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## Strategies for Life

William Paul Haas

This essay begins with an examination of the idea that an erroneous conscience binds the individual as much as a correct conscience does. Pope Benedict XVI considers conscience to the “supreme and ultimate tribunal” even when one’s conscience may disagree with the teachings of the Church. Cardinal John Newman also asserts that conscience must be followed, even when in error. But Thomas Aquinas offers the fullest development of the function and binding force of conscience. Furthermore, he explores the impact of experience and learning on the formation and maturing of conscience.

Conscience relies on the ability of a person to reason correctly, which according to Charles Sanders Peirce, the American philosopher/scientist, is a process, which entails three functions, deduction, induction and abduction, depending upon the availability of evidence and the opportunities for experimentation. In this regard moral reasoning is no different from any other kind of reasoning. I have applied this notion to the need for the Church to develop a variety of strategies to teach effectively about the sacredness of human life from its inception., starting with what is possible, moving to what is probable and then to what is certain

The Vatican and members of the hierarchy sometimes misrepresent or are unfortunately silent about the rights and obligations of individuals to follow their consciences, whether or not they agree with teachings of the Church. From this posturing, a dangerous polarity remains between the validity of objective moral principles and the binding force of the subjective judgments of individual consciences. This is wrongly construed as a tension between universal moral truth and individual freedom, when, in fact, the obligation of every person, correct or incorrect, to follow his or her conscience, (best moral judgment) is a fundamental universal moral principle, without which morality would be an absurd impossibility. This misunderstanding leads to further confusion about the rights of citizens in a democratic society to protect each person’s right and corresponding obligation to be true to his or her own conscience.

The challenge is to determine what the Church should do about the apparent conflict between individual autonomy and sound moral principles. I suggest that ecclesiastical proclamations and condemnations concerning the origin of personhood and concerning abortion, necessary as they may be in context, are inadequate to teach those citizens who, through no fault of their own, do not see the evidence for the truth that a human person exists in the womb from the moment of conception. The imperative is to develop as many strategies as possible for teaching this truth effectively which can be done by showing that the Church does indeed understand the state of mind of its opponents and by showing respect for their God-given right and obligation to choose the best alternative they can find within the limitations of their own experience. Fundamental to this effort is to seek forms of cooperation with persons who may only partially agree with the position of the Church in protecting the lives of the unborn, but who reserve the right to determine what emergencies warrant abortion. Too often, such strategies of cooperation with those partially in error to save as many lives as possible is misrepresented as cooperation in evil. The failure to be clear on this issue, seriously impairs the teaching effectiveness of the Church. There is a significant distinction between the conscience-driven individual who may consider the termination of a pregnancy as a morally justified choice in certain critical situations and another who may view abortion casually as a convenient form of birth control or a way of avoiding the annoyance or expense of child-birth without bothering to weigh any moral considerations at all.

I offer an example from history of how the Church weakened its effectiveness by not recognizing the legitimacy of the consciences of those she wanted to reach in the colonization of the Americas in the 16<sup>th</sup> Century. Bartolome de las Casas and Francisco de Vitoria, both Dominican friars, were leaders in the defense of the natives' rights of self-governance. As a contemporary example of the failure to acknowledge the state of mind of those in need, I also examine the recent efforts of the Vatican to force the German Bishops to abandon their role in the abortion counseling program in Germany. Most recently, the Holy See finds itself in serious confusion over the substantial differences among the hierarchy over the excommunication of the persons involved in the abortion of the twins carried by a nine year old mother. The president of the Pontifical Academy for Life characterized the condemnation as undermining the credibility of the Church's teaching "which in the eyes of many seems insensitive, incomprehensible and

lacking in mercy.” This impediment, real or imagined, is a stumbling block that should be removed.

This essay argues that there are better ways, worth exploring, to reach those who need enlightenment more than censure.

## STRATEGIES FOR LIFE

William Paul Haas

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In the United States there has been a continuous controversy and much confusion about those Catholic politicians who affirm their Catholic faith in the “right to life” and yet support the right of other citizens to choose abortion. This apparent contradiction between faith and “political expediency” brings about threats of excommunication and other punishments, including political defeat, from some members of the hierarchy and from some Catholic lay groups. In this exchange one very important moral principle needs to be reexamined, namely the obligation that every morally responsible person has/to follow his or her judgment, sometimes called conscience, even when that conscience is in error.

It is not my purpose to contradict or belittle the teaching of the Catholic Church concerning the sacredness of human life from the moment of conception, although I think it may prove useful to point out a better way to present the truth to those who struggle within the limitations of their knowledge and experience to deal with the real crises in their lives. If good moral judgment depends on sound reasoning as well as upon religious faith, it would be well to reexamine the role of reasoning, (abductive, inductive and deductive) in guiding moral deliberations. Reasoning from possibilities to probabilities to certainties is useful also in developing strategies that might advance the protection of life in the womb and strategies for offering further help to those who seek the evidence for as much truth as they can find.

It is critical to remember, too, that in the public debate the politician's conscience is not the only conscience that counts. More fundamental is the right and corresponding obligation of the individual person facing a choice about prenatal life to make the best moral judgment he or she is capable of (conscience) even when that judgment is imperfect or partially erroneous. As the author of this essay my own conscience also comes into play because I must weigh my own moral responsibility in speaking about the binding force of conscience. Also, in my deliberations I choose to respect the teaching authority of the Church and the good efforts of those who try to protect the lives of the unborn. I also must represent fairly the opinions of others and avoid giving solace to "the enemy" while still arguing that conscience is a "supreme and ultimate tribunal" even in matters of life and death. Moreover, my conscience requires that I admit to my reader that I have no magic wand that puts all questions to rest. The prospect that I could be mistaken is no reason for not doing the best I can.

The politician is obliged to recognize that each citizen has a responsibility before God (no less) to follow his or her own conscience and that no individuals should be forced to surrender their rights as persons and as citizens protected by constitution and law, because they insist upon following their consciences. Surprisingly, it is impossible for me to conceive of being consistently pro-life without being just as committed to being pro-choice for conscience, that is, conscience in the process of deliberation. But this attitude of tolerance is not a naïve relativism, as if one had to surrender to the overwhelming diversity of opinions about all matters moral - if anything goes, anything goes. Tolerance and respect for legitimate differences is not the end of the moral engagement; it is the wisest place to begin the really hard work of making the argument with valid and convincing evidence for the value of the personal life within the womb. There is always much learning and teaching to do, but the job is not made easier by thinking that all moral reasoning comes from the top down, deductively, from general principles which are self-evident. Real teaching and learning starts at the level of individual experience.

### The Erring Conscience

This central concept has rarely been as forcefully asserted as in Fr. Joseph Ratzinger's (later Pope Benedict XVI) commentary on Vatican II The Church in the Modern World: "Over the

pope as the expression of the binding claim of ecclesiastical authority, there still stands one's own conscience, which must be obeyed above all else, if necessary even against the requirement of ecclesiastical authority. The emphasis on the individual, whose conscience confronts him with a supreme and ultimate tribunal, and one which in the last resort is beyond the claim of external social groups, even of the official Church, also establishes a principle in opposition to increasing totalitarianism." The freedom of conscience from political intrusion will be looked at carefully later in this essay. Note here simply how Fr. Ratzinger protects the individual conscience from invasion from external authorities, including the legitimate authority of the Church. The Catechism of the Catholic Church (# 1790) modifies the same provocative challenge: "A human being must always follow the certain judgment of his conscience. If he were to deliberately act against it he would condemn himself." Note here the reference to "the certain judgment of conscience" as distinct from those casual, willful or indifferent preferences, which offer no particular moral or rational justification at all. Moreover, a conscience might appear "certain" subjectively even when the individual making the moral judgment is objectively mistaken about a fact or a principle. The word "certain" in the context does not mean "objectively correct." There is no critical moral event that is not primarily subjective, because only persons deliberate and decide subjectively based on what they actually experience and understand. It remains the responsibility of this essay to acknowledge that the objective truth of moral principles is not compromised by the fact that morality is lived subjectively and imperfectly. On the point, Thomas Aquinas and others have much to say. To me it is surprising how often otherwise competent authorities misconstrue the validity of subjective moral life as if what is subjective is essentially untrue or unreliable. I start from the conviction that conscience is a subjective finite phenomenon, which seeks as much of the objective moral truth as it is capable of in the course of live deliberations.

There are many conflicting notions of just what conscience is – one's best reasonable judgment and deliberation, a feeling of guilt or of justification, the voice of God, the superego, accumulated inhibitions or the weight of custom and habit. No one owns the word, so I will try to be clear and consistent in my own use of the term in its simplest sense. It is the best judgment one can make about what to do when a decision needs to be made. I take this to be consistent

with the view of Aristotle and of Thomas Aquinas and with many theologies and philosophies. This approach does not deny the prime importance of basic moral principles, but it does insist that all principles, insofar as they are principles, have moral value only when they are applied to actions in view of the choices we know we can make. The critical condition of moral activity is the actual state of one's understanding of many factors - principles and facts, the compatibility of principles with each other, the extent of experience, the availability of evidence, the moral maturity of the person or persons deliberating. The simplest example, "thou shall not kill" is a fine and certain principle but it is morally incomplete until one determines: kill whom, why, when, on what evidence and with what alternatives.

#### Cardinal John Henry Newman

In the extensive literature considering the unique questions posed by the reality of fallible conscience, Cardinal John Newman has had considerable influence, particularly on Pope Benedict XVI. Newman's oft quoted comment in his letter to the Duke of Norfolk that "If it came to it, he would first toast conscience, then the Pope" is tempered by the reflection that "Left to itself, though it [conscience] tells truly at first it soon becomes wavering, ambiguous and false: it needs good teachers and good examples to keep it up to the mark and the line of duty: and the misery is that these external helps, teachers and examples are in many instances wanting." (Discourse Addressed to Mixed Congregations) Clearly Newman sees conscience, not so much as a collection of self-evident and fixed values or principles immediately perceived in full force, but as an evolving and dynamic force shaped by God's guidance through life's experiences, with the help of others, toward a gradually firmer grasp of the truth. Conscience claims its power on the way to the truth not only after the full truth is achieved. Were it otherwise, where would any of us be. The guiding truth in Newman's view does not come prepackaged, achieved once and for all, whole and entire, and not free from the dangers of human weakness, confusion and neglect.

Pope John Paul II was also much influenced by Newman's thinking, but he had some difficulty in surrendering to Newman's full insight. In 1999 John Paul (Respect for Conscience) felt it necessary to stress that "To claim that one has the right to act according to conscience but without at the same time acknowledging the duty to conform one's conscience to the truth and to

the law which God Himself has written on our own hearts in the end means nothing more than imposing one's limited personal opinion." Unfortunately, the Pope fails to recognize that one must follow conscience while looking for the measure of truth, which experience yields. There is no morsel of truth outside one's experience. And one needs a judgment of conscience to even try to find out whether there is a "God" worth seeking. The power of conscience does not depend upon the achievement of the final answer. It is based on the honesty of the struggle toward some fragment of the truth that helps one live decently. My assertion here does not deny that there are indeed many holy and wise persons who correctly reads the "law of God written in their hearts." My concern is for those persons, less holy and less wise but not less human, who have no other reliable moral guide but their imperfect consciences, which ought not be dismissed as merely "limited personal opinion." because for those imperfect human being, you, reader, and I may be numbered owe it to God to follow the imperfect consciences they have. For many if not for most persons in the midst of life's challenges, their best judgment is all there is. Even to listen to advice or believe any authority, including the Church, takes a judgment of fallible conscience. Newman could see that someone had to teach the unlearned and provide them with tellingly good example for error to be diminished, if not eliminated. "The misery is" that this effective and sensitive teaching is the piece of the puzzle that is still missing in the current polemics about the politics of life and choice. And the Catholic Church needs to do a better job in helping people to find the truth the earnestly seek.

