

AMERICAN CATHOLICS AND AMERICAN POLITICS

Prefatory Note. The issues I collect under the label "religion in politics" are, for me, at least as much existential as intellectual. I am a religious believer—in particular, a religious believer for whom the Roman Catholic tradition has been formative. I am also a citizen of a liberal democracy: the United States. Indeed, I am grateful to be—I am enthusiastic about being—a citizen of a liberal democracy.¹

In some of my books, I have spoken to those of my fellow citizens who are not religious believers about how I and other religious believers, as religious believers, may and should participate in politics. I now want to speak to those of my fellow citizens who are also fellow religious believers—fellow Catholics—about how I and other Catholics, as Catholics, may and should participate in politics. This is, for me, a new topic, and the paper I am about to present is my first attempt to think "in writing" about the relevant issues.

Perhaps it is not unfitting for me, a mere lawyer in this den of Catholic theologians, to do in my paper what I am about to do: quote liberally the voices of several Catholic theologians. In any event, my paper is, in part, a collage of Catholic theological voices—voices that are surely familiar to all of you. I have assembled, or conscripted, these voices, these texts—I have relied on them—in my attempt to think about the relevant issues. I hope you will be patient with me as I rehearse the texts with you in the course of presenting my paper.

I.

For about fifteen years now, I have been engaged by the controversial question of the proper role of religion in politics—the proper role, that is, of religiously grounded moral beliefs in the politics and law of the United States and of other, kindred liberal democracies.² I have written two books addressing this question

¹The idea of human rights is not merely an integral part, but a large part, of the idea of liberal democracy. But that's another topic. See Michael J. Perry, *The Idea of Human Rights: Four Inquiries* (New York: Oxford University Press 1998).

²A moral belief—for example, the belief that homosexual sexual conduct is always immoral—is "religiously" grounded, for present purposes, if it is rooted in one or more of three ideas:

- The idea of a God-inspired text (or texts), like the Bible, that teaches moral truth—if not all moral truth, at least all the moral truth one needs to be saved.
- The idea of a God-anointed figure (or figures), like the Pope, who teaches moral truth.
- The idea of a God-created and God-maintained order—including, in particular, a God-fashioned human nature—that is the fundamental criterion of moral truth.

(*Love and Power* [Oxford, 1991] and *Religion in Politics* [Oxford, 1997]), and I am now writing a third (*One Nation, under God*). This is, for us citizens of the United States, a *perennially* controversial question; we are perennially divided about the proper role of morality in our politics, including—indeed, especially—religiously grounded morality.³ This is due in substantial part, no doubt, to the fact that we are perennially divided in our judgments about a host of important moral issues—and about a host of connected political issues. If we were united in our judgments about these moral/political issues, we would have less reason to argue with one another about the extent to which morality and religion should figure in our politics. But we are not united; we are perennially divided.⁴

The religious grounding *vel non* of a moral belief is person-relative: A moral belief that is religiously grounded for one person may not be for another. Two persons may both believe (for example) that homosexual sexual conduct is always immoral but each for a different reason—one, solely for a religious reason, the other, solely for a nonreligious (secular) reason. A person's moral belief is religiously "grounded," for present purposes, if she accepts the moral belief because she accepts one or more religious premises that support the belief—for example, the premise that the Bible teaches that the conduct is immoral—and if she would not accept the belief if she did not accept the supporting religious premise or premises. Thus, a person's moral belief is not religiously grounded, in the sense in which I mean, if she would accept the belief even if she did not accept any supporting religious premise—that is, if she would accept it solely because she accepts one or more nonreligious (secular) premises that support the belief. Political reliance on moral beliefs that are religiously grounded, in the sense just indicated, pose in their most difficult and urgent form the various questions about religion in politics that have engaged me. Assume that, as I argue in the book I'm now writing, political reliance on a religiously grounded moral belief is problematic neither according to the morality of liberal democracy nor according to the American morality of religious freedom. It follows, then, *a fortiori*, that for a person to rely on a moral belief *that she would accept even if she did not accept any supporting religious premise* is not problematic.

³In his book, *The Death of Outrage: Bill Clinton and the Assault on American Ideals* (New York: Free Press, 1998), William J. Bennett writes:

[The president's men] offer a temptation to their supporters: the temptation to see themselves as realists, worldly-wise, sophisticated: in a word, European. That temptation should be resisted by the rest of us. In America, morality is central to our politics and attitudes in a way that is not the case in Europe, and precisely this moral streak is what is best about us. . . . Europeans may have something to teach us about, say, wine or haute couture. But on the matter of morality in politics, America has much to teach Europe. (17)

But "on the matter of morality in politics," we Americans do not speak with, nor would we teach with, one voice.

⁴We are, moreover, congenitally divided. We citizens of the United States have been divided not only about great moral issues (e.g., slavery) but also about fundamental religious issues since the very birth of our nation. "As it arose in America, the problem of pluralism was unique in the modern world, chiefly because pluralism was the native condition of American society. It was not, as in Europe and England, the result of a disruption or decay of a previously existent religious unity." John Courtney Murray, *We Hold These Truths* (New York: Sheed & Ward, 1960) 27. Murray added: "This fact created the possibility of

The moral issues and connected political issues that divide us change over time, of course. Here are four prominent contemporary examples:

- Some believe that homosexual sexual conduct is always immoral and oppose the legal recognition of same-sex marriage; others believe that there is no morally relevant difference between heterosexual marriage and same-sex marriage and support legal recognition.
- Some believe that physician-assisted suicide is always immoral and oppose de-criminalization of the practice; others believe that physician-assisted suicide is sometimes a morally acceptable option and support de-criminalization.
- Some believe that the death penalty is always immoral and support abolition of the death penalty; others believe that the death penalty is sometimes morally appropriate and oppose abolition.
- Some believe that most abortions are immoral and support re-criminalization of most abortions;⁵ others believe that abortion is often a morally acceptable option and oppose re-criminalization.⁶

Imagine a religious believer—a legislator, say—who faces this political choice: She must decide whether to vote to outlaw, or otherwise disfavor, particular conduct (e.g., abortion or same-sex marriage). She wonders what weight, if any, she should put on her religiously grounded belief that the conduct is immoral; in particular, she worries that it might not be appropriate for her to disfavor the conduct on the basis of her religiously grounded moral belief. In the book I'm now writing, I inquire whether the morality of liberal democracy counsels her against disfavoring the conduct on the basis of her religiously grounded moral belief. I also address, in my book, a different but, for us citizens of the United States, comple-

a new solution; indeed, it created a demand for a new solution. The possibility was exploited and the demand was met by the American Constitution" (ibid.).

