment which separates him from the truth about who he is as a person. Thus, the legal acceptance of abortion destroys not only the child but, in some sense, every person.

Writing in 1978, Vaclav Havel provided a deep insight into this phenomena. In *The Power of the Powerless* Havel wrote, “The profound crisis of human identity brought on by living within a lie, a crisis which in turn makes such a life possible, certainly possesses a moral dimension as well; it appears, among other things, as a deep moral crisis in society. A person who has been seduced by the consumer value system, whose identity is dissolved in an amalgam of the accoutrements of mass civilization, and who has no roots in the order of being, no sense of responsibility for anything higher than his or her own personal survival, is a demoralized person. The

system depends on this demoralization, deepens it, is in fact a projection of it into society.”¹¹

The person described by Havel as one “seduced by the consumer value system: and one whose personality is “dissolved” into mass civilization does not exist only in Marxist societies. A similar process of “demoralizing” the human person is underway in the new culture of death within Western democracies.

Havel’s response is worthy of deep reflection precisely because it was a response which sought to return to the politics of his native Czechoslovakia a sense of morality in order that people might once again “be able to live within the truth.”¹² The rehabilitation of the “demoralized” man requires precisely the rehabilitation of his conscience through the restoration of the relationship between freedom and truth.

Writing during the Second World War, Jacques Maritain explored the Christian foundations of democratic political structures. He found that in the Western democracies Christianity had not been able to supplant the secular conscience but that, instead, Christianity had been able to achieve what he termed the “evangelical inspiration” of the secular conscience.¹³

In *Christianity and Democracy*, Maritain concluded that “what has been gained for the secular conscience, if it does not veer to barbarism, is faith in the brotherhood of man, a sense of the social duty of compassion for mankind in the person of the weak and the suffering, the conviction that the political work *par excellence* is that of rendering common life better and more brotherly and of working so as to make of the structure of laws, institutions and customs of this life a house for brothers to live in.”¹⁴

In short, Maritain proposed that there was an “evangelical inspiration” of democratic principles which has made democracy possible. Reduced to its essential character, this Christian “inspiration” of democracy achieved a political consensus that “Machiavellianism and the politics of domination” were to be rejected. In their place was established the idea that “politics depends upon morality because its aim is the human good of the community.”¹⁵

Thus, Maritain saw a vital and irreplaceable role for the Christian to engage democratic society at all levels of the political process. But an “evangelically inspired” secular conscience is not the same as a Catholic conscience or even a Christian conscience. The difficulty all too often today is that the Catholic politician possesses not a Catholic conscience, but a secular conscience with little or no evidence of any evangelical inspiration. How often do we hear a Catholic politician stating a political philosophy or guiding principles that reflect or move beyond those values Maritain concluded had been accomplished by the “evangelical inspiration” of the secular conscience? We must expect more from a Catholic politician than a secular conscience.

Yet, this obligation brings with it a dilemma. Joseph Cardinal Ratzinger described it when he asked, how is it possible “to allow faith to become effective as a political force without transforming it into yet another element of power?”¹⁶ Cardinal Ratzinger also put the question in a slightly different way when he asked, “How can Christianity become a positive force for the political world without being turned into a political instrument and without on the other hand grabbing the political world for itself?”¹⁷

To choose the wrong answer, of course, opens up the prospect of what Jacques Maritain so aptly described as “the pharisaically Christian state”—the state which manipulates both faith and political power in order to preserve existing power structures.

Evangelium Vitae's answer goes in an entirely different direction. It is a response which seeks to defend both the Christian and secular conscience. In doing so, it responds within the context articulated by the Second Vatican Council: “the civil authority must see to it that the equality of the citizens before the law, which is itself an element of the common good society, is never violated either openly or covertly for religious reasons and that there is no discrimination among citizens.”¹⁸

Evangelium Vitae embraced the democratic ideal and seeks to evangelize it through a community of believers transformed into a new “people of life and people for life.” Thus, the encyclical attempts to rehabilitate the secular conscience in regard to the true principles of the democratic ideal.