Of course there are various interpretations of Cardinal Newman's insights into conscience, among them is an outstanding commentary by Cardinal George Pell (2005) on the relationship of conscience to the pursuit of objective truth. My essay here does not attempt to explore every aspect of that question, but it does try to establish that an erroneous conscience does in fact bind a person when it is the truest conclusion that that person can draw from the facts, the needs and the evidence which is available at the time a decision needs to be made. As thoughtful as Cardinal Pell's analysis is, it is unfortunate that he never gives the slightest consideration of the moral obligation created by the "supreme and ultimate tribunal" of a fallible conscience "Supreme and ultimate" in Ratzinger's context, does not mean "once and for all" or never to be revised - it simply implies that the judgment of conscience is final when the judgment must be



made by the person making it. Cardinal Avery Dulles, in a brief reflection, also failed to acknowledge the possibility that anyone could be invincibly ignorant of how to apply a moral principle to a critical situation. My purpose here is to note that the failure of these and other authorities to even mention the legitimate claims of fallible conscience, leaves the picture of the moral responsibility of the politician, the teacher, the priest, etc. dangerously incomplete. The rights and responsibilities of individuals to follow the only moral guides they have do not disappear because they are neglected or ignored by those who should know better. More on this later.

### St. Thomas Aquinas

The thinking of St. Thomas Aquinas on the binding force of conscience, even when in error, is somewhat complicated, but it is well worth reviewing here because Aquinas has become everyone's stalking horse in this argument. For him, an erroneous conscience does indeed create a moral obligation. He is not concerned with freedom of conscience, but with the obligation to follow conscience, which for him is no more than reasonable human judgment. (1-II, q. 19, a. 5 and 6) And reason can err on matters of fact and in drawing conclusions from principles: it cannot err on such fundamental and self-evident principles (called *synderesis*) as "be reasonable," "pursue good and avoid evil." In Aquinas' view (following Aristotle) this self-evident insight is a natural disposition, not acquired by experience and learning, but everything else in moral decision making is conditioned by experience and learning: and it takes time. (per inventionem secundum viam experimenti, vel per disciplinam: II-II q. 47, a. 15) The specific precepts of natural law may not be known or correctly understood because of human weakness or because of nature itself which is subject to generation and corruption (and contingency) and because nature fails in some instances on account of some natural obstacle. (I-II, q. 94, a. 2,3 and 4) In other words, Aquinas is profoundly aware of the imperfect elements in moral deliberations. Reason has a tough job figuring out (by way of experiment) what to do about a nature, including human nature, which does not always function consistently. He leaves it to the personal virtue of prudence to learn how to guide reason in connecting one principle with another and in drawing conclusions about what works best. "As to the proper conclusions of the speculative reason [principles], the truth is the same for all men, but not equally known to all

men: thus it is true for all men that the three angles of a triangle are together equal to two right angles although it is not known to all.” For him, conscience is not a substitute for the hard work of thinking through problems, it is certainly not a clearly seen formula for moral perfection realized independently of experience. Like Newman, Aquinas sees moral development as growth within experience, subject to the limitations and inconsistencies of thinking and choosing and also subject to the quality of teaching and the example of others. Oddly enough, bad teaching and bad example can be just as effective in shaping conscience as good teaching and good example, as most of us have learned the hard way. Ask yourself, who taught you not to lie to them and how to lie for them. Moreover, neither Aquinas nor Newman offer much consolation about the divine voice dropping hints that save us the work of growing up.

Finally, it is encouraging to see the renewed interest in the flexibility of Aquinas’ ethics demonstrated in John Bowlin’s recent study Contingency and Fortune in Aquinas’ Ethics. I would add one additional refinement to complete the picture of Aquinas, namely, the distinction between two aspects of the contingency which pervades moral decision making. One aspect might be called “objective contingency” which is the contingency within the natural order at all levels and throughout evolution. The other form of moral contingency could well be called “subjective contingency” which encompasses the limitations, variations, and reversals in each individual’s understanding, foresight, teaching, learning and in the several communities that surround individuals as well. I am beginning to suspect that human moral development occurs in the tension between these two polarities, the vagaries of the natural world and human vagaries. Perhaps we grow morally because of this tug-o-war. However exquisite the citadel of moral principles might be, it is no substitute for the only activity that makes human beings morally good and that is deliberating as reasonably as possible and making decisions, which reflect honest deliberation.

Charles Sanders Peirce

Since the questions about the authority of conscience cannot be separated from questions about the limitations of human reasoning, this may be the place to appreciate the powerful insights of the American philosopher, Charles Sanders Peirce, who, scrutinizing Aristotle’s logic, saw

reasoning as an organic whole with three interrelated functions. Deduction is reasoning to a certain conclusion from clear and certain principles and adequate evidence. Induction is reasoning from growing evidence to a probable conclusion, which gets more probable as the evidence accumulates. Inductive reasoning is not less rational than deduction, in fact it is more rational when it is the only way to figure out the evidence at hand.. Abduction is reasoning from very fragmented evidence, which suggests a possibility that must be imagined and tested before much else can be concluded. At times abductive reasoning, which is much like a wise guess, is the only rational way to figure out what comes next. In adapting Peirce's illustration of the different functions of reason I suggest three different sets of evidence: (1) I have a sealed bottle of aspirin from which I can conclude deductively that if I take one pill from the bottle it will certainly be aspirin - if all the pills in the bottle are aspirin and this pill is from this bottle, this pill must be aspirin; and I can know that without even looking. (2) If I have an open bottle without a label, I can know the contents of the bottle only by examining each pill. As I proceed inductively, the probability that all the pills are aspirin grows, but it is not certain until the induction is completed. (3) If I have an open bottle marked aspirin and some pills lying on the table, I can only guess that they may be aspirin from that bottle. To conclude anything I must figure out abductively how I can find out what the pills are, where the pills came from, or whether it matters at all. Thus I must invent a hypothesis, which I can test, for example, by comparing size, color and taste of the pills on the table, by looking for someone who might know the answer to a question I must invent, or by chemically analyzing all of the pills. Peirce calls this testing of the wise guess "pragmatism", which to me is the same as thinking strategically. Given the limited or disconnected evidence available, abduction is at times the only reasonable way to begin the search for the truth. Moreover, often enough, nature which presents so many confusing dilemmas does not guarantee enough time to complete the search, so that many important choices, even life-death choices, such as some therapeutic abortions, must be made consciously with only a portion of the truth within reach. As in many life-death crises, to fail to choose the life that can be saved is to choose, by not choosing, that both lives are lost. In such dilemmas, it is not a moral failure of the individual's reasoning that acknowledges the limitations of the existential situation.

In Peirce's view as well as in Aquinas' view, the highest form of practical reasoning is not limited

to deduction from certain universal principles, invaluable as they may be when all things are normal or comprehensible. Reasoning is more intrinsically valuable because reason can be aware of its own limitations and of the limitations of the evidence that experience provides each person trying to be as reasonable as possible. Paradoxically, the perfection of reason is that it is conscious of its own imperfections - and it knows its own limitations. Hence the force of Peirce's view that the dynamic interaction of abduction, induction and deduction better describes the living deliberations which enables persons to grow morally with reflection over time: never all at once. Worth noting here is one other feature of Peirce's understanding of mankind facing the world where he acknowledges the universality of contingency or chance as the counterbalance or correlative of order and regularity in creation. Nothing in experience is so changing that there is no continuity or meaning to it: nor is anything so fixed that it is never subject to change or chance. This vision is no stranger to the cosmology of Aquinas and it has genuine relevance to how one interprets the stability and changeability of the natural law as a moral foundation. For Peirce and Aquinas change and continuity, chance and order, certainty and uncertainty, are not any more mutually exclusive in moral matters than in the physical universe. More on this as the argument develops.

### Where and How to Begin

Faced with the question of the human person in the womb, many intelligent and virtuous individuals see only the possibilities amidst the fragmented evidence and arguments: they do not see with clear deductive certainty that others claim, for example, the reality of the person in the womb, from whatever the moment of conception actually is, as the subject of rights, weighed against the right of a mother to defend her own being. For them, therefore, the most rational alternative is to explore abductively and inductively what the assumption of "the person in the womb" might possibly mean in solving crises when they occur and when they need to be resolved however imperfectly. This takes time and patience and cannot be circumvented by any clever slight of hand or rhetorical devices, Crises have their own timetables. This is also a major job for conscience- figuring out where to begin and how to stay reasonably clear as a necessary decision might loom.

In moral deliberations as in science a good guess that can be tested is as logical and rational as a perfect deductive syllogism. For Peirce deductive reasoning, inductive reasoning and abductive reasoning are parts of one living whole, each part genuinely rational. When applied to moral reasoning, Peirce's logic suggests to me that there is more to being reasonable than being certain about everything. There are times in the absence of certainty when one must decide to act on what is more probable or what is merely possible. These limitations of judgment and, therefore, of conscience are not moral faults, nor are they erroneous or malicious: they are simply finite limitations. Daniel Maguire and Nicholas Fagnoli do not indicate any familiarity with Peirce's thought but they do stress the importance of "creative imagination" in the growth of moral awareness and the discernment of new moral alternatives and possibilities. The process of searching for these possibilities (by way of experiment and learning) requires constant commitment and the deliberation of conscience. One can detect a similar line of reasoning in the way Thomas Aquinas unfolds his vision of the real function of conscience: for him rationality is not limited to formal deductive reasoning.

Unfortunately many defenders of the rights of preborn human beings assume that every reasonable person must come to the same certain deductive conclusion because all face the same overwhelming evidence which points in only one certain direction. It is not less rational and therefore less moral to act on experience even when that experience is limited to the fragmented evidence at hand in certain critical situations when a choice must be made. Persons who are less than certain on all moral matters are not less rational or less moral, nor do they surrender their rights to govern themselves as reasonable human beings. In short, there is more to being reasonable and having rights than being completely certain and correct. Imperfect conscience on the way to discovering what is going on and what needs to be done, seems to be, in Pope Benedict's words, a "supreme and ultimate tribunal"

### A Helpful Analogy

For those readers not familiar with such formal discussions of moral matters, a brief analogy might help. For a sailboat to function it needs to meet certain objective principles of design. Its

mast, boom, sails, centerboard or keel, its rudder and hull shape must have some stable relationship to each other and to the winds, the water depth and tides, the docking and the experience of the sailor. The principles of marine design, though certainly valid, do not sail themselves, they do not get wet. And some designs simply do not work well in certain conditions. Sailors do get wet, good ones and bad ones. And sometimes sailors drown - because of their own faults or because the designers and builders forgot something or because something just breaks. A sailboat can sail almost into the wind: this is called tacking. Two boats, of the same design and on the same day can sail in what appears to be opposite directions, using the same principles of design and seamanship. Each boat uses its own strategies to maximize the push-pull force of the wind, but they both follow the same principles. Tricky as this seems, morals can and should work in the same way. The differences affirm the principles, they do not contradict them. As a teacher, the Church needs to be aware that such diversity does not undermine unity or clarity or even infallibility: rather the unity is strengthened by the diversity. In the German crisis to be examined later, and in other current situations, the Vatican seemed unable to accept this simple notion. Again, unity of principle is not the same as conformity in performance. Teaching about moral matters is like teaching sailing. Inevitably mistakes are made but they can be learned from if the teachers know how to draw discovery out of error and confusion. Condemning error, though useful at times, accomplishes little if nothing else is taught in a way that is learnable. It is a tragic mistake, whether teaching morals or sailing, to blame students for not being as smart as their teachers. The Church must be careful not to give the impression that anyone who does not agree with her teaching on the origin of human personhood is too stupid or too immoral to learn. Tragically that impression is common and could be the death of effective teaching and learning and could render the Church's witness to the truth less valuable to mankind. This danger concerns many of us as we observe so many Catholic voices in the current situation consistently avoiding the legitimate claims of errant consciences crying more for help than for censure.