⁵A state would be constitutionally free to recriminalize most abortions, however, only if the United States Supreme Court overruled *Roe v. Wade*, 410 U.S. 113 (1973). For my critique of the court's decision in *Roe*, see Michael J. Perry, *We the People: The Fourteenth Amendment and the Supreme Court* (New York: Oxford Univ. Press 1999) 151-79.

⁶These examples of political controversy rooted in moral controversy are not meant to suggest that one who believes that particular conduct is immoral will always want the law to ban the conduct. One who believes that (particular) conduct is immoral may have good reasons to want the law *not* to ban the conduct. (Similarly, one who believes that conduct—e.g., physician-assisted suicide—is sometimes a morally acceptable option may have good reasons to want the law to ban the conduct.) Nonetheless, with respect to conduct believed by many to be immoral, the claim that the conduct is immoral is typically an important part of the argument that the law ought ban, or otherwise disfavor, the conduct. (The law can disfavor conduct without banning it. For example, for the law not to recognize same-sex marriages, which exist in spite of the fact that the law does not recognize them—that is, for the law not to extend to homosexual marriages the benefits it grants to heterosexual marriages—is not for the law to ban same-sex marriages, but it is for the law to disfavor them.)

mentary question: Does the United States's distinctive constitutional morality of religious freedom—in particular, the constitutional requirement that government not “establish” religion—forbid government to disfavor the conduct on the basis of a religiously grounded belief that the conduct is immoral? (At least, does the nonestablishment norm forbid government to disfavor conduct on the basis of a moral belief for which there is no plausible, independent secular ground?) I conclude, in my book, that neither the morality of liberal democracy nor even the nonestablishment norm stands in the way of citizens or legislators or other policymakers banning or otherwise disfavoring conduct on the basis of a religiously grounded belief that the conduct is immoral (even if the belief lacks plausible, independent secular grounding).⁷ That conclusion will surely please Pope John Paul II and “the vast majority of Americans” to whom he referred in the following statement:

It would truly be a sad thing if the religious and moral convictions upon which the American experiment was founded could now somehow be considered a danger to free society, such that those who would bring these convictions to bear upon your nation's public life would be denied a voice in debating and resolving issues of public policy. The original separation of church and state in the United States was certainly not an effort to ban all religious conviction from the public sphere, a kind of banishment of God from civil society. Indeed, the vast majority of Americans, regardless of their religious persuasion, are convinced that religious conviction and religiously informed moral argument have a vital role in public life.⁸

⁷A word of explanation. To make a political choice on the basis of a belief—to base the choice on the belief—is to make a political choice that one would not make in the absence of the belief. (To make a political choice partly, not solely, on the basis of a belief is still to make a political choice that one would not make in the absence of the belief.) To rely on a belief in making a political choice is not necessarily to base the choice on the belief: one may be relying on the belief as additional support for a choice that one would make, on the basis of some other ground, even in the absence of the belief. The claim that one may not base a political choice on a belief of a certain kind—for example, a religiously grounded belief—is therefore weaker, in the sense of less restrictive, than the claim that one may not rely on the belief at all, that one may not put any weight whatsoever on the belief, in making a political choice. If the weaker (less restrictive) claim cannot be sustained, then *a fortiori* the stronger (more restrictive) claim cannot be sustained either. If the weaker claim cannot be sustained that, according to the morality of liberal democracy, one may not make a political choice disfavoring conduct on the basis of a religiously grounded belief that the conduct is immoral, it is unnecessary to focus on the stronger claim that in making the choice one may not rely on the belief at all. And if the weaker claim cannot be sustained that, under the nonestablishment norm, government may not disfavor conduct on the basis of a religiously grounded belief that the conduct is immoral, it is unnecessary to focus on the stronger nonestablishment claim that in disfavoring the conduct government may not rely on the belief at all.

⁸Documentation, “John Paul II on the American Experiment” (17 December 1997),

II.

That "vast majority of Americans" no doubt includes the vast majority of American Catholics. As we know, however, there are in the United States many citizens, including many legislators and other policymakers, who self-identify as Catholic but who are not persuaded by the Pope's—or, if you prefer, the magisterium's⁹—"religiously informed moral argument" about one or more controversial issues. Indeed, there are many American Catholics whose own religiously grounded moral judgment about one or more such issues is contrary to the magisterium's judgment. Yet it often seems that the Pope and the bishops—including, in the United States, the National Conference of Catholic Bishops—want Catholics, in deciding what political choice to make, not merely to give a properly respectful hearing to the magisterium's position on the moral issue at hand but to defer to the magisterium's position; it often seems that the Pope and the bishops believe that Catholic citizens/legislators/policymakers lack the competence to work out, even in respectful conversation with the teaching of the magisterium, their own positions on the moral issue at hand and do not want them to try to do so; indeed, it often seems that the Pope and the bishops believe that if a Catholic citizen/legislator/policymaker does work out her own position on the moral issue at hand, and if her position is contrary to the position of the magisterium, and if she makes a political choice on the basis of her own position rather than on the basis of the magisterium's position, she is not being a "faithful" Catholic.¹⁰

First Things (April 1998): 36, 37.

⁹The "magisterium" is the "teaching office and authority of the Catholic Church; also the hierarchy as holding this office." *The HarperCollins Encyclopedia of Catholicism*, ed. Richard P. McBrien et al. (San Francisco: HarperCollins 1995) 805. "The whole episcopal college is the bearer of supreme magisterium, which it exercises both when dispersed throughout the world and when gathered in an ecumenical council. The pope, as head of the episcopal college, can exercise the supreme teaching authority that resides in this college" (ibid.). "At the present time the term 'magisterium' refers, for all practical purposes, to the hierarchical magisterium alone, especially that of the pope" (ibid., 807). For a fuller discussion, see ibid., 805-808.

¹⁰Is all this "seeming" an illusion? I don't think so. See, e.g., Bishop James McHugh, "Political Responsibility and 'Living the Gospel of Life,'" *Origins* 29 (1999): 290, 292:

[A] bishop may establish a policy that protects people from being misled. Such a policy could contain the following elements for Catholic [public] officials who persist in their actions and statements contrary to the Gospel of Life. Such persons

would not be invited:

- To leadership positions in the diocese, parish, or other church agencies or organizations.
- To receive any type of honor or public recognition by church agencies or organizations.
- To serve as a chairperson or committee member of major church celebrations or

Having argued, in the book I'm now writing, that neither the morality of liberal democracy nor the nonestablishment norm stands in the way of citizens or legislators or other policymakers banning or otherwise disfavoring conduct on the basis of a religiously grounded belief that the conduct is immoral, I now want to argue, in this paper, that, *with respect to moral issues that have become widely controversial among those Catholics and other Christians engaged by the issues*, it is important for a Catholic citizen/legislator/policymaker to work out her own position on the moral issue at hand, albeit in conversation with the teaching of the magisterium, and then to make a political choice on the basis of her own position, even if her position is contrary to the position of the magisterium. I also argue that for a Catholic to do so does not entail that she is not being a "faithful" Catholic.