What *Evangelium Vitae* brings to this discourse (nos. 18-24) is a new awakening of moral sensitivity, the rehabilitation of the concept of freedom, and the presentation of the role and dignity of conscience. This threefold approach offers the **only** enduring opportunity for avoiding an unprecedented abuse of human rights of the weak, handicapped and defenseless now being fore-shadowed by the culture of death.

This “inspiration” of the secular conscience is possible because, as John Paul II has observed, “there is a moral logic which is built into human life and which makes possible dialogue between individuals.... The universal moral law written on the human heart is precisely that kind of ‘grammar’.”¹⁹

But we must ask ourselves what is the language which speaks this “grammar”?

It has been argued that the abortion “freedom means that women must be free to choose self or to choose selfishly.... There is no easy way to deny the powerful argument that a woman’s equality in society must give her some irreducible rights unique to her biology, including the right to take the life within her life.”²⁰ What is surprising here is not so much the ideological basis of the rhetoric of the abortion “freedom” but its explicit identification with the culture of death.

But this is not all. If the “right” to abortion may not be limited by the combined weight of an innocent human being’s “right” to life and the state’s interest in the protection of human life, how is it to be supposed that the “right” to abortion may be limited by a “right” of conscience?

In contrast to this view of freedom, *Evangelium Vitae* rejects any “notion of freedom which exalts the isolated individual in an absolute way” (no. 19). John Paul II’s insistence that freedom must have an “essential link with the truth” is a claim that truth is linked first and foremost not with some external moral code, but with the true identity and the true dignity of the human person—and this must include a recognition of the inviolability of conscience.

As John Paul II reminded us at the United Nations, “Reference to the truth about the human person is, in fact, the guarantor of freedom’s future.”²¹ It is only when the dignity of the human person is recognized and respected in the public order that it is possible for men and women to live not only in freedom but in truth.

Common law today is the basis for the legal systems of England and many other countries formerly under British rule including the United States, Canada and Australia,

among others. England, the land of St. Thomas More, is also the birthplace of common law. Common law was originally derived from Natural Law and was seen as above and independent of the state.²² Many civil rights – even those found in the U.S. Constitution – are attributed at least in part to the common law system. “Common law emphasizes assent rather than domination, the community rather than the state, moral authority rather than physical power.”²³ The system also recognized the value of precedent. However, as St. Thomas More discovered, even English common law – the independent tradition of right and wrong within a community – was unable to grant him an exclusion from taking the Oath of Supremacy based on conscience, nor did it save him from the block.

However, Thomas More held true to his beliefs – and interestingly – to common law as well. In his discourse on common law, William Blackstone, one of its most famous commentators and a man to whom the foundational documents of the United States owe a great debt²⁴ wrote: “Nay, if any human law should allow or injoin us to commit it [an act contrary to divine or natural law], we are bound to transgress that human law, or else we must offend both the natural and the divine.”²⁵ Thomas More certainly held fast to this principle, as “the King’s good servant, but God’s first,” however, King Henry made no allowance for a man’s conscience.

Thankfully, England and other common law countries grew more tolerant of conscience in the years that followed, but to this day there is no *absolute standard* in common law countries with reference to exemptions on behalf of conscience for medical or pharmacy personnel confronted with issues of conscience, and common law countries struggle to balance the rights of conscience with perceived “rights” to various

medical procedures. However common law countries generally seem to be moving in the direction of accepting at least some conscience claims, though there are troubling exceptions. To follow their conscience, providers of health services have sometimes had to pursue legal action, however, in many cases the right to conscience seems to have prevailed in common law countries and thus, in many instances, doctors, other medical staff and pharmacists such countries can make successful moral objections to performing certain procedures such as abortions - or dispensing certain drugs, such as so-called "emergency contraception." [I have limited this commentary to abortion and the dispensing of abortifacients since they are the most likely to cause grave moral concern among health care providers. Moreover, the apparent trend toward allowing conscience exceptions for health care providers in this area may well set a precedent in other (newer) areas of medicine fraught with ethical dilemmas].