Objective and Subjective: Absolute and Relative

It would be a mistake to conclude that the defense of erring conscience necessarily leads to a complete relativism, which argues that abstract principles are irrelevant and that any moral opinion

is as good as any other. However, as anyone who has taught on any level of schooling knows, when it is clear that a student is in error, the choice to do something dawns. The relativist yawns and looks the other way (except when anyone attacks relativism). The one who can spot an error ought to be able to find a place to begin the constructive dialogue, but the dialogue does not begin with the denial of the learner's basic rights of self-determination or the disregard of the learner's dignity as a person. Individuals really learn when they choose to find more of the truth than what they possess, which they can do only by building on the portion of the truth they do cling to. In the meantime, while the learning and searching is going on many moral judgments must be worked out as best the individual can manage, because life does not stop until we have all our problems solved and all lessons learned. This is why it is so important for the Church to discover how best to treat those intelligent and virtuous persons who reserve the right to make their own moral judgments without interference from any external source, as Benedict XVI so clearly asserted. Yet many such persons will listen when the teacher addresses them where they are on their own itinerary.

To begin with, it is wrong morally and theologically to misrepresent all those who protect their own private moral judgments about the mysterious origins of the human person as if they had no moral principles at all, or as caring nothing for the wellbeing of others, or as being self-indulgent and depraved. There are many good and wise persons who value human life profoundly, but insist upon the right to determine in certain critical situations whether unborn life has the same value as a mature person. One cannot honestly squeeze all defenders of choice into one mold, and expect to make much progress in offering better choices. Choice is not the problem - experience, understanding and deliberation shape the alternatives for choice.

### The Human Being and the Person

Here is where the question of the personhood of the being in the womb (or outside the womb as in a laboratory experiment) should be seen as a very difficult question for many honest inquirers. It is an oversimplification to claim that it is self-evident that what is human and a being is a "human being" in the sense of a person who is the subject of true rights. Such rhetorical devices

not only fail to convince, they scandalize as well. It is a mere tautology, devoid of probative value, to assert that a being that is human is a "human being", meaning a person. It is like claiming that a square has four equal sides: it may be true but it does not add any evidence or knowledge. Not every being that is human is a "human being" as a human person is. A human heart or other organ being transported for transplantation is a real, living, physically human creature, with the value of the human life it is intended to save, but it is not a person. Human seed and eggs are beings and are human (physically) but they are not persons. The natural gestation process does not always work perfectly: miscarriages and still births occur, complicated childbirths kill babies and mothers, tubal (ectopic) pregnancies occur, fertilized eggs do not always survive the earliest stages after conception, all of which suggests that nature itself treats conception a very unstable value. Such complications in nature certainly involve human reality, but not necessarily human beings in every instance. Nature, from which many people get their only hint of what is right or wrong, makes no case that everything human is a person and is therefore never expendable. Nature is at times ruthlessly practical and does not hesitate to reject what does not work nature's way. Human ingenuity must often intervene to correct as much as possible the inadequacies and anomalies of nature. Whatever nature is, it does not clearly affirm the overriding value and presence of the person in the womb from conception nor does nature make it easy to figure out what to do about nature's own failings and contradictions. Yet, anyone familiar with the imperfect messages of nature can see that nature can also kill the unquestionably human mother (a person) without giving any evidence that it matters much. These anomalies are cited here, not to deny that a true human person might actually exist from the moment of conception: they are cited here simply to illustrate how any honest and competent person might innocently be confused about just how to identify a person within the anomalies of nature, especially in the complicated process of human generation. Thomas Aquinas never lets his reader forget that "natural law" which shapes conscience evolves with experience and is not self-evident in all of its implications and that nature itself fails and at times stumbles over its own obstructions, uncertainties and ambiguities.

When *Evangelium Vitae* states that "The gospel of life is not for believers alone..." the Church is offering hope and guidance to all mankind, as it must. Yet, in so doing the Church is not offering



verifiable evidence or sustainable arguments that demonstrate that human life at its inception is a person in the same sense that a mature and recognizable human is a person. Over the centuries of Christian reflection many saintly intellectuals had serious reservations about how one determines when life in the womb becomes sufficiently well formed to be presumed to have a soul, which then could be redeemed through the sacrament of Baptism. Among those Christian intellectuals who suspected that life in the womb went through a transformation before it was ensouled and therefore redeemable were St. Augustine, St. Anselm, St. Thomas Aquinas, St. Raymond and lastly St. Antoninus, the Dominican Archbishop of Florence in the fifteenth century, who explicitly approved of the removal of the unborn (unanimated fetus or pre-ensouled embryo as he thought ) in rare cases when it threatened the life of the mother. While all of these writers condemned abortion, they recognized a period of uncertainty when unborn life was in the process of becoming fully human. It would seem that they did not quite understand in their own times exactly what is presently seen as a fundamental doctrine of faith and as a truth accessible to reason alone. Apparently they did not consider the personhood of the preborn to be self-evident. Therefore, it should be no surprise that many of our contemporaries might be reasonably just as uninformed as these holy and learned figures were centuries ago. Thus it would be no concession to error or to immorality to acknowledge the difficulties which honest individuals face in trying to comprehend the position of the Church. The Vatican instruction, Dignitas Personae is a profound and beautiful profession of faith and an attempt to meet the demands of rational inquiry, but it does not reach to the level of those persons of good faith who still wait for some answers to the questions, which come from the fragmented evidence before them. Teaching is leading individuals from where they are in experience and understanding to where they might be. The truth is not discovered by threats and condemnations. Church doctrine alone does not define the logic of discovery (deductive, inductive and abductive) but someone in the name of sound moral judgment ought to attend to this crying need while there is time..

Added to the confusion created by nature itself, there are several influential philosophers who enjoy considerable academic prestige, such as Peter Singer of Princeton University, who do not hesitate to argue that infanticide and abortion are simple, straightforward and utilitarian solutions to practical problems. Shocking as it is, there is nothing new in this view of moral honesty.

Whether the victims are persons is for such thinkers irrelevant. Not everyone reads Singer, yet such thinking pervades a level of American consciousness and credibility without much rebuttal, except among other philosophers. For example, the work of William E. May of Catholic University and his colleagues makes a valiant effort to confront the persuasive oversimplifications of Singer, but their scholarship does not reach far enough to change public indifference, ignorance or confusion. The Supreme Court determination in Roe v. Wade that "the word 'person' as used in the 14<sup>th</sup> Amendment, does not include the unborn" adds still further to the common suspicion that individuals must decide for themselves what to do in a crisis. Furthermore, the Jewish traditions of the Talmud consider the fetus to be part of the mother's body and not a person with definable rights. Also, many Christian communities outside Roman Catholicism, leave it to individual believers to make up their own minds about their moral responsibilities to unborn life. It will take a long time for societies and their leaders to acknowledge that the fetus might indeed be a human person, just as societies have struggled for centuries over whether slaves were indeed human beings with "inalienable rights." In the meantime, regrettably, individuals had to fend for themselves throughout history: and that is where many of our contemporaries find themselves, without much confidence in government, academic institutions or churches.

Since it is the position of the Church that the personhood of preborn life from conception is a natural truth accessible without faith, then this truth is either self-evident or the evidence of this truth needs to be more clearly exposed. Physical evidence such as pictures of a fetus at its earliest stages of being only show physical and biological reality and development and do not adequately demonstrate the presence of the spiritual reality of a person, if a person is essentially a spiritual reality, not merely a biological fact. A picture of a fetus sucking its thumb, as some other primates do, only shows that its sucking instinct is taking shape. Again, sperm and eggs are truly existing and truly human, but they are only physically human and are not, therefore, persons. Individuals who claim the right to search for the evidence and to choose, as best they can, how to cope with the crises which life presents do not lose their rights as citizens of a democracy because they cannot see what the Church proclaims is so evident to all honest enquirers. Following the logic of abductive reasoning, many reasonable and honest people can only come up with a good

guess as to what to do about the bits and pieces of truth they find scattered about the public forum by elements of science, philosophy, religion, politics, the media and human loyalty. For so many the old certainties have vanished. The right/obligation to follow one's conscience is God-given and God-demanded even if God is long forgotten or never discovered: it is not a concession bestowed by the Church only to those who agree with her principles, sound as they are, and who believe in God. If there is any inalienable right and obligation, this is it. Thus, an honest Catholic politician cannot deny such persons the full protection of their God-given moral imperative, to think morally. The exercise of this right/obligation is also protected by the constitution and law and is also protected by the politician's oath of office. No Catholic politician could justifiably take an oath of office, or run for office in the first place, if he intended to disregard or dismiss the claims of citizens who disagreed with his own beliefs.

It is not my purpose here to defend every justification for abortion that gets thrown into the public arena with or without much thought or moral concern. The common sense of reasonable people generally can discern the difference between an honestly expressed difference of moral judgment and an arbitrary, callous, self-centered, hostile or indifferent rejection of all attempts at serious moral deliberation or dialogue. Reasonable persons can recognize the pathological ramblings of the mentally ill personality or of the drug-crazed social menace. Those of us who defend the autonomy of conscience do not throw discretion to the wind, nor would we hesitate to intervene when a person is driven by impulses that are dangerous to self and others. Defending the moral autonomy of conscience, even in error, does not require that one surrender all reasonable insight into the vagaries of human behavior. The danger in writing an essay such as this one, for example, is that any defense of fallible conscience can be misconstrued to be an abandonment of sound moral principles and common sense. Quite the contrary, such a defense of fallible conscience is based on the soundest of moral principles- be as reasonable as possible in the pursuit of good, which may be another way of identifying synderesis do good and avoid evil.

Moral leadership, of course, goes beyond questions of principle, critical as principles are for clear thinking. Real leadership seeks to find the best strategies to bring about as much good as is actually possible in very confusing and sometimes ugly situations. Incidentally, this is where abductive or creative reasoning is so important in moral activity (as it is in scientific inquiry)

because there is a moral imperative to keep looking for the better choice when that is possible and to keep on testing to find where our mistakes can be avoided and learned from and where progress can be made. This is Peirce's meaning of pragmatism -keep trying to find out what you need to know and then test it! "Strategies for Life" may well save more lives in the long run than gambling on political battles, which may never be won. Saving lives is at least as important as winning arguments or votes, especially since real lives have a definite value and are the true purpose for winning political and rhetorical battles in the first place. In recent years many new arguments have evolved to protect unborn life; I would suggest that the same creative effort be given to ways to meet the unconvinced halfway - to lead them from where they are to where they would be better off morally. Thus I would propose that many of the strongest allies in the struggle to save lives may well be those who only partially agree with the Church's absolute position, yet, who want as ardently as the Pope himself might desire, to save as many unborn lives as possible, as they see the possible. Yet, they may insist upon their God-given right and responsibility to make judgments and choices according to their own best rational deliberations. Cooperating with people who are partly correct and partly in error is not the same thing as cooperating in evil. Pope John Paul II in *Evangelium Vitae* acknowledges that "A particular problem of conscience can arise in cases where a legislative vote would be decisive for the passage of a more restrictive law, aimed at limiting the number of authorized abortions, in place of a more permissive law already passed or ready to be voted on." This kind of moral reasoning was evident in the support given to the Health Reform Act of 2010 by some Catholic congressmen in exchange for a presidential order restricting abortion funding but still allowing for the exception of cases of rape, incest or life endangerment, following the thrust of the longstanding Hyde Amendment. That compromise did not cause anyone to have an abortion, but it allowed individuals to follow their consciences in certain grave situations.