(I do not add casually the proviso "albeit in conversation with the teaching of the magisterium." The proviso is important: There is no excuse for a citizen/legislator/policymaker *to self-identify as Catholic* and then, in struggling with a difficult moral issue [capital punishment, e.g., or physician-assisted suicide, or abortion¹¹] to fail to enter into conversation with the teaching of the magisterium—and with the reflections of the Pope and, more locally, the National Conference of Catholic Bishops. But to enter into conversation with the teaching of the magisterium is not to defer to, or necessarily to end up in agreement with, that teaching.¹²)

events, including fund-raising programs.

—To exercise any liturgical ministry or public role in the celebration of Mass or the sacraments.

—To celebrated lectures or other public events where the speaker is given positive recognition or approval to be speaker at graduation ceremonies, anniversary celebrations.

See also George F. Will, "Being 'Most Mentioned,'" *Newsweek* (12 June 2000): 84 (referring to Erie, Pennsylvania Bishop Donald Trautman's decree that "public officials whose policies are opposed to church teachings will not be featured participants at church events").

¹¹The list of examples could go on for quite some time: nuclear deterrence, economic justice, immigration, etc.

¹²The following passages from a recent statement by the Assembly of (Catholic) Bishops of Quebec, *Annoncer l'Évangile dans la culture actuelle au Québec*, help explain why it is important to enter into conversation with the teaching of the magisterium on the moral issue at hand even if, finally, one ends up disagreeing with that teaching:

For our contemporaries, truth may come from tradition, but it is also the fruit of their own work of exploration. It is received, but it is also discovered. It may remain beyond us, but it comes to us by way of the subject's own activity on a personal journey. In this view, tradition and teaching may have a role to play in a person's pursuits, in the quest of a subject. Tradition and teaching are not imposed as a kind of final or definitive word, but function as memory, reference points, and markers or as a word which questions and confronts one's own discoveries, a word which evokes a word from the subject. Statements from tradition are critiques before being taken up by the subject. Tradition no longer represents a catalogue of timeless, ready-made answers from which one has only to pick and choose. . . . Tradition is not first and foremost a source for

In 1989, in his book *Public Catholicism*, historian David O'Brien suggested "that, after two centuries of organized existence in the United States, the American church has not evolved a coherent understanding of its public role and responsibilities."¹³ In 1975, in what should be understood partly as an effort to repair this state of affairs, the U.S. bishops began their practice of issuing "a reflection on 'political responsibility' in advance of each presidential election."¹⁴ Last October, in the conclusion to their most recent such reflection, the bishops asked: "What does it mean to be a believer and a citizen in the year 2000 and beyond?"¹⁵ Let me suggest this as a more precise formulation of the question the bishops meant to ask: "What does it mean to be a Catholic and a citizen of the United States in the year 2000 and beyond?" This paper is a response—a partial response—to that question. My overarching aim in this paper is to do what Kenneth Himes, President-elect of the Catholic Theological Society of America, recently urged Catholics to do: "reflect on the experience of being faithful disciples and free citizens in a democratic nation."¹⁶

The position I defend in this paper is best developed, I think, in the context of one or more particular moral/political controversies. Due to constraints of space and time, one such controversy will have to do. Given the prominent public role Catholic bishops recently played both in California, in (successfully) supporting Proposition 22,¹⁷ and in Vermont, in (unsuccessfully) opposing a bill "creating

answers. It puts us in dialogue with the quests and pursuits of individuals from the past, who, in given situations, produced a given faith-filled meaning. Conceived of in this way, tradition no longer elicits a negative response from many of our contemporaries who see in it something other than an authority which short-circuits our own attempts at discovery by providing, in advance, answers to all our questions, both now and in the future. Better yet, understood in this way, tradition allows the subject to shift her center of concern outside the self and enter into a fruitful dialogue with other points of view which find expression in tradition. . . .

(These passages are from a brief excerpt of the bishops' 101-page text—an excerpt translated into English—that appears pp. 1-3 of the Winter 2000 issue of the Canadian journal *The Ecumenist*.)

¹³David O'Brien, *Public Catholicism* (New York: Macmillan, 1989) 7.

¹⁴USCC Administrative Board, "Faithful Citizenship: Civic Responsibility for a New Millennium," *Origins* 29 (1999): 309, 317n.1.

¹⁵*Ibid.*, 317.

¹⁶Kenneth Himes, OFM, "Catholic Political Responsibility in This Time and Place," *Origins* 29 (2000): 614, 616.

¹⁷On 7 March 2000, the ballot initiative known as Prop 22 passed by a margin of about 2 to 1. According to the 2000 California Primary Election Ballot Measure Summary, Proposition 22 "adds a provision to the Family Code providing that only marriage between a man and a woman is valid or recognized in California."

same-sex marriage in almost everything but the name,"¹⁸ the controversy I have chosen to contextualize my argument in this paper is at least as timely as any.

III.

In the United States today, many persons, including many religious believers—indeed, including many Catholics¹⁹—hold that same-sex marriage is not immoral and that the law should recognize same-sex marriage by extending to same-sex marriage the legal benefits granted to heterosexual marriage.²⁰ But many other persons hold that homosexual sexual conduct, including same-sex marriage, is always immoral and that the law should not recognize same-sex marriage; for the law to do so, they argue, would be for the law both to affirm immorality and, thereby, to encourage its spread.²¹

¹⁸Carey Goldberg, "Vermont Gives Final Approval to Same-Sex Unions," *New York Times* (National Edition), 26 April 2000, A12.

¹⁹A revealing statistic: According to survey data gathered by Andrew Greeley, only a little more than half of all American Catholic priests (56%) accept the Church's teaching that homosexual sexual conduct is always immoral. See Andrew M. Greeley, "A Sea of Paradoxes: Two Surveys of Priests," *America* (16 July 1994): 6, 8.

²⁰See, e.g., "Separate but Equal?" (editorial), *New Republic* (10 January 2000): 9: "As civil marriage is currently conceived and practiced in America, it contains no requirements and holds out no aspirations that homosexuals cannot achieve as easily as heterosexuals."