The trend toward freedom of religion and conscience has been building over the past centuries. Certainly, the last hundred years have brought a greater tolerance of religious ideas in England, with restrictions on Catholic finally lifted in the early 19th century, and the United States has, since the late 18th century enshrined religious freedom as a preeminent right. There is thus reason to hope that we may be moving toward a situation in which the precedent will be established that provides a greater understanding and accommodation of the conscience of the individual healthcare provider. However, there is not unanimity of opinion and contradictory decisions about the freedom of conscience in this area continue. "This issue is the San Andreas Fault of our culture,' said Gene Rudd of the Christian Medical & Dental Associations. 'How we decide this is going to have a long-lasting impact on our society.'"²⁶

While many jurisdictions have moved to incorporate some element of a conscience exemption into the law, especially in the areas of abortion and contraception, the absolute right to such an exemption is not yet universally accepted – and is the subject of widespread debate and lobbying by abortion advocates, who often seek to force those in the medical profession to perform immoral procedures.²⁷ Too common are opinions like that of philosophy professor Ken Kipnis: “If your religious orientation is such that you can't discharge your professional responsibilities, then you shouldn't take on those responsibilities in the first place [...] You should find other work.”²⁸

Fortunately the law has often been more generous to healthcare professionals. With respect to abortion, an early example of a conscience clause occurs in England. Section 4(1) of the Abortion Act of 1967, which states:

No person shall be under any duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised (sic) by this Act to which he has conscientious objection [...]²⁹

While the burden of proof of the conscientious objection rests with the person making the claim, a statement under oath that the person indeed has such an objection “shall be sufficient evidence for the purpose of discharging the burden of proof.”³⁰

Section 4(1) of the 1967 Act... was not in the original bill, but was introduced in response to concerns that doctors would be under pressure to perform terminations against their beliefs. Interestingly, one amendment that didn't make the final Act proposed that, ‘no person [shall be]...deprived of, or be disqualified

from, any promotion or other advantages by reason of the fact that he has such conscientious objection.³¹

So it would seem, the protection, while better than nothing, is limited.

Pharmacists in England also appear to enjoy the benefit of certain conscience exemptions. The Royal Pharmaceutical Society allows some freedom of conscience for pharmacists: “The Code of Ethics, Part 2A1(k) states “*that before accepting employment pharmacists must disclose any factors which may affect their ability to provide services. Where pharmacists’ religious beliefs or personal convictions prevent them from providing a service they must not condemn or criticise (sic) the patient and they or a member of staff must advise the patient of alternative sources for the service requested.*”³²

However, because the guidelines do stipulate that a pharmacist must “advise the patient of alternative sources for the service requested,” pharmacists objecting to providing a particular prescription may find themselves in the awkward position of having to be if not actors, at least accomplices. Some have evidently refused to refer their patients, and the legal consequences of such actions are, as of now, unclear.³³ In fact, the issue of referral has become a sticking point in many common law countries as health care professionals refuse to be involved in immoral treatment in any way.

It seems that many common law countries have followed England in allowing physicians and pharmacists to decline to dispense medical services that they find morally unacceptable – at least under certain conditions.

In Canada, a 2002 article in the *BC Catholic* noted:

They remain anxious, but Canadian nurses seem to have their right to conscientious objection worked out, for the most part. The nurses' code of ethics and their collective agreements recognize their right to withdraw from giving care that offends their morality *as long the patients they tend are placed in others' care...* However, a recent contract cancellation at B.C. Women's Hospital, as well as developments in other provinces, raises doubt as to whether nurses do in fact enjoy unfettered freedoms of conscience and religion.³⁴

The article cites several examples of nurses whose hospitals were forced to participate in abortions, though, in most of the cases, the results – sometimes after years of struggle – favored those who held to their conscientious objection.