A particular challenge to Catholic leadership appears in 2012, when Catholic institutions which employ persons of many different religious and ethical convictions, would be required to provide health insurance to employees which covers contraceptives, abortifacients and sterilization, which practices are contrary to Catholic moral teachings. The Catholic authorities complained that their freedom of religion and their consciences were being violated by these requirements. There has

been no official acknowledgement of the consciences of those employees who in good faith see such practices a morally justifiable and even compelling in some situations . Nor has there been any acknowledgement of the obligation of government to respect the rights of citizens to participate in public health programs according to their consciences and without jeopardizing their careers. As Catholic institutions should not discriminate against employees for their private moral judgments, in hiring them or promoting them, according to fair policies, so, too, they should provide the health insurance that they have a right to as citizens. This does not involve the Catholic institutions in formal cooperation in immoral practices, and may involve only a marginal and very indirect material cooperation. The insurance does not cause anyone to act immorally, particularly when the person follow an honest conscience as God requires. How can this respect for the moral demands of God upon every person be a violation of a Catholic conscience? The failure to acknowledge publicly the profound difference between formal and material cooperation in morally questionable activity and failure to acknowledge the profound sacredness of each person's conscience, further weakens the credibility of the Church and creates huge obstacles to effectively teaching the truth. Absent from the public controversy are any indications of the willingness of Catholic Institutions to do everything they can to help female employees with difficult pregnancies, as a way of demonstrating what respect for the sacredness of life really means.

An imperfect understanding about the metaphysics of preborn life should not disqualify good people from cooperating toward as much good as is possible while they struggle toward a better understanding of the origin of human personhood. It must always be remembered that the politician's conscience must acknowledge the valid claims of the consciences of families and individuals who try to survive as best they can with the knowledge they have. They often struggle to better understand the profound mystery of life in the face of daunting confusion, charged emotions, misinformation, conflicting advice, ignorance and harassment. St. Thomas Aquinas was quite sensitive to the way that social and personal pressures and emotions, particularly fear, can influence a person's understanding of basic moral principles. The mystery of the origin of human personhood can be and should be addressed coherently, compassionately and patiently by those who claim moral authority and leadership. There is no magic wand, and

blaming politicians for being responsive to citizens who have legitimate rights to follow their own consciences solves nothing and prevents much good from being done.

### A Lesson from Galatians

A brief reflection is called for here on the role of dissent within the Catholic Church, especially about what is characterized as a fundamental tenet of faith. Sometimes it takes considerable faith and love for the Church to speak honestly about how even the leaders of the Church can make tactical and strategic mistakes. In the Epistle to the Galatians St. Paul defended the needs for the new Gentile converts to Christianity to become totally integrated into the Christian community without having to be circumcised as a condition for full participation. Paul believed that Peter was being “hypocritical” (“dissimulating” is less abrasive) because he ate (shared the Eucharist ?) with the Gentiles until he later yielded to pressure to avoid that practice. Paul withstood Peter “to his face” blaming Peter and his supporters who “walked not uprightly unto the truth of the gospel.” The argument was not over a minor matter of protocol or ritual: it was about the very nature of the Church. We can all be guided by the open and courageous tactics of Paul to urge for deeper dialogue on the profound issues before the early Church leadership. Thomas Aquinas commenting on the Epistle to the Galatians points out the spirit that should inspire such an exchange: “The Apostle opposed [?] Peter in the exercise of authority, not in his authority in ruling.” Aquinas then encourages prelates to take the “example of humility, that they disdain not corrections from those lower and subject to them: subjects have an example of zeal and freedom, that they fear not to correct their prelates, particularly if their crimes [faults] are public and verge upon danger to the multitude.” In Galatians it is clear that Paul was convinced that Peter failed to be true to the gospel because of the fear of alienating the conservative “circumcision group.” This leads to the suspicion that it might well be that Church authorities in the present situation actually fear more than anything else the alienation of those groups of Catholics who will not tolerate any deviation from what they claim to be the absolute meaning of the gospel. Or the absolute requirements of natural law. That fear of “scandal” may blind some authorities to the more promising “strategies for life” because others insist that cooperation for some good less than perfect is the same as cooperating in evil. The disagreement between Paul and Peter in the first generation of Christians on so profound an issue deserves to be revisited in

our own day. There seems to be the same depth of fear in the Church today, very much like Peter's fear, that haunts the possibility of a fair examination of other alternatives to the present public polemics. This essay will attempt later on to illustrate how such fear has harmed the Church in her mission in the past in the colonization of the Americas and in recent years in Germany.

### Other Voices

The "supreme and absolute" prerogative of conscience is not seen the same way throughout the Church. For instance, Archbishop Charles Chaput of Denver found it necessary to dispel any false notions of conscience in his recent book Render unto Caesar: Serving the Nation by Living Our Catholic Beliefs in Political Life, where he proposes that the Church has always taught that conscience is "the strong, still, uncomfortably honest voice inside us that speaks the truth if we let it." In this view, it is implied that conscience cannot err innocently- conscience is infallible unless immorally interfered with. "If we let it be" it speaks the truth. The Archbishop further explains that "The Catholic Church does not hold, and Vatican II did not teach, that respect for conscience means that individuals have absolute sovereignty in determining their own truth." His statement misses the essential meaning of "respect for conscience." Apparently Bishop Ratzinger, who was not reluctant to use terms as powerful as "supreme and ultimate," and Bishop Chaput see the Vatican II reflections on conscience quite differently. I suspect that Archbishop Chaput's problem begins with an inadequate grasp of just what conscience is or tries to do. It does not determine its own truth once and for all as if making up its own basic principles, but it does try to figure out which principles apply to each other and to the facts at hand and how deliberations and decision are to be made when they must be made. Conscience is simply judgment and sees truth as best it can. If conscience is a voice, it seems to the Bishop to be the voice of God, compelling in its clarity and convincingly unerring. In his news commentary "On Human Life" the archbishop states that the basic moral law is written in the human heart because we are created in the image and likeness of God "But we bear the wounds of original sin, which garbles the message and dims our ability to judge and act according to the truth." He does not acknowledge that the limitations of the finite human mind and heart do not come as a penalty on individuals because of original sin. To be able to reason deductively, inductively and

abductively is a marvelous gift, hardly a penalty, through which an individual can spend a life time approaching the truth. For him the human's role is to be passive and to listen. However, if conscience is a matter of holding ourselves responsible for how we live; conscience is ourselves talking to ourselves and to each other, it is simply the experience of being as reasonable as we can be. Some of us see the truer image of God's voice in the power of fallible reason, not a kind of divine I-pod with unerring advice on call. Imperfect as that image is in us human beings, unquestionably tarnished by original and actual sin and by bad example and ineffective teachers, as well, it deserves no less respect: it is no less God-given because of its imperfections - after all, what gift to human nature is not created and imperfect.

Think of the plight of the many devout and virtuous Christians and of other believers and nonbelievers who have never heard anything approaching the voice of God but who use their wits to deliberate and to determine what to do. They may hear the voices of others giving advice, some of which is reliable and some not and sometimes the clearest voice of conscience is to wait in silence till a situation becomes clearer. In Aquinas' view, the voice of God calls us to be as reasonable as we can be and to never stop trying - there is no substitute for experience and learning in forming conscience. In my own experience God has never spoken to me so as to save me the trouble of understanding my own experience. What haunts Bishop Chaput's characterization of autonomous conscience is the fear that if you give conscience an inch of independence it will take a mile. In other words, if you grant any genuine autonomy to conscience it will run away with itself and destroy sound moral judgment - again, the fear of relativism. However, moral self-confidence grows with moral maturity, with self-criticism, and with the wise application of judgment to the raw material of experience. It does no good to blame autonomous conscience, befuddled by original sin as it well may be, for all the errors regarding the origin of human personhood as if the truth were easily available to everyone who was willing to accept it, or unavailable to others because they would not accept the truth even if it stared them in the face. Such a disparagement of conscience as Bishop Chaput proposes is hardly a doctrine of faith, and his oversimplification places still another obstacle in the way of honest people yearning for some guidance.

Unfortunately, the Bishop has it backwards: autonomous conscience can continuously test its



own perceptions of principles and facts. Thomas Aquinas, in the spirit of Aristotle's vision of ethics, emphasizes how the limitations of conscience are recognizable and correctable by human judgment. Moreover, conscience can be helped to grow stronger when the teacher of moral values realizes what a magnificent endowment autonomous conscience really is. Thus understood, an individual and free conscience engages and challenges the moral person and the community of such persons to confront their own limitations and fallibility in the search for better understanding and better decisions. When I respect another's autonomous conscience, though I might know that person is in error, I can either look the other way (as the relativist might do) or I can help the person by word and example to find what is missing. It is always easier to score a political or rhetorical victory by making a fool or scoundrel out of a mistaken opponent than it is to convince the opponent that there is still a lot more to learn. The imperative for Catholic teachers, particularly for the hierarchy, is to pay more attention to the need to meet those in error halfway, that is, to try to understand exactly how right those in error are with respect to many important values and then to grasp how they are often trapped by their own limited experiences and how they would be freer and more autonomous with a deeper understanding of what perplexes them. Proclaiming infallible principles, useful as that can be, is no substitute for teaching others to reason as well as they can to the conclusion that a human person exists in the womb from the moment of conception. Again, reasoning begins with a good and testable guess, abduction, that there might be a way to find out more of the truth with a little help from your friends. Punishment and condemnation make it much more difficult to teach a willing learner. Moreover, silence about the prerogatives of every person's conscience and distortions about the availability of "God's voice" at a moment's notice, discredits the very truth that is desperately needed. The failure of those who possess the truth but teach it badly if at all is a prime cause of the very prevalent invincible ignorance about what to do about life at its origin.

Reflecting on Pope Benedict XVI's statement about the preeminence of the individual conscience as the most powerful defense against the invasion of totalitarianism, I can see how important it is that no secular government be allowed to intrude into the sacred domain of conscience when critical though imperfect decisions must be made. This may not be what the pope had in mind, but it seems clear that persons have an obligation to God to protect their own

moral accountability from being politically usurped. Being pro-choice about protecting one's individual moral autonomy from political manipulation is not the same thing as being pro-choice in favor of killing whatever, whomever, and whenever one chooses. When Church authorities are clearer about this simple distinction they will open up new opportunities to convey the rest of the deeper truth they cherish and want to share. Unfortunately such a notion is not included in Bishop Chaput's idea of "Serving the Nation." Although a democratic government of 100 % orthodox believers or naturally wise persons, where the common political will coincides with the full moral teaching of the Roman Catholic Church, might be desirable, it has never occurred in history and there is no foundation in the gospels for expecting such an eventuality. The goal of the struggle should not be primarily political but pastoral, i.e. to bring as much truth and love to those in need as is really possible. The recent efforts of the German bishops, to be examined later, painfully demonstrates the dangers of missing this point.