²¹It bears emphasis that same-sex marriages already exist; they exist in spite of the fact that the law does not recognize them. The question is whether the law should recognize them. Even though, for now, the law does not recognize same-sex marriages, they exist: "[C]ertain same-sex unions already are functioning in their communities as marriages. These gay and lesbian couples support and are supported by the community's practices of marriage and family as a whole. With these unions already in place, the task is not to reformulate marriage so that gays and lesbians might enter. Instead, the task is to understand how and why these same-sex unions fit so well, given that so many good arguments are made against them." David McCarthy Matzko, "Homosexuality and the Practices of Marriage," *Modern Theology* 13 (1997): 371, 372.

One question is whether the law should recognize same-sex marriages. Another is whether the law *must* recognize them. I have argued elsewhere that a state's refusal to recognize same-sex marriages violates the Fourteenth Amendment to the United States Constitution. See Perry, *We the People*, above, at 131-50. In December 1999, the Supreme Court of Vermont ruled that the Vermont Constitution requires Vermont to extend to "same-sex couples . . . the benefits and protections that its laws provide to opposite-sex married couples." *Baker v. State* [Vermont], 744 A.2d 864, 867 (Vt. 1999).

We hold that the State is constitutionally required to extend to same-sex couples the common benefits and protections that flow from marriage under Vermont law. Whether this ultimately takes the form of inclusion within the marriage laws themselves or a parallel "domestic partnership" system or some equivalent statutory alternative, rests with the Legislature. Whatever system is chosen, however, must conform with the constitutional imperative to afford all Vermonters the common benefit, protection, and

The moral argument at the heart of the fierce political controversy over whether the law should recognize same-sex marriage—the argument about whether homosexual sexual conduct is always immoral—is at bottom an argument about the requirements (conditions) of human well-being. Those who believe that homosexual sexual conduct is always immoral do so mainly because they believe that engaging in homosexual sexual conduct is always hostile to the authentic well-being of those who do so and is never, therefore, a fitting way for human beings to act. Thus, the argument about whether homosexual sexual conduct is always immoral exemplifies something I noted in my recent Giannella Lecture at Villanova (“What Is ‘Morality’ Anyway?”), namely, that “moral” argument is often about this:

What is good—truly good—for those we should care about (including ourselves)? And what is bad for them? In particular: What are the requirements of one’s well-being? (The “one” may be, at one extreme, a particular human being or, at the other, each and every human being.) What is friendly to (the achievement of) one’s well-being, and what is hostile to it? What is conducive to or even constitutive of one’s well-being, and what impedes or even destroys it?²²

security of the law. (Ibid.)

But even if no state were constitutionally obligated to recognize same-sex marriages, the question would remain whether, nonetheless, the law should recognize them—whether it should do so as a matter not of constitutional obligation but of public policy and political morality.

²²As I said, we Americans are perennially divided in our judgments about many important moral issues and connected political issues. (I suggested that this is one reason we Americans are as divided as we always are about the extent to which morality and religion should figure in our politics). Yet, it is often obscure what, deep down, we Americans (and others) are arguing about when we argue about “morality.” (By contrast, it is often clear what we are arguing about when we argue about, for example, “economics” or “history.”) If our discussions of religion and politics are to be as productive as possible, it is important that we be as clear as possible about the subject matter of “moral” argument. When we Americans, Catholics included, are engaged in what we understand to be “moral” argument, most of us seem to be arguing about one or more of three basic questions. In my Gianella Lecture, in the course of commenting on the controversy among legal academics and contemporary moral philosophers as to what the subject matter of morality is, I sketched the three questions. See Michael J. Perry, “What Is ‘Morality’ Anyway?” *Villanova L. Rev.* (forthcoming, 2000) (Donald M. Gianella Memorial Lecture). It may be helpful to rehearse the questions, or sets of questions, here.

First, and most fundamentally, “moral” argument is often about this:

Which human beings ought we to care about—which ones, that is, besides those we already happen to care about, those we already happen to be emotionally or sentimentally concerned for or attached to: ourselves, our families, our tribes, and so on? Variations on the question: Which human beings ought to be the beneficiaries of our respect; the welfare, the well-being, of which human beings ought to be the object of our concern? Which human beings are subjects of justice; which are inviolable (or

“sacred”)? All human beings, or only some?

There is a related question, but it is really just a variation on the question about which human beings are inviolable: Who is a human being; that is, what members of the species *Homo sapiens* are truly, fully human? Women? Nonwhites? Jews? Cast as the claim that only some individuals are human beings, the claim that only some human beings are inviolable has been, and remains, quite common. According to Nazi ideology, for example, the Jews were pseudohumans. See Johannes Morsink, “World War Two and the Universal Declaration,” *Human Rights Q.* 15 (1939) 357, 363. There are countless other examples, past and present:

Serbian murderers and rapists do not think of themselves as violating human rights. Further they are not doing these things to fellow human beings, but to *Muslims*. They are not being inhuman, but rather are discriminating between the true humans and the pseudohumans. They are making the same sort of distinction as the Crusaders made between the humans and the infidel dogs, and the Black Muslims make between humans and blue-eyed devils. [Thomas Jefferson] was able both to own slaves and to think it self-evident that all men are endowed by their creator with certain inalienable rights. He had convinced himself that the consciousness of Blacks, like that of animals, “participates more of sensation than reflection.” Like the Serbs, Mr. Jefferson did not think of himself as violating *human* rights.

The Serbs take themselves to be acting in the interests of true humanity by purifying the world of pseudohumanity.

Richard Rorty, “Human Rights, Rationality, and Sentimentality,” in *On Human Rights: The Oxford Amnesty Lectures 1993*, ed. Stephen Shute and Susan Hurley (New York: Basic Books 1993) 111, 112; see also at 125.

Second, “moral” argument is often about this:

What is good—truly good—for those we should care about (including ourselves)? And what is bad for them? In particular: What are the requirements of one’s well-being? (The “one” may be, at one extreme, a particular human being or, at the other, each and every human being.) What is friendly to (the achievement of) one’s well-being, and what is hostile to it? What is conducive to or even constitutive of one’s well-being, and what impedes or even destroys it?

Third, “moral” argument is often about priorities among conflicting goods:

Should I act in a way that is good for A (someone I should care about) in one respect but bad for her in another? Or in a way that is good for A but not good, or even bad, for B (someone else I should care about)? Or in a way that is good for me but not good, or even bad, for you? (That, according to the Gospel vision, I should love the Other does not mean that I should not love myself too. According to the Gospel vision, I should love the Other “as myself.”) Or in a way that is good for my family (tribe, nation, etc.) but not good, or even bad, for your family?