The Canadian Medical Association discourages any discrimination stating: “No discrimination should be directed against doctors who do not perform or assist at induced abortions. Respect for the right of personal decision in this area must be stressed, particularly for doctors training in obstetrics and gynecology, and anesthesia.”³⁵

“Pharmacists across Canada have the right to refuse to sell the contraceptive as a ‘matter of conscience’ as long as they refer customers to someone who will,” the Daily Herald Tribune in Grande Prairie, Alberta, reported earlier this year.³⁶

Both in Canada and in Australia, things seem to be improving for conscientious objectors. Many legal battles and debates over conscience were seen over the past twenty to thirty years, with a shift in favor of conscience as the norm.

Australia generally allows for conscience exclusions for doctors and pharmacies. For example, in 2002, along with passage of a liberal abortion law in Canberra, a

conscientious objection amendment allowed doctors to opt out of the procedure.³⁷ In many areas of the country including the Australian Capital Territory, South Australia, Tasmania and Victoria the law allows medical personnel to opt out of performing abortions.³⁸

The Age in Australia reported in 2003 that “[p]harmacists who are morally opposed to selling emergency contraception can refuse to dispense the drug but may leave themselves open to legal action.”³⁹ In 2004 *CNS News* reported that a pharmacist “who has moral objections is not obliged to supply a product, but is expected to refer the customer to an alternative source.” The story went on to report that some pharmacists are refusing “to refer customers to other suppliers.”⁴⁰

As recently as last year the debate continued in Australia: “Health Minister Tony Abbott believed individual pharmacists had the right to choose whether they supplied the morning-after pill. But the Federal Opposition maintained pharmacists were obliged to offer a full range of products, particularly in one-chemist towns.”⁴¹ There is some gray area, to be sure, but overall, the idea of a conscience-exemption for those morally opposed to procedures such as abortion seems to be making headway in Australia.

In the United States, both the Federal Government and many states have provided some conscience exemptions for doctors who are morally opposed to abortion:

The dispute over abortion access began almost as soon as the U.S. Supreme Court legalized the procedure in 1973. Six months later, Congress carved out exceptions for doctors and hospitals with moral objections to abortion. Forty-seven states passed similar laws. Louisiana’s, one of the most restrictive in the

nation, says no one should be forced to 'recommend or counsel' an abortion, either.⁴²

More recently, Congress took steps to protect health care workers whose consciences prevent them from performing abortions. The Weldon Amendment became Federal Law in 2004 and gave "federal protection for health care providers, including hospitals and insurers, who choose not to participate in abortion."⁴³ The Amendment stated:

(1) None of the funds made available in this Act [the federal Health and Human Services appropriations bill for Fiscal Year 2005] may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions. (2) In this subsection, the term "health care entity" includes an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan.⁴⁴

The amendment was not universally accepted. California' Attorney General Bill Lockyer quickly filed suit to block the Amendment from taking effect. [The case is still pending].

For pharmacists in the United States, the laws vary according to state. As of Aug. 1 of this year:

Four states – Arkansas, Georgia, Mississippi, and South Dakota – have passed laws allowing a pharmacist to refuse to dispense "emergency contraception" drugs. Illinois passed an emergency rule that requires a pharmacist to dispense

FDA-approved contraception. Colorado, Florida, Maine, and Tennessee have broad refusal clauses that don't specifically reference pharmacists, while California pharmacists have a duty to dispense prescriptions and only can refuse when their employer approves the refusal and the patient can still access the prescription in a timely manner.⁴⁵

Unresolved and troublesome issues remain, however. While pharmacists and medical personnel can often have recourse to a conscience exclusion, hospitals – including Catholic hospitals – are increasingly under attack by laws requiring them to provide so called “emergency contraception” to rape victims.

Connecticut is part of a growing number of states that are considering or have passed legislation requiring hospitals to dispense Plan B or at least provide information about the emergency contraception to rape victims.

According to advocacy groups, Massachusetts, California, New Jersey, New Mexico, New York, South Carolina and Washington require hospitals to dispense the drug. Catholic hospitals are not exempted from those laws, yet the laws in New Jersey and New York include provisions to appease the church that prevent the pill from being given if a woman is already pregnant.