#### Understanding Some Papal Statements

In 1974 Pope Paul VI proposed that "...one can never claim freedom of opinion as a pretext for attacking the rights of others, most especially the right to life." Indeed, freedom of opinion used as a pretext for murder is indefensible. However, a seriously thought out judgment based on the best evidence available to an individual or to a group is hardly a dishonest pretext for anything, although the judgment might be in error even on the value of a living being. It is not a doctrine of faith that no person could ever be innocently in error on a matter of life and death., or is that what the Pope wants us to believe. Pope Paul's words appear to dismiss all freedom of judgment as depraved except when it agrees with Catholic doctrine. Of course, the Pope does not mean that, but his words do carry that implication, and offensive words can discourage many good but mistaken people from seeking constructive dialogue. Pope Paul comes as close as he can to acknowledging the legitimate state of mind of an opponent when he writes: "From a moral point of view this much is certain: even if a doubt existed concerning whether the fruit of conception is already a human person, it is objectively a grave sin to dare to risk murder." The Pope can bring himself to admit the possibility of doubt, but for him doubt is still no excuse for murder, yet he cannot go so far as to admit that a person in good conscience might have no doubt at all when the choice had to be made between the life within the womb and the life of the mother The Pope

acknowledges the “very grave difficulties” which individuals face in such crises, yet he insists that “these difficulties can never objectively confer the right to take another’s life.” It is not clear whether the Pope realized that the right to act on one’s judgment about what the other’s life is, person or not, lethal aggressor or not, is itself a natural right founded on the very nature of the rational being. It is also not clear whether the Pope realized that everyone has a fundamental natural right to defend himself or herself even if that requires the killing of the life-threatening aggressor, who might be innocent, yet no less lethal. Thomas Aquinas is worth reviewing again on this critical point, II-II q. 64, a.7. The Pope pleads that “The very grave difficulties” do not” objectively confer the right to take another’s life.” Indeed, but the natural law requirement that one defend his or her own life does indeed confer objectively a right and an obligation, as Aquinas puts it: ” one is bound to take more care of one’s own life than of another’s.” Similarly the right to take another’s life in a war does not come from the objective justification of the war, but from the conviction of the soldier who may have no way of knowing whether the war is actually just or whether the individual “enemy“ is personally guilty for what he does. Ultimately what is objective is the subjective reality that conscience is the final arbiter. Conscience does not bind only when it is objectively correct: it binds, especially before God, when the owner of that conscience thinks he is correct, though he may be objectively mistaken. This is a tough proposition to face up to, but it cannot be avoided. Pope Benedict XVI alas did face up to the “contradiction” of a legitimate objective truth (and authority) yielding to the fallible individual deliberations of the moral agent.

Pope John Paul II (*Evangelium Vitae*) suggested that freedom “negates and destroys itself, and becomes a factor leading to the destruction of others, when it no longer recognizes and respects its essential link with the truth” When the truth of the sanctity of life from its origin is lost to “complete relativism” everything becomes negotiable and the ideal is “betrayed in its very foundation.” The Pope’s admonition clearly applies to those situations “when freedom, out of a desire to emancipate itself from all forms of tradition and authority, shuts out even the most obvious evidence of an objective and universal truth” But, the papal pronouncement does not acknowledge that there is much more to rational freedom than this light-headed disregard of tradition and authority. This rejection of tradition and authority leaves the individual with “only

his subjective and changeable opinion or, indeed, his selfish interest and whim.” Despite the Pope’s persuasive characterization of the dangers of “complete relativism’ one is left with the unattended question about the many people who are relativists about many things and absolutely certain about just as many other things and the question about the seeker of the truth who would literally die for another human being but who honestly disagrees with the Pope’s understanding of the sanctity of life at its origin, and who firmly believes in the natural sanctity of self-preservation . It is difficult to see how freedom of conscience, if that is what the Pope is actually talking about, radically destroys itself as a person reaches for as much of the truth as he can grasp. If the truth is to be found, even partially, one ought to be allowed to search for it and embrace it freely. The Pope seems to believe that the suppression of freedom is the only defense against “absolute relativism“, if there is such a thing. A person who in good conscience does not affirm the sanctity of life from its origin as the Church would express it, may not be a relativist at all. Similarly, a relativist may value the lives of others more than he values his own because such altruism produces greater benefits for those he cares for. And it needs to be said that even relativists must follow their consciences under the weight of their experience, confused and incomplete as that may be. Those who fear “ relativism” so much that they make it into an absolute principle, overlook two factors, 1) those good and intelligent people who hold many sound moral principles, but not all of the principles as espoused by the Catholic Church, and 2) that all practical moral principles are either relative or relevant to real practical deliberations bound by time, place, availability of information, etc. etc. or they are useless irrelevancies.

Again, when discussing freedom of conscience one must add immediately that conscience imposes a responsibility first, which then must be freely embraced to be of any moral significance. Conscience is not some arbitrary contrivance, devoid of substantial rational deliberations. Archbishop George Niederauer of San Francisco (Jan 21, 2010) urges that while we Catholic citizens “deeply respect the freedom of our fellow citizens, we nevertheless are profoundly convinced that free will cannot be cited as justification for society to allow moral choices that strike at the most fundamental rights of others” Alas, the binding force of conscience comes from the moral judgment of the person, based on experience and evidence, not from an

arbitrary claim of freedom. Indeed, for many individuals, freedom overshadows every other consideration, (moral justifications are irrelevant to them) and so is any serious discussion of ethical issues. They simply do not want to be bothered. However, many other individuals have honestly concluded from everything they know that there may be circumstances when they are bound by moral principles to take the life of the unborn, not arbitrarily, not out of selfishness, not out of moral indifference to the lives of others, but precisely because of the value they give to the lives of others. These people are not reluctant to discuss their values in public dialogue. Their freedom of choice follows from the free embrace of responsibility, which in turn follows from the honesty of their own judgment, even when that judgment is objectively imperfect.

Silence about half of the true value of freedom and autonomy can lead to much confusion, especially in a democratic society which protects the right of persons to live within the imperfections of their knowledge and experience, and also protects the rights of others to address their neighbor's deficiencies. It is the singular strength of democracies that they are not static: that they evolve and correct their shortcomings by embracing and protecting the diversity among their citizens. Democracies need to keep open the dialogue, which brings differences to light and allows for reconciliation where possible. The right to follow one's conscience freely is not merely a political expedient nor is that right reserved for those who are always correct in their moral judgments. Moreover, a Catholic politician has an obligation before God to protect this right of the errant seeker, since that right and obligation too comes from God. It is dialogue that brings about deeper insight, not the suppression of freedom or the disparagement of autonomous self-direction.

Pope John Paul leaves us with still another incomplete concept. He notes: "Really, what we have here [with laws permitting abortion] is only the tragic caricature of legality; the democratic ideal, which is only truly such when it acknowledges and safeguards the dignity of every person, is betrayed in its very foundation. When this happens, the process leading to the breakdown of a genuinely human co-existence and the disintegration of the State itself has already begun." The Pope seems to imply that the only true, "ideal" democracy is a community of persons who are convinced of the presence of a true human person from the moment of conception. Are all other "democracies" therefore doomed for that reason. Yet, history provides us with no examples of

governments or societies, including the Church itself, which were made up exclusively of individuals who were perfectly moral even on fundamentals such as life. The democracies I know best are quite imperfect, made up of mostly very imperfect individuals, but which move always closer to a deeper respect for all human beings to the extent that they engage in open dialogue on the fundamentals. As evidence of this was the slow and painful acknowledgement that black slaves are indeed human beings with the same inalienable rights as their white owners. The Church itself took some time to realize the same truth and to proclaim that truth to all nations. More on this later. Pope John Paul does acknowledge that cooperation with others to minimize the ill effects of pro-abortion legislation is occasionally “legitimate and proper.” What is lacking in the Pope’s salutary advice is the recognition that moral development takes time, dialogue and patience, and during that time of development the rights of those partly in error are as sacred to them and before God as are the rights of those who happen to be correct at a particular time (at least in what they affirm if not in what they do). Respect for the rights/ obligations of all seekers of the truth is the first step toward helping them enlarge their vision - and our own.

#### A Sixteenth Century Lesson

It may prove instructive for us to examine briefly a crisis, not totally different from the abortion issue, which the Catholic world faced in the 16th Century when it discovered in the New World natives whose culture made Christians wonder whether these creatures were human beings at all. A few Dominican friars, outraged at the way the conquistadores treated the Indians, defended the rights of the native inhabitants as human beings to live as they chose even though their culture condoned cannibalism, incest, sodomy, bestiality and human sacrifice. Abortion is not cited as one of their practices, but the other violations of the natural law make the situation a useful parallel here. Bartolome de las Casas (1474-1566) was one of the first missionaries to witness the abuse of the natives and to boldly condemn the Spanish invaders. His confrere, Francisco de Vitoria (1483-1546) a highly respected theologian at Salamanca, took up the cause of the Indians in two essays, De Indis and De Jure Belli, and in the process developed a theory of international law based upon the natural rights of all humans. Incidentally, he has been recognized as the founder of International Law by the League of Nations and the United Nations. In 1539 Vitoria came to the defense of the Indians’ way of life, their property, their self-governance and their

religion. Vitoria and las Casas, both good Thomists, sought to apply the insights of Aquinas' idea of natural law to the unusual conditions in the new land. He condemned the effort of the Spanish King, Charles V, to force Christianity upon the natives and to force them to reform their way of life. The King's adventure was authorized by Pope Paul III. Nonetheless, Vitoria claimed that the "war" against the Indians was unjustified because the natives had a God-given right to govern themselves as they saw fit. Charles reacted, "Let these friars keep their mouths shut... Beside being very prejudicial and scandalous [they] might cause great inconvenience to the disservice of God, the disrespect of the Holy See and the Vicar of Christ and to the detriment of Our Royal Crown in those kingdoms." For Vitoria genuine faith could not be imposed justifiably on these simple people at the point of a sword and in a language they could not understand. The question of the humanity and the redeemability of the Indians was settled after some hesitancy by a declaration of the Pope who allowed that the Indians might retain their liberty and their property after conversion to Christianity. Vitoria questioned whether it was proper for the Pope to determine the fundamental rights of unbelievers and to make baptism a condition of their freedom and their right to self-governance. This moment in history is most relevant to the argument in this essay.

The friars had no illusions about the immoral practices of the native peoples, yet, they responded that, "Christian princes cannot, even with the authorization of the Pope, restrain the Indians from sins against nature or punish their sins." Vitoria emphasized often that the Pope had jurisdiction only over believers. "It would be strange that the Pope, who cannot make laws for unbelievers, can sit in judgment and visit punishment upon them." I do not see Vitoria questioning the authority of the Pope to make moral judgments at all, but he does question his right to suppress the rights of the natives as human beings to follow their consciences, mistaken and undeveloped as they might be. Vitoria concluded that it would be "rash and imprudent" for the Indians to believe in Christianity if it were presented in a way they could not comprehend and by people who were themselves guilty of "many scandals, cruel crimes and acts of impiety." Vitoria never defended the "heinous sins" of the Indians, as he called their moral failings, nor was he indifferent to their need for moral guidance and maturity. He urged both Pope and King to pay attention initially to the Indians invincible and helpless ignorance of any better life or of any principles of a

higher morality. Vitoria characterized the natives' predicament thus: "So also it is not every sin against the law of nature that can be shown to be such, at any rate to everyone." There can be two causes of such ignorance, one from the weakness or immaturity of the learner and the other from the limitations and misconduct of the teacher. Vitoria was pleading that condemnation and punishment were not the best ways to lead the natives to discover for themselves that there were better choices to be made.

Instead of dwelling on the depravity of the Indians' conduct from a European Christian point of view, Vitoria stressed the need to recognize first the moral strengths of the native culture from which it would be possible to build toward moral growth. He saw the fundamental value of strategic thinking, when the most rational alternative is to examine the possibilities of doing something different. In Peircean terms, this is a clear case of thinking abductively, of creating an hypothesis that can be acted upon "They have a certain order in their arrangements, and they have a definite form of marriage, magistrates; they have laws, division of labor, exchanges, all of which require the use of reason. They also have a kind of religion." In his view none of these moral accomplishments was vitiated by the coexistence of "heinous" vices. He concentrated on the evidence of the moral character of the natives, in the hope that when they met genuine Christian witnesses, with swords sheathed, genuine moral progress would follow.