See, generally, Garth L. Hallett, *Priorities and Christian Ethics* (Cambridge: Cambridge University Press, 1998). See also Peter Unger, *Living High and Letting Die: Our Illusion of Innocence* (New York: Oxford University Press, 1996).

“Moral” argument is often and preeminently about one or more of these three large subjects: Which human beings ought we to care about? What is truly good for those we should care about—and what is bad for them? And how should we resolve conflicts among goods—

Many homosexual persons and others hold that same-sex marriage is (or would be) truly good for many homosexual persons. But many others—including the magisterium of the Roman Catholic Church—hold that homosexual sexual conduct, including same-sex marriage, is always truly bad for all persons. On what basis can a citizen/legislator/policymaker who self-identifies as Roman Catholic adjudicate this controversy? On what basis should she adjudicate it? Consider the following two passages, one from John Mahoney's magisterial book, *The Making of Moral Theology: A Study of the Roman Catholic Tradition* (1987), the other from John Noonan's illuminating essay, *Development in Moral Doctrine* (1993). First, Mahoney:

At any stage in history all that is available to the Church is its continual meditation on the Word of God in the light of contemporary experience and of the knowledge and insights into reality which it possesses at the time. To be faithful to that set of circumstances . . . is the charge and the challenge which Christ has given to his Church. But if there is a historical shift, through improvement in scholarship or knowledge, or through an entry of society into a significantly different age, then what that same fidelity requires of the Church is that it respond to the historical shift, such that it might be not only mistaken *but also unfaithful* in declining to do so.²³

Now, Noonan:

One cannot predict future changes; one can only follow present light and in that light be morally certain that some obligations will never alter. The great commandments of love of God and of neighbor, the great principles of justice and charity continue to govern all development. God is unchanging, but the demands of the New Testament are different from those of the Old, and while no other revelation supplements the New, it is evident from the case of slavery alone that it has taken time to ascertain what the demands of the New really are. All will be judged by the demands of the day in which they live. It is not within human competence to say with certainty who was or will be saved; all will be judged as they have conscientiously acted. In new conditions, with new insight, an old rule need not be preserved in order to honor a past discipline. . . . In the Church there can always be fresh appeal to Christ, there is always the possibility of probing new depths of insight. . . .

in particular, between what is good for some we should care about and what is good for others we should care about? As between the first and second questions, the second—or at least a particular instance of it—is, existentially, the more fundamental of the two. Normally, one cares about oneself; one is committed to one's own welfare. So, a particular instance of the question "What is truly good for those we do or should care about?" is the question "What is truly good for oneself?" And a particular instance of that question, in turn, is "Which human beings is it truly good for one to care about?" But it is useful, I think, to keep the two questions distinct: Which human beings ought we to care about? And what is truly good for those we do or should care about—and what is bad for them?

²³John Mahoney, SJ, *The Making of Moral Theology: A Study of the Roman Catholic Tradition* (Oxford: Clarendon Press, 1987) 327; emphasis added.

Must we not, then, frankly admit that change is something that plays a role in [Christian] moral teaching? . . . Yes, if the principle of change is the person of Christ.²⁴

Noonan refers to "new conditions" and "new depths of insight." Mahoney refers to the Church's "continual meditation on the Word of God in the light of contemporary experience and of the knowledge and insights into reality which it possesses at the time." In her essay, *An Ethic for Same-Sex Relations* (1983), Margaret Farley writes:

The final source for Christian ethical insight is [contemporary human experience]. Scripture, tradition, and secular disciplines must all reflect on experiences, past and present. What differentiates the source I am calling "contemporary experience" is the unsystematic way we have access to it. In this context, I am referring primarily to the testimony of women and men whose sexual preference is for others of the same sex.²⁵

This, then, is a principal way for Catholics (and others) to adjudicate the controversy between those who hold that same-sex marriage is (or would be) truly good for many homosexual persons and those who hold that same-sex marriage is always truly bad for all persons: to inquire whether contemporary human experience supports the belief that homosexual sexual conduct is always hostile to human well-being—the belief that no kind of homosexual sexual relationship can be truly fulfilling for any human being. If contemporary human experience does not support the belief that homosexual sexual conduct is always hostile to human well-being, this is surely reason, for Catholics no less than for others, to be skeptical that such conduct is always hostile to human well-being.

Why should Catholics (and others) put such weight on contemporary human experience? Why is such experience relevant? Authentic well-being is something that, in normal circumstances, human beings can be expected to experience. With respect to questions about the requirements of human well-being, human experience is, to say the least, probative. "Ethics will never be like physics, chemistry, or certain types of sociology, because it understands the moral reality to be about an interaction between persons and the world which can only be known from the reports of those who experience that interaction."²⁶ As Margaret Farley argues in her essay, *The Role of Experience in Moral Discernment* (1996): "Experience is essential to both moral discernment and deliberation."²⁷ Now, as John Noonan has

²⁴John T. Noonan, Jr., "Development in Moral Doctrine," *Theological Studies* 54 (1993): 662, 676-77.

²⁵Margaret A. Farley, "An Ethic for Same-Sex Relations," in *A Challenge to Love: Gay and Lesbian Catholics in the Church*, ed. Robert Nugent (New York: Crossroad 1983) 93, 99-100.

²⁶Robin W. Lovin, "Empiricism and Christian Social Thought," *Annual of Society of Christian Ethics* 25 (1982): 41.

²⁷Margaret A. Farley, "The Role of Experience in Moral Discernment," in *Christian*

cautioned, "[e]xperience as such, taken as 'raw experience,' the mere participation in this or that phenomenon, is . . . not the key. Raw experience carries with it no evaluation. But experience, *suffered or perceived in the light of human nature and of the gospel*, can be judged good or bad. It was the experience of unfreedom, in the gospel's light, that made the contrary shine clear."²⁸ Farley herself acknowledges that "[b]y itself, experience does not provide an incontestable, foundational deposit of insight in a fund of moral wisdom. . . . Interpretations of sexual experience can yield illusion and falsehood on a par with some interpretations of the Bible and of the Christian tradition."²⁹ Nonetheless, "there are some questions for which [contemporary experience] is an essential and even determinative source. I would argue that same-sex relations today present one of those questions."³⁰ Farley elaborates:

[T]here are some things important for moral discernment that simply cannot be known without experience—things like the limitations and possibilities for ourselves as moral agents, the dimensions of suffering and diminishment, the ways to hope and to love, the parameters of intimacy, the multiple consequences of injury and injustice. Moreover, all of our morally relevant knowledge (from whatever source) is modified when it partakes of experience—whether this is our knowledge of disease or of the complexities of a moral situation or of God. And there are issues of specific moral rules (and their exceptions) that cannot be resolved without access to some persons' experience—for example, issues of sexuality, of discrimination, of fidelity to covenants.³¹

In *An Ethic for Same-Sex Relations*, Farley proceeds cautiously, accepting that "we have as yet no univocal voice putting to rest all of our questions regarding the status of same-sex relations." But she rightly insists that

[w]e do . . . have some clear and profound testimonies to the life-enhancing possibilities of same-sex relations and the integrating possibilities of sexual activity within these relations. We have the witness that homosexual activity can be a way of embodying responsible human love and sustaining Christian friendship. Without grounds in scripture, tradition, or any other source of human knowledge for an absolute prohibition of same-sex relations, this witness alone is enough to demand of the Christian community that it reflect anew on the norms for homosexual love.³²

Ethics: Problems and Prospects, ed. Lisa Sowle Cahill and James F. Childress (Cleveland: Pilgrim Press 1996) 134, 148.

²⁸Noonan, "Development in Moral Doctrine," 31; emphasis added.

²⁹Margaret A. Farley, "Response to James Hanigan and Charles Curran," in *Sexual Orientation and Human Rights in American Religious Discourse*, ed. Saul M. Olyan and Martha C. Nussbaum (New York: Oxford Univ. Press 1998) 101, 106.

³⁰Ibid.

³¹Farley, "The Role of Experience in Moral Discernment," 144-45.

³²Farley, "An Ethic for Same-Sex Relations," 100.

This path, this way of adjudicating the controversy over the morality of same-sex marriage, should be an attractive option not just for Catholics but for all Christians who accept what Thomas Aquinas taught:

Aquinas remained . . . convinced that morality is essentially rational conduct, and as such it must be accessible, at least in principle, to human reason and wisdom. . . . In the teaching of Aquinas, the purpose of revelation, so far as morality is concerned, appears to be essentially remedial, not absolutely necessary for man. . . . [T]he Christian revelation contains in its moral teaching no substantial element over and above what is accessible to human reason without revelation. . . . Revelation as such has nothing in matters of moral behaviour to add to the best of human thinking. . . .³³

Although the Roman Catholic religious-moral tradition follows Thomas Aquinas in embracing this position, Aquinas's enormous influence on the Christian religious-moral tradition extends far beyond just Catholic Christianity. Christians generally, and not just Catholics, would "want to argue (at least, many of them would) that the Christian revelation does not require us to interpret the nature of

³³Mahoney, *The Making of Moral Theology*, 106, 107, 108. Mahoney then adds: "[B]ut such human thinking is not always or invariably at its best" (109). Also:

["In principle," because t]he participation by man in God's eternal law through knowledge . . . can be corrupted and depraved in such a way that the natural knowledge of good is darkened by passions and the habits of sin. For Aquinas, then, not all the conclusions of natural law are universally known, and the more one descends from the general to the particular, the more possible it is for reason to be unduly influenced by the emotions, or by customs, or by fallen nature. (105-106)

The American philosopher Robert Audi (who identifies himself as a Christian) seems to me naïve about the vulnerability of "secular" argument relative to religious argument in suggesting that

good secular arguments for moral principles may be *better* reasons to believe those principles to be divinely enjoined than theological arguments for the principles, based on scripture or tradition. For the latter arguments seem (even) more subject than the former to cultural influences that may distort scripture or tradition or both; more vulnerable to misinterpretation of religious or other texts or to their sheer corruption across time and translation; and more liable to bias stemming from political or other nonreligious aims. Granting, then, that theology and religious inspiration can be sources of ethical insight, we can also reverse this traditional idea: one may sometimes be better off trying to understand God through ethics than ethics through theology.

Robert Audi, "Liberal Democracy and the Place of Religion in Politics," in Robert Audi and Nicholas Wolterstorff, *Religion in the Public Square* (Lanham MD: Rowman & Littlefield 1997) 20-21.

Secular moral argument can be no less vulnerable to distorting "cultural influences" than religious argument. See Paul F. Campos, "Secular Fundamentalism," *Columbia Law Review* 94 (1994): 1814.

man in ways for which there is otherwise no warrant but rather affords a deeper understanding of man as he essentially is."³⁴

Happily, in deciding whether human experience supports or, instead, belies the claim that same-sex marriage is always and everywhere immoral, the faithful Christian—and, indeed, anyone, Christian or not, believer or not—will be aided enormously by a large literature that has emerged in recent years, a literature that inquires whether, as a matter of human experience, same-sex marriage can be truly fulfilling for some persons. The *Catechism of the Catholic Church* holds (in paragraph 2357) that "homosexual acts are intrinsically disordered" and "[u]nder no circumstances can they be approved." Nonetheless, in recent years, some of the most powerful arguments to the effect that same-sex marriage can be truly and deeply fulfilling for some persons—arguments based on contemporary human experience—have been made by Roman Catholic thinkers.³⁵ Of course, Roman Catholic thinkers continue to defend the position that homosexual sexual conduct is always hostile to human well-being.³⁶

³⁴Basil Mitchell, "Should Law Be Christian?" *Law & Justice* 96/97 (1988): 12, 21.

³⁵One of the most important such works is Kevin T. Kelly, *New Directions in Sexual Ethics* (London: Geoffrey Chapman 1998). For a laudatory review of Kelly's book, see James F. Keenan, SJ, *The [London] Tablet*, 6 July 1998, 878-79. (Kelly, a Catholic priest in England with broad pastoral experience, is a moral theologian.) Other such contributions by Catholic writers include:

- Margaret A. Farley, "An Ethic for Same-Sex Relations" (n. 25 above); see also Farley, "The Role of Experience in Moral Discernment" (n. 31 above); Farley, "Response to James Hanigan and Charles Curran" (n. 29 above). Farley, a member of the Sisters of Mercy, is the Gilbert L. Stark Professor of Christian Ethics at Yale University and a former president both of the Society of Christian Ethics and of the Catholic Theological Society of America.
 - Patricia Beattie Jung and Ralph F. Smith, *Heterosexism: An Ethical Challenge* (Albany: State University of New York Press, 1993). Jung teaches theology at Loyola University of Chicago; Smith, now deceased, was an ordained Lutheran pastor who taught at Wartburg Theological Seminary (Dubuque, Iowa).
 - David McCarthy Matzko, "Homosexuality and the Practices of Marriage" (n. 21 above). Matzko teaches theology at the College of Saint Rose (Albany, New York).
 - Paul J. Weithman, "Natural Law, Morality, and Sexual Complementarity," In *Sex, Preference, and Family*, ed. David M. Estlund and Martha Craven Nussbaum (New York: Oxford University Press, 1997) 227. Weithman teaches philosophy at the University of Notre Dame.
 - Richard Westley, *Morality and Its Beyond* (Mystic CT: Twenty-Third Publications, 1984; 21985) 169-98. Westley teaches philosophy at Loyola University Chicago.
- ³⁶Some prominent examples:
- John Finnis: "Law, Morality, and 'Sexual Orientation'" and "The Good of Marriage and the Morality of Sexual Relations: Some Philosophical and Historical Observations." The first essay (re)appears in *Notre Dame Journal of Law, Ethics, and Public Policy* 9:11; the second appears in the *American Journal of Jurisprudence* (1997): 97.