Similar bills are pending this session in 12 states, including Connecticut.⁴⁶

The Connecticut bill was defeated, but the trend toward forcing hospitals to provide unethical treatment is troubling. Also troubling is the fact that abortion can be made nearly mandatory for physicians in training, with career consequences if they opt out. Such is already the case in New York City:

In July 2002 the 11 public hospitals in New York City imposed mandatory abortion training for all medical residents. Amid the bad news, an encouraging sign has been reported. Some 25 percent (or 38 of the approximately 150 doctors in residency training) have opted out of the abortion program, though doing so could compromise their medical careers.⁴⁷

Challenges to the conscience of a health care professional certainly continue in common law countries, and the current system of dealing with such issues in these countries is far from adequate, or uniform. The problems will only grow as new unethical procedures become seen as “the norm” by some and as a “right” by others. A good overview of the situation in the United States, at least occurred in 2002 when the United States Conference of Catholic Bishops submitted a statement to Congress, which included the following:

While the principle of protection for conscience rights is widely acknowledged, its implementation has been far from perfect, creating a need for more comprehensive and forward-looking legislation.

Most federal conscience protections apply only to specific federal programs or are tied to the receipt of federal funds.⁽⁵⁾ Their scope is limited by this fact, and by the narrow range of procedures covered.

Though the majority of states acknowledge and protect rights of conscience, their laws suffer from similar inadequacies. Most of these laws are limited to abortion.

Only a few states protect health care providers from being forced to perform sterilizations. Few existing laws protect the full range of individuals and institutions that may be involved in providing health care in our increasingly

complex health care system. Many states do not protect the rights of conscience with respect to newly created technologies such as cloning or embryonic research, or even current misuses of older technology such as 'surrogate' motherhood. States have also not addressed the need to protect providers with respect to new threats to human life at the end of life, such as physician-assisted suicide and euthanasia. As noted by one commentator: 'As the range of medical technologies continues to expand..., the number of medical services involving potentially serious conflicts of conscience is certain to increase.'⁽⁶⁾

Finally, with new organized threats to conscience on the horizon, it is especially important for states to expand and strengthen their existing protections now.

These threats have become especially apparent in recent years in the fields of abortion and contraception, as reviewed below.⁴⁸

Common law countries certainly have much to do to develop more fully the ideal of a *conscience clause* for those in the medical field. However, the fact that in most common law countries some accommodation at least seems to be made for the conscience of those in the health care field provides hope. It may also provide a precedent upon which we can work to build a society that does not require any protector of life with moral objections to unethical medical procedures to actively participate in a culture of death.

It may seem that the discussion of the role of conscience of a Catholic politician and of a Catholic health care provider are two distinct, unrelated issues. However, if it is true that much of the difficulty for Catholic politicians concerns the failure to adequately form a Catholic conscience or to properly understand the implications of the

demands of conscience on one's public responsibilities, then it is difficult to see how it will be possible in the future to fashion laws—either by legislative or judicial action—that respect the rights of a properly formed conscience. Once again we are reminded of a scene from *A Man for All Seasons*, this time of the conversation between More and his friend, the Duke of Norfolk. It is clear that More's stand on conscience is really incomprehensible to the duke since he asks More to join the other members of the nobility in agreeing to the demands of the king for the sake of friendship. When More asks the duke whether after he has done what has been asked whether the duke will then follow More into hell for violating his conscience for friendship's sake, the duke complains of More's obstinacy. In short, how can we expect those who have failed to take due care of their own conscience to properly care for the consciences of others?

While we have focused most on the consciences of politicians and health care providers, the consciences of our bishops and priests, and indeed of all Catholics, are in danger from the lack of a coherent standard in allowing conscientious objection for certain medical procedures and other ethical issues. As a result of this ambiguity, any piecemeal gains made in the area of conscientious objection must be seen as tenuous. Better than nothing, they are a far cry from a societal acceptance of a right to conscience. At any time, restrictions on the freedom of conscience may arise, and although those who object to immoral laws may face penalties less severe than the death faced by Thomas More, there could easily be real consequences for those who refuse to ignore the principles of their conscience. Thus there is a real need for a codified, universal right to conscience.