Vitoria's plea for tolerance was not a compromise of principles or a passive acceptance of the status quo; it was a challenge to the highest authorities to mount a more profoundly effective transformation. It must be noted that Vitoria's reversal of perspective which emphasized patience or tolerance first, was in no way a desertion of the Gospel. Thus, one is reminded of the words of Isaiah applied to the way Jesus approached those in sin: "He will not wrangle or cry aloud, nor will anyone hear his voice in the streets. He will not break a bruised reed or quench a smoldering wick, until he brings justice to victory" (Matthew 12:19)

Self-governance was the central issue in Vitoria's defense of the Indians as it is the central issue in the present abortion crisis over the rights of citizens who find no evidence of personhood at the moment of conception or who refuse to surrender their right to judge how to defend their own being when they must do so. As the Catholic Church and European military might were unknown



and unfathomable forces outside the realities of life for the American natives, so to, for many of our contemporaries, the Catholic Church is a totally incomprehensible nuisance, which addresses their lives with an arrogance that makes it easy to resist anything the Church has to say. It would take profound humility for Church authorities to confront this vision of themselves, and to begin the talk to their adversaries as if they were worthy of respect and entitles to the best evidence of the truth available. Vitoria stressed the fact that the Indians were not uncivilized barbarians and that they governed themselves with dignity by “the consent of the majority, not necessarily by the agreement of all,” because “such consent seldom or ever happens in a multitude.” Vitoria, unlike most of his contemporaries, had at least a rudimentary concept of democratic self-governance from the constitution and practice of his own Dominican Order since 1220.

Vitoria was not so naïve as to conclude that majorities are always correct. “The decision of the majority binds even when the rest are of a contrary mind.” He might have added that a majority decision binds even when, in the long run, the minority turns out to be correct in its judgment and the majority is proven to be mistaken. The force of the majority consensus is not based on the certainty that majorities are always right, as some in the Church seem to misconstrue it, but on the acceptance of the only procedure, which guarantees enough stability to foster possible change and correction through dialogue. And the two Dominican friars knew from their own order’s history that the democratic spirit of the order’s constitution was a major force in keeping the order in tact. (even to this day ) It appears that Vitoria and las Casas defended the stability of the native communities so as to be able to build upon that solid foundation in bringing them eventually to a higher moral standard. For the friars, it was not an “all or nothing” contest-accept Christianity or else! It was difficult for the infallible authority of the Church to grasp how democracies are self-correcting over time, and therefore, must be inherently tolerant of disagreement and self-correction. Vitoria realized that in time self-governance is more powerful than the sword and in the long run self-governance embraces the moral guidance of the Holy Spirit more profoundly than an uncritical surrender to any power, ecclesiastical or military, especially when that power is not quite understood and not very trustworthy.

This acceptance of the critical importance of democratic consensus-building, even when so primitive and imperfect, takes on a special relevance in light of several Vatican statements like

that of Pope John Paul II (Evangelium Vitae): “No appeal to policy, procedure, majority will or pluralism ever excuses a public official from defending life to the greatest extent possible.” Vitoria’s respect for the value of consensus or “majority will” among the members of primitive societies does not contradict the Pope’s admonition as much as it seems to. Where there is any kind of majority will which gives a community its essential stability, one must work within the agreed-upon rules of engagement or on that foundation of common trust, because that is the only way to achieve long-range voluntarily embraced moral advancement. Majority consensus is an important way to sustain the hope that error can be detected and more or less corrected. Revolution is the other highly problematic alternative. Majority will and pluralism are not excuses, as the Pope seems to characterize them; they are the foundation of change and of the hope that free and intelligent people can actually learn from their mistakes and correct them as a natural function of self-governance. In an imperfect society, whether primitive or advanced, whether secular or ecclesiastical, evil is never vanquished “once and for all,” moral consensus-building never ends and the truth is rarely embraced by all without some ambiguity. The Catholic Church itself cannot divorce itself from its own imperfect history. The Catholic authority or Catholic politician who cannot tolerate such human imperfection has no right to ignore or suppress the basic human rights of others to discover for themselves, with help when possible, the better alternatives in life and death decisions.. Pope John Paul II ‘s words avoid the simple truth that those in error do not lose their civic or natural rights and are answerable to God for living in accord with their honest consciences. Those rights are not granted to them by any government or majority opinion, nor granted by the Church, they are God-given. If the Church authorities can ever bring themselves to admit this publicly, they will have taken the first step toward a renewed respect among their adversaries for unborn life. In Tertio Millenio Adveniente (1994) Pope John Paul II was not reluctant to admit that in the past the Church “ indulged in ways of thinking and acting which were truly forms of counter-witness and scandal.” It is time now to explore all possible strategies that will reach the many people within the Church and outside who have lost their way and hear no invitation to listen and to be listened to.

In 1998 the Catholic bishops of the United States urged that no faithful and serious Catholic public official “can responsibly advocate for or actively support attacks on innocent human life.”

Their well-intended directive simply does not apply to the Catholic official who protects the rights of those who disagree with his convictions, without in any way “actively supporting” an attack on innocent human life. Individuals who are in error, even concerning basic moral principles, still possess natural and God-given rights and obligations to be true to their own better judgment. Allowing a wrong choice to be made, when under existing conditions it could not be prevented, is not in any legitimate sense causing the mistaken choice to be made. When Francisco de Vitoria defended the rights of the Indians to their self-governance he was not actively or directly supporting human sacrifice, sodomy or cannibalism. He was urging a more effective strategy to eradicate the “heinous sins” of the natives by bringing them to a greater appreciation of their own worth. “Life must be protected with the utmost care from the moment of conception” the Vatican Council declared, “abortion and infanticide are abominable crimes.” Indeed they are, but every intelligent and morally good person does not see all therapeutic abortion, for example, as murder or infanticide. Nor does the mere statement of the Council provide any evidence to the morally sensitive observer that a human person certainly exists in the womb from the moment of conception or any evidence of just when that moment of conception takes place. Unfortunately the Council does not explore how the strategic tolerance of abortion, in specific definable situations, might actually protect life from its inception with “the utmost care” more effectively than any other means available. Condemnations and excommunications may attract the applause of some, but they fail to deliver much of the truth to those who need it most. This point will be a bit clearer when we examine the crisis of abortion counseling in Germany and other efforts around the world to reduce the number of abortions, without necessarily totally eliminating all abortions.

### The Crisis in Germany

There is a telling lesson to be learned from the recent crisis in Germany where the Catholic Bishops Conference had approved participation in a government-supported abortion counseling program. The parallel between the role of strategic reasoning in the German situation and in the 16<sup>th</sup> Century crisis in the New World may prove enlightening. Since the merger of East and West Germany the new law requires that a woman seeking an abortion in the early weeks of pregnancy must receive a certificate from an approved counseling center that states that she had

received counseling in defense of life before being allowed to have an abortion without criminal penalty. The Catholic bishops maintained that as a result of the cogency of the counseling and the help offered to petitioners (medical care, shelter, work and adoption services) the Catholic centers were able to persuade 5,000 women a year to reject the abortion option and to bear their children. Some Catholic critics of the bishops' involvement in the program convinced the Holy See that the bishops were causing grave scandal because the certificates issued by the centers could be used to secure abortions. It appeared to these critics that granting the certificates verifying the counseling sessions and therefore permitting abortion involved the Church "in killing of innocent children" and made the Church's "absolute opposition to abortion less credible." After several exchanges between the Vatican and Bishops Lehmann and Kasper, the leaders of the Conference, including direct pleas from the Pope to discontinue issuing the certificates, the bishops withdrew from the program and a lay Catholic group, Donum Vitae continued the work.

Pope John Paul admitted the ambiguity of the situation and acknowledged that the bishops were certainly not the "decisive causes" of abortion. It would have been more helpful if the Pope had insisted that the Catholic counseling effort was not a cause of abortion or an occasion at all. Most important to our present discussion is that the Holy See publicly disagreed with the majority of the bishops in Germany over their tolerance of abortion as an indirect consequence of their efforts to save the lives of the unborn. There was a strategic decision, not a compromise of doctrine. The uneasy compromise to satisfy both sides of the controversy led from a lesser scandal, that might have been averted if the Vatican defended the bishops against their critics in the first place, to a greater scandal in which the apostolic authority of the bishops was publicly disparaged and many unborn lives lost. And, indirectly the rest of the Catholic world was advised not to bother with any clever strategies to save lives, because someone might object. I have seen no evidence that the Vatican offered to those who opposed the work of the counseling centers any defense of the bishops' credibility or of their competence to make reasonable moral judgments. German citizens were left to think that the bishops were in some way simply ignorant of the moral principles involved or, worse yet, hypocritical about the value of human life and thus blind puppets of the Vatican. The suspicion lingers that the Vatican was intimidated or threatened by

unyielding critics. This fear of scandal reminds me of the thrust of the Epistle to the Galatians. The Vatican failed to acknowledge that the German program sought primarily to persuade clients who needed help in making up their own minds (to form their consciences) that preserving life was the best alternative. Women came to the counseling centers in order to secure permission to have abortions, not to study Catholic doctrine, on the assumption that the choice was theirs. German law protected that right of choice but demanded that the expectant mother at least be aware of the value of human life in question. The German strategy guaranteed that the defenders of life would have an opportunity to make their best case in favor of both life and choice - informed choice.

The German bishops chose to bring the wisdom of the Gospel and the resources of Christian charity directly to the formation of the personal conscience of the woman facing the moral choice. Thus, the well being of the unborn and the right of the mother to choose were equally protected without any compromise of moral principles. The strategy of the German Bishops emphasized the central value of the conscience of the prospective mother who may have had only the slightest help in forming her conscience previously. Unfortunately the Vatican could not see the issue as the German bishops saw it and chose not to defend the bishops' strategy. To confound the confusion, after this confrontation, the Pope named bishops Lehmann and Kasper to be cardinals, which turned the critics of the program against the Pope himself for trying to placate the bishops. Since that time, Cardinals Lehmann and Kasper have continued to speak critically of the need for decentralization of control by the Curia and for more respect for the authority of local bishops. Indeed, Cardinal Kasper and then Cardinal Ratzinger have debated this matter in *America* magazine (2001).