It is not surprising that so many theologians, philosophers, and others in the Roman Catholic tradition are addressing the issue of same-sex marriage not, or not principally, as a question about what the magisterium teaches (or about what the Bible teaches) but rather as a question about what human experience discloses to be the requirements of authentic human well-being. Again, the Roman Catholic religious-moral tradition, partly because of the influence of Aquinas, is committed to the position "that the Christian revelation does not require us to interpret the nature of man in ways for which there is otherwise no warrant but rather affords a deeper understanding of man as he essentially is."³⁷ So, when John Finnis (for example) sets out to defend the traditional Roman Catholic teaching that homosexual sexual conduct is always antithetical to true human well-being, he does not invoke the putative authority of the magisterium; instead, he tries to construct an argument that is, in Finnis's own words, "reflective, critical, publicly intelligible, and rational."³⁸

IV.

Now, some Catholics will insist that with respect to same-sex marriage, there is no controversy *for Catholics* to adjudicate—that *for Catholics* the magisterium speaks both clearly and authoritatively, and that according to the magisterium, same-sex marriage is always and everywhere immoral. Period!

The first thing to note about this response is how ill-suited it is as a basis of political participation in a religiously pluralistic society like our own. As Richard John Neuhaus has warned: "So long as Christian teaching claims to be a privileged form of discourse that is exempt from the scrutiny of critical reason, it will understandably be denied a place in discussions that are authentically public."³⁹

I have commented critically on the first essay. See Michael J. Perry, *Religion in Politics: Constitutional and Moral Perspectives* (New York: Oxford University Press, 1997) 85-86. Finnis teaches law at both Oxford and Notre Dame.

- James P. Hanigan, "Sexual Orientation and Human Rights: A Roman Catholic View, in *Sexual Orientation and Human Rights in American Religious Discourse*, 63 (see n. 29 above). See also James P. Hanigan, *Homosexuality: The Test Case for Christian Sexual Ethics* (Mahwah NJ: Paulist Press, 1988). Hanigan teaches theology at Duquesne University (Pittsburgh).
- Patrick Lee and Robert P. George, "What Sex Can Be: Self-Alienation, Illusion, or One-Flesh Union," *American Journal of Jurisprudence* (1997): 135. Lee teaches philosophy at the Franciscan University of Steubenville (Ohio); George is a member of the Department of Politics at Princeton.

³⁷See n. 34 above.

³⁸Finnis, "Law, Morality, and 'Sexual Orientation,'" 16.

³⁹Richard John Neuhaus, "Reason Public and Private: The Pannenberg Project," *First Things* (March 1992): 55, 57. Listen, also, to J. Bryan Hehir, who, as the principal drafter of the U.S. Catholic bishops' 1983 letter on nuclear deterrence (National Conference of Catholic Bishops, *Challenge of Peace: God's Promise and Our Response* [1983]), has some

Insisting on a persuasive argument grounded on human experience in support of a claim about the requirements of human well-being is one important way to heed Neuhaus's warning.

Moreover, it is a relatively ecumenical way for Catholics and other religious believers, in pursuit of the truth, to test the various religious pronouncements about the requirements of human well-being that are sometimes articulated in public political debate—for example, statements that certain biblical passages “‘prove’ that heterosexuality is God's exclusive intention for human sexuality and that homosexuality is an abomination before God.”⁴⁰ Only a historically naïve religious

experience in the matter:

[R]eligiously based insights, values and arguments at some point must be rendered persuasive to the wider civil public. There is legitimacy to proposing a sectarian argument within the confines of a religious community, but it does violence to the fabric of pluralism to expect acceptance of such an argument in the wider public arena. When a religious moral claim will affect the wider public, it should be proposed in a fashion which that public can evaluate, accept or reject on its own terms. The [point] . . . is not to banish religious insight and argument from public life[, but only to] establish[] a test for the religious communities to meet: to probe our commitments deeply and broadly enough that we can translate their best insights to others.

Bryan Hehir, “Responsibilities and Temptations of Power: A Catholic View,” unpublished ms. (1988).

The Dutch theologian, Edward Schillebeeckx, who is Catholic, has written: “Even when their fundamental inspiration comes from a religious belief in God, ethical norms . . . must be rationally grounded. None of the participants in [religiously grounded moral discourse] can hide behind an ‘I can see what you don't see’ and then require [the] others to accept this norm straight out.” *The Schillebeeckx Reader*, ed. Robert Schreiter (1984) 263. Even if we assume for the sake of argument that Schillebeeckx's principle should not govern moral discourse in *all* contexts—for example, in the context of a small, monistic, charismatic religious community—the principle should certainly govern moral discourse in *some* contexts, especially in the context of a large, pluralistic, democratic political community like the United States.

⁴⁰Jeffrey S. Siker, “Homosexual Christians, the Bible, and Gentile Inclusion: Confessions of a Repenting Heterosexist,” in *Homosexuality in the Church: Both Sides of the Debate*, ed. Siker (Louisville: Westminster John Knox Press 1994) 178, 184. For Siker's criticism of such interpretations, see 184-91.