Since this paper was submitted, two situations have arisen – within the past several days – that underscore the need for wide-ranging conscience clause language to be adopted by governments worldwide. The first assault on conscience that has made recent headlines is unfolding as we speak in England. There, the attempt by the British Government to codify, without exception, certain rules concerning adoption by homosexuals will likely amount to the attempted coercion of Catholic adoption agencies.

The second issue that has arisen comes from the United States, where, this month, one of the nation's most prestigious medical journals explored via a survey the beliefs among doctors of their rights not to recommend or discuss all available medical procedures with a patient if the doctor's conscience found certain options objectionable. A survey and discussion of the *ethical debate* over the use of conscience by medical professionals was the topic of this article in the February 8 issue of the *New England Journal of Medicine*.

First let us discuss the situation in England, the land of Thomas More. This situation literally challenges the Church and all Catholic citizens of that country.

According to one news report:

Catholic adoption agencies in Britain run the risk of being forced out of business since on Jan. 29 Prime Minister Tony Blair announced that there will be no exemption from anti-discrimination laws for the Catholic agencies.

The new regulations will be voted on in Parliament this month and come into force April 6, according to a BBC report Jan. 29. The Equality Act, valid for England, Wales and Scotland, prohibits discrimination in the provision of goods, facilities and services on the basis of sexual orientation.⁴⁹

Following the example of Sts. Thomas More and Bishop John Fisher, who took principled stands against Henry VIII as their consciences dictated, Cardinal Cormac Murphy O'Connor cited the primacy of conscience as the reason that government should not force the workers at Catholic adoption agencies to violate their principles. He stated in an open letter to British Prime Minister Tony Blair:

We believe it would be unreasonable, unnecessary and unjust discrimination against Catholics for the government to insist that if they wish to continue to work with local authorities, Catholic adoption agencies must act against the teaching of the Church and their own consciences by being obliged in law to provide such a service.⁵⁰

While the government seems likely to impose these restrictions on adoption services, all but precluding Catholics from participating in good conscience, and while the cardinal has threatened to close Catholic adoption agencies as a result, there does seem to be at least a glimmer of light.

This issue has proven of interest to members of other denominations as well as to Catholics, and several religious leaders of other denominations have taken a position in favor of the rights of conscience in support of the Catholic Church: "Anglican archbishops Rowan Williams of Canterbury and John Sentamu of York sent a letter Jan. 23 to the prime minister in which they said: 'The rights of conscience cannot be made subject to legislation, however well meaning.'"⁵¹

While it is hopeful – and a great step forward – that important figures from other faiths have stepped up to defend the Catholic's right to his or her conscience, it is deeply disturbing that a government would attempt to coerce – or drive out of business

– Catholic adoption agencies in the name of “tolerance” with a law ironically called the “Equality Act.” Though not a situation of medical ethics, the events of recent days in England underscore the real need for the standardizing of rights of conscience.

In confronting the issue of homosexual adoption laws in England, it will not only be the British clergy and politicians who could suffer the consequences of following their own conscience. Though Catholic adoption agencies are major players in the British adoption scene, without a conscience exception, those who object to new law on moral grounds, and currently work for adoption agencies run the risk of losing their jobs or having to find another line of work. Such employees, should they remain true to their consciences, run the real risk of economic martyrdom.

The spread of attacks on conscience should give us all cause for grave concern. The conscience, which is such an integral part of the human person, runs the risk of being marginalized in an ever increasing circle of societal activities.

The disheartening news from England was compounded by news of conflict over the rights of American doctors to allow their consciences to guide them in recommending treatment. It is encouraging that the results of a recent survey published in the *New England Journal of Medicine* show that a significant number of doctors believe they do not have an obligation to mention or recommend unethical medical treatments, and that a majority believe that doctors should be able explain their own ethical reservations to the patient. Of the doctors surveyed: “[eight] percent said they had no obligation to present all possible options to patients, and 18 percent said they did not have to tell patients about other doctors who provide care they found objectionable.”⁵²

However, the positive statistics are limited by the negative reaction held by many in today's society. According to the medical journal article, the study was motivated by the controversy over rights of conscience among healthcare workers:

Recent controversies regarding physicians and pharmacists who refuse to prescribe or dispense emergency and other contraceptives have sparked a debate about conscientious objection in health care. On the one hand, most people believe that health professionals should not have to engage in medical practices about which they have moral qualms. On the other hand, most people also believe that patients should have access to legal treatments, even in situations in which their physicians are troubled about the moral implications of those treatments.⁵³

In reporting on the medical journal article, *The Washington Post* noted that: "Some pharmacists, for example, refuse to fill prescriptions for birth control and emergency contraceptive "morning-after" pills. Some doctors and nurses refuse to participate in abortions, prescribe birth control pills or withdraw or withhold care from dying patients." The result of such conscientious objections, according to the *Post* is that:

The refusals have led to bitter clashes between medical workers and patients around the country. Dozens of states have considered legislation that would either require medical workers to deliver all legal forms of care or protect those who refuse. The issue is expected to intensify as medicine continues to move into controversial areas, such as therapies based on embryonic stem cells.⁵⁴

It is the lack of clarity on issues of conscience, and especially the last statement

– indicating that the issue is expected to intensify as controversial medical procedures increase – that should be the wake up call for Catholic politicians, citizens, and clergy. We must work together to build a consensus that legally recognizes conscience as a fundamental right wherever it is that we may live or work.

Models of this sort exist in Article 18 of the Universal Declaration of Human Rights, which provides a good start, as to a lesser extent does Article 18 of the International Covenant on Civil and Political Rights, [though the latter allows for exceptions to the primacy of conscience when it states in section 3 of Article 18 that: “Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” Such language renders freedom of conscience and religion handicapped, and could easily be used to justify both the lack of exceptions for Catholic adoption agencies, and the denial of conscience rights to those doctors who elect to allow their beliefs to dictate their medical practice. It further underscores the need for unambiguous language in favor of conscience]

Because individuals and institutions are confronted with a variety of circumstances in terms of which rights of conscience are restricted or violated by the action of various governmental regulation or mandates, a model “Health Care Rights of Conscience Act” has been proposed by the Chicago-based organization, Americans United for Life in an attempt to protect the fundamental right of conscience.

While written within the context of American law, the Act would implement the principles embodied in Article 18 of the Universal Declaration of Human Rights. That Article states: “Everyone has the right to freedom of thought, conscience and religion;

this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public and private, to manifest his religion or belief in teaching, practice, worship and observance.”

Excerpts of the “Health Care Rights of Conscience Act” follow:

Section 2. Legislative Findings and Purposes

- (a) It is the public policy of [*insert State*] to respect and protect the fundamental right of conscience of all individuals who provide health care services.
- (b) Without comprehensive protection, health care rights of conscience may be violated in various ways, such as harassment, demotion, salary reduction, transfer, termination, loss of staffing privileges, denial of aid or benefits, and refusal to license, or refusal to certify.
- (c) It is the purpose of this Act to protect as a basic civil right the right of all health care providers, institutions and payers to decline to counsel, advise, pay for, provide, perform, assist, or participate in providing or performing health care services that violate their consciences. Such health care services may include, but are not limited to, abortion, artificial birth control, artificial insemination, assisted reproduction, human cloning, euthanasia, human embryonic stem cell research, fetal experimentation, physician-assisted suicide, and sterilization.
- (d) Accordingly, it is the purpose of this Act to prohibit all forms of discrimination, disqualification, coercion, disability, or liability upon such health care providers, institutions and payers that decline to perform any health care service that violates their conscience.

Section 4. Rights of Conscience of Health Care Providers

- (a) Rights of Conscience. A health care provider has the right not to participate, and no health care provider shall be required to participate, in a health care service that violates his or her conscience.
- (b) Immunity from Liability. No health care provider shall be civilly, criminally, or administratively liable for declining to participate in a health care service that violates his or her conscience.
- (c) Discrimination. It shall be unlawful for any person, health care provider, health care institution, public or private institution, public official, or any board which certifies competency in medical specialties to discriminate against any health care provider in any manner based on his or her declining to participate in a health care service that violates his or her conscience. For purposes of this Act, discrimination includes, but is not limited to: termination, transfer, refusal of staff privileges, refusal of board certification, adverse administrative action, demotion, loss of career specialty, reassignment to a different shift, reduction of wages or benefits, refusal to award any grant, contract, or other program, refusal to provide residency training opportunities, or any other penalty, disciplinary or retaliatory action.