### The Brazilian Crisis

An equally significant crisis has occurred since 2008 in the situation involving a nine year old girl who was four months pregnant with twins. Her mother brought her to two doctors for an abortion because of the danger to her life, which was denied by other competent professionals. The Archbishop of Olinda and Recife, Brazil, Jose Cardoso Sobrinho, noted publicly that the diocese made every effort to convince the mother and her doctors that a therapeutic abortion

would be immoral and he insisted that the three adults involved automatically incurred an excommunication from the Church. Archbishop Rino Fisichella, president of the Pontifical Academy for Life at the Vatican, expressed in *L'Osservatore Romano*, (March 2009) his disapproval of the actions of the Brazilian prelate as “hasty” and undermining the credibility of the Church’s teaching “which in the eyes of many seems insensitive, incomprehensible and lacking in mercy.” Such a candid criticism from a high ranking Vatican official makes it easier to understand how people who have little understanding of Church teaching would conclude that the message of Catholic authorities is not too compelling, “insensitive, incomprehensible and lacking in mercy.” . Fisichella acknowledged that the girl’s case required “an arduous decision for doctors and moral law itself” and he adds “The conscience of the physician finds itself alone when forced to decide the best thing to do.” It is noteworthy that in December 2008 Archbishop Fisichella, in comments about the papal instruction Dignitas Personae, noted that” the embryo has the same dignity as a human person. We don’t want to give a definition of a person as we know very well that there is a big discussion among scientists, philosophers and psychologists, and also in the juridical world... So we won’t enter into this discussion.” One cannot be too surprised if a simple country woman has only a vague notion of what a person in the womb is. The exchange about Brazil was followed by the statement of Cardinal Giovanni Battista Re, supporting the judgment of Archbishop Sobrinho that “Life must always be protected, the attack on the Brazilian Church is unjustified...the twins conceived were two innocent persons, who had the right to live and could not be eliminated.” Several members of the Pontifical Academy demanded that Archbishop Fisichella apologize for his intervention and requested that the Holy Father provide some clarification. In July 2009, the Holy Office, under instructions from Pope Benedict XVI published a clarification of the doctrine on Procured Abortion. Observing the “manipulation and exploitation” of Archbishop Fisichella’s initial statement, the Vatican affirmed its traditional doctrine without direct reference to specific points made by the Archbishop. However, the Vatican did reiterate the formal doctrine in Evangelium Vitae that “No circumstance, no purpose, no law whatsoever can make licit an act which is intrinsically illicit, since it is contrary to the Law of God which is written in every human heart, knowable by reason itself and proclaimed by the Church.” (no. 62)

Not to split hairs, but it is worth noting that the phrase “knowable by reason itself” does not assert that this principle is in fact known by everyone, but only “knowable”, especially with respect to the presence of a person from the moment of conception. The papal document acknowledges the “tragic and painful” decision of a mother wrestling with the reasons to consider an abortion, but emphasizes that reasons “however serious and tragic can never justify the deliberate killing of an innocent human being.” What remains to be clarified is that the person making the deliberation is ultimately bound by the conclusion of that person’s conscience which may honestly, though mistakenly, conclude that taking the life within the womb is not “killing an innocent human being” at all. The ambiguity found in St. Thomas Aquinas’ discussion of the right of a person to defend him or herself by taking another’s life is not lost in this case, where the mother saw her young daughter’s life threatened, not by an innocent pair of twins, but threatened by an incestuous invasion of her child’s life and an immanent threat of death. Her thinking may have been overwhelmed by fear and hatred, yet her deliberations were all she had. Unless one is prepared to claim that no rational and moral person could honestly think such a thing, such a conclusion, imperfect as it would be for a learned theologian, justifies before God that woman’s moral determination and decision, since conscience, however chaotic, is the “supreme and ultimate tribunal.” Certainly the judgment of conscience does not reject the sacredness of life so much as it tries to reconcile the apparent contradiction between the sacredness of the daughter’s life and the need to protect her from an unfathomable aggression. The Church must carefully define and distinguish moral principles and practices, but it cannot define before God the subjective moral state of an honest but mistaken conscience nor should the Church mandate that such a state of mind be ignored, rejected or punished, particularly by excommunication. Who needs the communion of Christ and his Church more than a woman in a predicament like that in Brazil? This is the paradox which is so hard for Church authorities to face in deciding what and how to teach the truth to those who desperately need it.

These events are important to my thesis here in several ways. First, if there can exist such confusion about the demands of conscience at the highest levels of moral leadership in the Church, it is understandable that many others, believers and non believers, would find it difficult to be certain about the credibility of Church authorities when they do not seem to understand

each other . Questions remain about the moral judgments to be made when faced with a crisis of the magnitude of that facing the Brazilian mother and her child. Secondly, Archbishop Fisichella acknowledges the binding obligation of the physician's conscience acting "alone and forced to decide" but the archbishop was criticized for this outspoken acknowledgement of the role of conscience. It would have been most helpful if he had elaborated on the critical conscience issues. Thirdly, Archbishop Fisichella, as president of the Pontifical Academy for Life, earlier on withdrew from any discussion of the meaning of "person" in the womb because of the disagreement among scientists and other professionals. Nothing makes the predicament of the layman, Catholic or otherwise, in trying to understand how the Archbishop could be so uncertain and unclear about the truth of the person in the womb , which the Church claims is " written in every heart, knowable by reason itself and proclaimed by the Church." This leaves us with the questions: where does the dialogue about the reality of the person in the womb take place? And who is invited to participate in that exchange? Fourthly, all three of the archbishops affirmed the same principles that the embryo from conception should be treated as a person, and that abortion is immoral, but they disagreed about what they should do or say about the credibility of the Church's witness, if indeed it appears "insensitive, incomprehensible and lacking in mercy." This essay argues that the Church as a teacher must think differently. It must think abductively, about strategies to reach those who are understandably confused, without compromising the moral principles that guide the teaching effort. Nothing is wrong with a smart guess when searching for a new solution. The Vatican's strategy to resolve the tensions between Archbishop Fisichella and his critics among the hierarchy and from the Pontifical Academy for Life, which he was deemed competent to head, was to give him a new assignment as president of the Pontifical Council for the Promotion of the New Evangelization. This kind of behind the scenes shuffling clarifies nothing.

### An Excommunication in Phoenix

A recent crisis of conscience in the United States warrants some consideration here because of the way that it reveals the limitations of the teaching strategies of the Church and the interplay of consciences within the Catholic community. In November 2010, a 27-year-old mother of five, 11 weeks pregnant, was admitted to St. Joseph's Hospital in Phoenix, Arizona. Her



doctors advised her that she was suffering from “right heart failure”, short hand for severe pulmonary arterial hypertension with profoundly reduced cardiac output. This condition endangered her life and that of her fetus, judged to be “close to 100 percent” certain. It seemed to some, including Bishop Thomas J. Olmsted the local ordinary, that the only moral solution was to allow both mother and child to die. The administration of the Hospital saw the situation otherwise. The hospital was guided in its deliberations by the ethical directive for Catholic Hospitals which states;” Operations, treatments and medications that have as their direct purpose the cure of the proportionately serious pathological conditions of a pregnant woman are permitted when they cannot be safely postponed until the unborn child is viable even if they will result in the death of the unborn child.”

This directive reflects the centuries old understanding of the morality of actions with double effects, one effect morally good and directly chosen, the other effect not directly chosen as the means to the good end but allowed as an unwilled consequence of the first decision. If it were medically determined that the pregnant mother was endangered by the pathological organ of the placenta, which her pulmonary condition could not survive, it was considered appropriate to remove the placenta, with the indirect consequence of the death of the child. Bishop Olmsted rejected the conclusion of the hospital on the grounds that this was a direct abortion, in no way morally justified., and therefore he declared Sr. Margaret McBride, the hospital administrator, automatically excommunicated. The Reverend John Ehrich, the medical ethics advisor to the bishop declared: “She consented in the murder of an unborn child...There are some situations where the mother may in fact die along with her child. But- and this is the Catholic perspective - you can’t do evil to bring about good. The end does not justify the means.” The general principles are fine as far as they go but they simply do not apply to the situation. Calling the death of the fetus “murder” does not make it so, as even a rudimentary understanding of the principle of double effect would suggest. Furthermore, the mother herself and the hospital caregivers had an obligation under the primary principle of natural law to examine every way possible to protect her endangered life. Again, Thomas Aquinas is correct in his understanding of the natural law as applied to the necessity of a person to protect his or her own life, even if that requires the death of an aggressor. Father Ehrich’s summation reflects a very superficial

grasp of moral theology and of common sense. The burden of conscience in situations where there is no simple self-evident solution is to figure out what are the best possibilities available. Medical judgments are sometimes at best good guesses, because of the lack of reliable information or precedent, but a good guess can be the most rational judgment one can make under the given circumstances. Conscience does not always have the luxury of perfect certitude about everything all the time. The bishop might have reason to question the medical and moral competence of the hospital decision makers, but his Episcopal authority does not make him automatically infallible or more competent than everyone else in such matters. One is reminded of the lament of Archbishop Fisichella that such hasty resolutions of difficult life and death situations makes the credibility the Church's witness for life to appear "insensitive, incomprehensible and lacking mercy." Quite obviously, there is more than one cause of the widespread invincible ignorance about the sanctity of life.

#### Reduction if not Elimination.

In 1984 at Notre Dame University, Governor Mario Cuomo proposed that a greater national effort be made to help women bring their pregnancies to term with nutritional, prenatal, child birth and postnatal care for the mother and in addition with pediatric care for the child. He expressed his hope that: "Without lessening their insistence on a woman's right to an abortion, the people who call themselves "pro-choice" can support the development of government programs that present an impoverished mother with the full range of support she needs to bear and raise her children, to have real choice". At the time, Cuomo could not have anticipated the frustration of the Catholics in Germany. Nor did he examine the possibilities of sources of aid other than government to launch such an effort on the grand scale. However, in recent years, where efforts have been made to bring pro-choice and pro-life advocates together to cooperate in the reduction of abortions, there surfaces the disagreement about whether contraception should not be supported as a significant way to limit conception and therefore abortion. When the support for contraception is established as a precondition for any cooperation toward the reduction of abortions, some Roman Catholics have turned away on the grounds that such

cooperation would involve them supporting an immoral activity. The principle of double effect and the difference between formal and material cooperation might well apply to resolve this impasse, but the initiative falls to the pro-life side of the disagreement. No cooperation, no help for the most needy person in the equation, the troubled mother.

When the encyclical Humanae Vitae appeared in 1968, declaring all forms of artificial birth control to be immoral and unnatural, serious questions were raised among some hierarchy and theologians around the Christian world about the proper role of the individual's conscience in judging the reasons for limiting child births and the best, safest and most reliable methods to use. Although the official position of the Church against contraception has not weakened, the original questions still remain unasked and unanswered among believers and unbelievers. The official Catholic contention is that it is plainly evident that artificial contraception is against the natural law, which establishes procreation as the natural purpose of sex. This position leaves many enquirers unconvinced, wondering if the Church is saying that everything artificial is unnatural or that sex alone without procreation is evil. It is not surprising, then, that the failure to confront the obligations of conscience concerning artificial birth control should now become entangled with the same challenge of conscience concerning abortion. There are many social, technical, psychological and economic factors that contribute to the long festering opposition to the Church's teaching among Catholics and non-Catholics, and it might be that the failure on the contraceptive front in the past has contributed to the difficulties at present on the abortion issue. Here is where the language needs to be examined. Cooperation with people who support the evils of abortion or contraception in strategies to save unborn lives, may appear to many to be actual immoral participation in those evil acts in some way. However, when one cooperates with a person who honestly disagrees in conscience with part or all of the Church's teaching on contraception and abortion, that person's judgment of conscience is not an evil activity at all, it is in fact a morally, indeed divinely mandated activity of a morally autonomous individual. Cooperation with a person who is correctly following his incorrect conscience is radically different from participation in evil. The physical thing, the contraceptive, or the physical surgical abortion are not the substance of evil: the subjective choice and intention can be evil, ultimately depending on the integrity of conscience. Things are not evil in themselves,

but people are, depending upon the integrity of their consciences.

President Barack Obama has more than once expressed the hope that something can be done on the national level to assist women, who might otherwise think abortion was necessary, to have and care for their babies. He repeated this message at Notre Dame University amid vehement objections and criticism from certain Hierarchy and laymen. He urged: “ Understand - I do not suggest that the debate surrounding abortion can or should go away...Each side will continue to make its case to the public with passion and conviction. But, surely, we can do so without reducing those with different views to caricature. Open hearts, Open minds. Fair-minded words.” In June of 2010 at the Vatican, President Obama pledged to the Pope that he seeks to reduce abortions. Both Pope and President stressed “ the defense and promotion of life and the right to abide by one’s conscience. “ The message would have been clearer if the phrase read “ and the right of all persons to abide by their consciences.” Most recently the public contention over health insurance, which would provide contraceptives and abortifacients for employees of those Catholic Institutions which hire people of various moral positions on these matters, has not resulted in any constructive compromise, in large measure because of the political exploitation on both sides of the issue. Little attention has been paid to the consciences of women who demand as citizens these health benefits and who refuse to surrender their rights as employees and citizens because their employer holds different moral values. It would not hurt the pro-life message of the Catholic Church to admit that providing health insurance does not involve the Church in formal cooperation in any evil at all.

Inspired by Mr. Obama’s exhortation at Notre Dame, Princeton University mounted a conference of representatives of pro-life and pro-choice advocates. In similar fashion, Fordham University invited theologians in the region to begin to discuss their concerns over abortion. Also, ten provinces of the Jesuits in America have agreed to launch “creative dialogues’ to bring opposing views on abortion together. The results of these efforts are not yet clear, but the initiatives are desperately called for.

Concluding reflections

When Church authorities, here and in Rome, condemn Catholic citizens for defending the rights of others to choose abortion (some of them in good, though erroneous, conscience) they fail to acknowledge that the tolerance of this objective (not necessarily subjective) evil, coupled with a vigorous effort to help others form better judgments, can be the most effective strategy for achieving the good. This was the challenge facing Francisco de Vitoria and las Casas much earlier and of the German bishops many centuries later. The Church must proclaim sound moral principles, but that is not enough. Proclamations and condemnations do not teach those who most need to learn how to make very difficult decisions. The Church must teach and better educate itself on how to realize the greatest good possible in the actual conditions of human choice, and that means to engage with compassion in sustained persuasion and dialogue with those facing the final crisis. The Church must constantly present the evidence for the sanctity of life to the citizens, learned and unlearned, who are bombarded with conflicting arguments and misleading example (even from Church authorities). Even at the highest levels of the hierarchy, it would be more constructive to encourage open dialogue and debate so that the world could witness how the truth is arrived at, refined, adjusted and applied. When the process is so secretive and exclusive, as in the *Humanae Generis* publication, in the German counseling affair, the Bolivian/Vatican differences, and other situations, even bishops are left aghast. Bishop Skylstad of Spokane, Washington, and Father Bryan Hehir propose that Catholic politicians who protect the rights of pro-choice advocates should be met with persuasion, not with “bludgeoning,” with dialogue and evangelical witness and not with lines drawn in the sand. I would add, save the bludgeons for the real enemies, who might be closer than anyone suspects.

I suggest that the same strategy of personal engagement be offered to the pro-choice advocates themselves, who must be presumed to be morally disposed to the best human alternatives they can find. Perhaps many pro-choice advocates are in fact indifferent to the value of new life and resent every form of moral restraint, but the Christian imperative is to bear witness to all people at whatever stage of moral understanding they may be. One might have to look long and hard in some locations to find a few “pro-choice” advocates who are anxious to find ways to reduce the number of abortions, but the search would be a most worthy undertaking. Since the Church has no authority to judge the state of conscience of individuals, it creates immense obstacles to its

own effectiveness when it disregards the plight of those good persons who yearn for some guidance but do not know where to turn.. The Church needs both sound doctrine and a commitment to convince through practical common sense and strategies, (wisdom) that life is indeed sacred in all of its manifestations.

When Francisco de Vitoria pleaded for patience with the Indians, he was guided by the insight of Thomas Aquinas that grace perfects the good, which lies dormant in every human being. Thus, Vitoria's first admonition to both Pope and King was to put up the sword and to take the time to find the moral strength in the Indians character and culture. To Charles V, Vitoria's hesitancy to join the battle was scandalous. To Vitoria, the ravages of the conquerors under the guise of missionary zeal was the more heinous scandal. The Dominican friars had no quick and easy solutions and so they appeared to be cowardly, capitulating and unfaithful. Vitoria dared to lecture the Pope on the limitations of papal authority and to suggest that there was a better way to go about converting the natives. His example should not be lost on us today. Nor can we afford to disregard the struggle of the German bishops to convince the Holy See of the evangelical power of counseling individual women who came looking for an easy way toward abortion, but who discovered that there was a better alternative. This was possible only because there were Christians who offered to share the burdens of those in trouble and who bore witness from their hearts and minds to the hearts and minds of the individual desperate women.

The German bishops were thinking strategically (abductively) about the possibility of convincing more and more women that life was the better choice. This involved the pragmatic conviction that it was worth trying over and over to uncover the most effective ways by actions as well as by words to save lives. It appeared rational to pick up the scattered fragments of lives so as to find ways to mend and heal without being certain about the unimagined challenges to be uncovered. In this interaction, where inspired guesswork met with the intensity of faith, new strategies for life might emerge. Without their daring initiative, the unfinished argument lingers. How tragic that those who could settle for nothing less than certitude, would think that this Christian adventure was a denial of faith: when it was in its incompleteness an extraordinary affirmation of faith. In the face of such disappointment, if not betrayal, why would anyone try to explore the possibilities. If the Vatican is so sure of everything, what is left to be learned?

When Pope John Paul II urged that innocent life be defended “to the greatest extent possible” he might have realized that one way, not the only or the best way, but one way to defend innocent life is to appeal to the choice of the mother facing the crisis. Offers of help and compassion need to counterbalance arguments and pressure. The Vatican’s rejection of the initiatives of the German bishops led to the formation of a group of lay persons, called Donum Vitae, who continued to provide pro-life counseling to women seeking abortions. The Vatican intervened again to prevent these laypersons from using any Catholic facilities in their work. As of 2007 Pope Benedict XVI pressed the German bishop still again to be more vigorous in discouraging parishioners from working with supporters of the counseling centers. One cannot help dreading that the Vatican will eventually forbid those counselors under pain of some ecclesiastical censure. Incidentally, it has been reported that, although a significant number of abortions occur in Germany, the incidences of abortion per capita is about one-fifth that of the United States. This may be due in part to the different approaches to moral strategies

A situation similar to that in Germany is taking shape in the United States where the U.S. Conference of Catholic Bishops has been severely criticized by a coalition of Catholic groups who object to the way the Bishops distribute the funds raised by the Catholic Campaign for Human Development. The purpose of the campaign is to give substantial grants to community-based programs, which help the poor deal with hunger, housing and health care problems. The grants “know no racial or religious boundaries” and 100% acceptance of Catholic teaching is not a precondition for offering help to the poor through these grantees, any more than such a precondition would apply helping the unbaptised in a missionary country. The critics of the campaign “find it hard to believe assurances that the CCHD always carefully vets its grantees given both its history and its continued funding of groups which openly oppose the Catholic Church’s teachings on social justice, family and life issues.” The Bishop’s conference insists that grants are given exclusively to aid the poor and that none of its grants are given to support programs, such as the promotion of abortion, that are hostile to Church teachings. Yet the “scandal” over cooperation with evil continues to escalate as it did in Germany. Hopefully the Vatican will not find itself rejecting the competence of the American Catholic bishops, as it did the German bishops, to make reasonable judgments about how best to carry on the mission of the

Church in this society.

It is encouraging to discover that several initiatives have been launched in the U.S. Congress in recent years to reduce the number of abortions in the U.S. by 95% in ten years. The strategy is to create support programs for pregnant women who face abortion as their more compelling alternative. To advance these initiatives a Catholic politician might have to make concessions to those who share the goal of saving lives but who refuse to close out the option of choosing abortion in certain emergencies. Churchmen should not condemn politicians for thinking like this. Politics being the art of the possible one might conclude that it is more moral to settle for modest losses in favor of very large gains in the long run, since the gains are measured in real lives saved. The longer the struggle continues the more possibilities there are for further reductions in lives lost. This appears to be precisely the kind of strategic thinking Pope John Paul envisaged as “legitimate and proper” in *Evangelium Vitae*, although he does not say this explicitly enough. The Vatican should vigorously and publicly support such initiatives, without fear that it would compromise its teaching about the sacredness of life.

In Bishop Skylstad’s words, “We can evangelize only by engaging the culture which surrounds us.” This, of course, must include confronting the pervasive materialism of American culture as well as the political culture with its restrictions, its procedures and limited options. It is no surprise that those who dare to engage the culture can become lost, alienated, disheartened and compromised while they struggle to remain faithful to their religious convictions and still try to help those in need. Catholic politicians who respect the God-given rights and obligations of all human beings to follow their consciences should not be disqualified from the support of the catholic community nor from sharing in the sacraments. The powerful language of Canon 915 requiring that holy communion not be given to persons who “obstinately persist in manifest grave sin” should not be applied to politicians who wholeheartedly accept the principles of the Church’s teaching but who insist upon their right to find the best strategies to protect the rights of other citizens while extending the protection of life within the womb as much as is possible. There is no sin in the rational effort to uncover better ways to deal effectively with the complexity of a free society. And there can be no immorality in helping and protecting those who in obedience to God, follow their own consciences.



Archbishop Raymond Burke disagrees with the majority of the American bishops on the application of canon 915 to what he characterizes as “pro-abortion” politicians who support the “legalization of unlimited abortion” and who “knowingly and willingly hold opinions contrary to the natural law.” The canon law is clear enough: the differences among the bishops have to do with how one determines which politicians fall into Archbishop Burke’s characterization. I would add the importance of acknowledging that respect for and protection of the right/obligation of each person to abide by the “supreme and ultimate tribunal” of conscience is itself a fundamental principle of natural law, not a compromise of natural law. Without this affirmation, natural law would be an empty notion indeed. It is hardly malicious to assert one’s own right to think through difficult crises and to protect the same rights/obligations of others

Some of these engaged Christians, though not learned theologians, are the ones who have the greater need for the sacramental nourishment of the body and blood of Christ. Because they have made themselves more vulnerable by entering the political arena, they have the deeper need for communion with Christ and the Church. Jesus likened his body and blood to the manna which the Jews ate as they wandered about in the desert. Manna was a food for a difficult journey, it was sustenance for a distressed people wrestling with dissension and disappointment. The scriptures do not describe the old or the new manna as a reward for those of perfect vision and unwavering fidelity. Few of the apostles at the Last Supper would have met that standard, least of all Peter and Judas. I am baffled that the reception of the body of Christ can be mistaken as a weapon to enforce conformity or as a punishment for those politicians who become “pro-abortion” and guilty of obstinate and persistent “grave sin.” Again, pro-conscience is not the same as pro-abortion.

This essay is not about the tactics of individual politicians or of Church authorities and it does not rest on a thorough examination of all the literature available. Yet it does reflect on those public statements, which influence the current public debate. And it has certainly not been an attack on the sound moral principles of philosophy or on the authoritative teaching of the Catholic Church. Nor does the essay separate the domains of faith and public action. In fact, with Bishop Skylstad, I would argue for a more profound and sustained engagement of faith with the totality of the secular world and a greater awareness of the strategic side of morality where

compromise of tactics is not the same as compromise of principles. The Second Vatican Council is so clear on its approach: “The truth cannot impose itself except by virtue of its own truth, as it wins over the mind with both gentleness and power” The point in the present crisis over abortion is not to win an argument or an election, though this must be faced in a limited context, but to advance the wisdom of mankind, especially among those who face frightening moral challenges without the guidance of either faith or of evidence which they can comprehend. This is the more daunting task. Matthew’s (12:19) characterization of Jesus bears repeating: “He will not wrangle or cry aloud, nor will anyone hear his voice in the streets. He will not break the bruised reed or quench the smoldering wick until he brings justice to victory.” Jesus thought differently. He knew the difference between tolerating evil and condoning it. Perhaps embracing the bruised reed and the smoldering wick, up close so that the voice of a person can be heard, is one better way to bring justice to victory.