Section 5. Rights of Conscience of Health Care Institutions

- (a) Rights of Conscience. A health care institution has the right not to participate, and no health care institution shall be required to participate, in a health care service that violates its conscience.
- (b) Immunity from Liability. A health care institution that declines to provide or participate in a health care service that violates its conscience shall not be civilly, criminally, or administratively liable if the institution provides a consent form to be

signed by a patient before admission to the institution stating that it reserves the right to decline to provide or participate in health care services that violate its conscience.

(c) Discrimination. It shall be unlawful for any person, public or private institution, or public official to discriminate against any health care institution, or any person, association, corporation, or other entity attempting to establish a new health care institution or operating an existing health care institution, in any manner, including but not limited to, any denial, deprivation or disqualification with respect to licensure; any aid assistance, benefit or privilege, including staff privileges; or any authorization, including authorization to create, expand, improve, acquire, or affiliate or merge with any health care institution, because such health care institution, or person, association, or corporation planning, proposing, or operating a health care institution, declines to participate in a health care service which violates the health care institution's conscience.

(d) Denial of Aid or Benefit. It shall be unlawful for any public official, agency, institution, or entity to deny any form of aid, assistance, grants, or benefits, or in any other manner to coerce, disqualify, or discriminate against any person, association, corporation, or other entity attempting to establish a new health care institution or operating an existing health care institution because the existing or proposed health care institution declines to participate in a health care service contrary to the health care institution's conscience.

Legislation like this must be pressed for, by Catholic statesmen and citizens alike, in order to protect the consciences of those in an ever-increasing array of industries and occupations. Without such protection, economic martyrdom, and even the risk of substantial civil or criminal penalties may await those who rightly decide that their violating their conscience is a line that they will not cross. As is occurring with the adoption situation in England, Catholics must try to secure the support of people of good will of every creed in order to build an increasing consensus for the rights of conscience. We must succeed lest our countries be led “by a short route to chaos.” Truly, the consensus that we must build must be built on real and universal rights of conscience.

Pope John Paul II has given us a guide to finding such a proper consensus. Indeed, he has elevated the role of Catholics by insisting in *Veritatis Splendor* and *Evangelium Vitae* that any moral consensus within society must be one which recognizes the three fundamental principles of the culture of life.

The first is the incomparable value and dignity of every human being regardless of age, condition or race. This is especially true in the case of the poor, the weak and the defenseless. And this is also true for the dignity of the human conscience.

The second is that it is always a violation of human dignity to treat anyone as an instrument or means to an end. Instead, every person must be seen as good in himself or herself and never as an object to be manipulated.

The third principle is that the intentional killing of an innocent human being, whatever the circumstances and particularly in cases of abortion and euthanasia, can never be morally justified.

In these moral principles we can see that the Church's mission in building the culture of life is inseparable from the legacy of the Second Vatican Council. This is especially the case in regard to the teaching of the Council on conscience, freedom and human dignity.

By insisting that the Catholic people must be "a people of life and for life" (no. 6), John Paul II has outlined the mission of the Catholic people in the conversion of culture. In this mission, *Evangelium Vitae* presents a blueprint for Catholic identity in the Third Millennium in which "the dignity of the person and the Gospel of life are a single and indivisible Gospel" (no. 2). In becoming "a people of life and for life" Catholics will bear witness most truly to the truth, to conscience and to the possibility of building a culture of life. But "a people of life and a people for life" can only be so if it is at the same time "a community of consciences for life" or what John Paul II might have called "a great solidarity of consciences for life." A Catholic people must have a Catholic conscience and that conscience, to be Catholic, must be for life.

ENDNOTES

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