Many persons who accept the Bible as a God-inspired text—in particular, as a text that, *inter alia*, reveals the will of God—believe that the Bible indicates that homosexual sexual conduct is always contrary to God's will, that it is always, in that fundamental sense, immoral. This belief about God's will is best understood as a belief about the requirements of human well-being. A religious believer might object that for him or her, this belief is not about (the requirements of) human well-being but only about God's will. It is implausible, however, to believe that a loving God—indeed, a God who *is* love (1 John 4:8; 4:16)

(1) has fashioned human nature—has defined the requirements of human well-being—in such a way that same-sex marriage can be, for some, a truly and deeply fulfilling relationship for them as human beings, but at the same time

(or other) tradition would doubt the value of such ecumenical dialogue, which is an essential way of correcting error and broadening and deepening one's apprehension of truth.⁴¹ "There is, of course, much to gain by sharpening our understanding in dialogue with those who share a common heritage and common experience with us. . . . Critical understanding of the [religious] tradition and a critical awareness of our own relationship to it, however, is sharpened by contact with those who differ from us. Indeed, for these purposes, the less they are like us, the better."⁴² Defending the moderate style of his participation in public discourse about abortion and other issues implicating what he famously called "the consistent ethic of life," the late Joseph Cardinal Bernardin, Archbishop of Chicago, said:

(2) has willed that no human being ever enter into such a relationship.

Therefore, to believe that same-sex marriage is always contrary to God's will is to believe that same-sex marriage can never be truly fulfilling for anyone, that it is always hostile to authentic human well-being.

Charles Curran has raised a helpful question, in correspondence, about my "emphasis on human well-being and human nature. Some people might criticize that [emphasis] as being too anthropocentric and not theocentric enough for a truly Protestant position. . . . The primary question perhaps even in the reformed tradition is what is the will of God and not what is human flourishing or human nature." Letter to Michael J. Perry, 7 August 1995. However, given two assumptions that few if any Christians would want to deny, the distinction between doing "what God wills or commands us to do" and doing "what fulfills our nature" is quite false. The two assumptions are, first, that human beings have a nature—indeed, a nature fashioned by God—and, second, that it is God's will that human beings act so as to fulfill or perfect their nature. As Bernard Williams has observed, "[Preferred ethical categories] may be said to be given by divine command or revelation; in this form, if it is not combined with a grounding in human nature, the explanation will not lead us anywhere except into what Spinoza called 'the asylum of ignorance.'" Bernard Williams, *Ethics and the Limits of Philosophy* (Cambridge MA: Harvard Univ. Press 1985) 96.

The belief that according to the Bible homosexual sexual conduct, including same-sex marriage, is always contrary to God's will is, therefore, the belief that the Bible teaches—that God reveals in the Bible—that homosexual sexual conduct is always hostile to human well-being. Some religious believers hold that according to the inerrant teaching of the Bible, no kind of homosexual sexual relationship can be, for anyone, truly fulfilling.

⁴¹I have discussed the value of ecumenical political dialogue elsewhere. See Michael J. Perry, *Love and Power: The Role of Religion and Morality in American Politics* (New York: Oxford University Press, 1991) chap. 6. See also David Lochhead, *The Dialogical Imperative: A Christian Reflection on Interfaith Encounter* (Maryknoll NY: Orbis Books 1988) 79: "In more biblical terms, the choice between monologue and dialogue is the choice between death and life. If to be human is to live in community with fellow human beings, then to alienate ourselves from community, in monologue, is to cut ourselves off from our own humanity. To choose monologue is to choose death. Dialogue is its own justification."

⁴²Robin W. Lovin, "Why the Church Needs the World: Faith, Realism, and the Public Life," unpublished ms. (1988 Sorenson Lecture, Yale Divinity School).

The substance of the consistent ethic yields a style of teaching it and witnessing to it. The style should . . . not [be] sectarian. . . . [W]e should resist the sectarian tendency to retreat into a closed circle, convinced of our truth and the impossibility of sharing it with others. . . . The style should be persuasive, not preachy. . . . We should be convinced we have *much to learn from the world* and much to teach it. A confident church will speak its mind, seek as a community to live its convictions, *but leave space for others to speak to us, to help us grow from their perspective.*

. . .⁴³

But some Catholics will reply that with respect to the question of the morality of same-sex marriage, Catholics do not have anything "to learn from the world," because according to the clear and authoritative teaching of the magisterium, same-sex marriage is always and everywhere immoral. Such Catholics will argue that the proper inquiry question for a citizen/legislator/policymaker qua Catholic is not whether same-sex marriage is immoral, but only how to persuade enough others that same-sex marriage is immoral to keep the law from affirming the contrary view.⁴⁴ For a Catholic citizen/legislator/policymaker to conclude, against the teaching of the magisterium, that same-sex marriage is not immoral and then to make a policy choice on the basis of that view is for her to fail in her calling to be a "faithful" Catholic.

This way of thinking about a Catholic's political role is deeply misconceived. The place to begin, in making this clear, is the recent statement prepared by the International Theological Commission: *Memory and Reconciliation: The Church*

⁴³Joseph Cardinal Bernardin, "The Consistent Ethic of Life after Webster," *Origins* 19 (1990): 741, 748; emphasis added.

⁴⁴With respect to the "how to persuade" question, such Catholics might concur in the judgment of the Williamsburg Charter: "Arguments for public policy should be more than private convictions shouted out loud. For persuasion to be principled, private convictions should be translated into publicly accessible claims. Such public claims should be made publicly accessible . . . because they must engage those who do not share the same private convictions. . . ." *The Williamsburg Charter: A National Celebration and Reaffirmation of the First Amendment Religious Liberty Clauses* (1988) 22. They might also concur in the judgment of Richard John Neuhaus, who was a principal drafter of the Williamsburg Charter: "[P]ublicly assertive religious forces will have to learn that the remedy for the naked public square is not naked religion in public. They will have to develop a mediating language by which ultimate truths can be related to the penultimate and prepenultimate questions of political and legal contest." Richard John Neuhaus, "Nihilism without the Abyss: Law, Rights, and Transcendent Good," *Journal of Law & Religion* 5 (1987): 53, 62. In commenting on this passage, Stanley Hauerwas has said that "[r]ather than condemning the Moral Majority, Neuhaus seeks to help them enter the public debate by basing their appeals on principles that are accessible to the public." Stanley Hauerwas, "A Christian Critique of Christian America," in *Religion, Morality, and the Law*, ed. J. Roland Pennock and John W. Chapman (New York: New York University Press 1988) 110, 118.

and the Faults of the Past.⁴⁵ The statement distinguishes between “the indefectible fidelity of the church”—the Church understood theologically and analogically as Holy Mother—and “the weaknesses of her members, clergy or laity, yesterday and today.”⁴⁶ The Church, which in the words of the I.T.C. statement is “the bride of Christ ‘with neither blemish nor wrinkle . . . holy and immaculate,’ ” must be neither confused nor conflated with the Church’s “children, pardoned sinners, called to permanent *metanoia*, to renewal in the Holy Spirit.”⁴⁷ The statement acknowledges that the Church’s “sons and daughters,” when acting “in the name of the church,” can do things, and from time to time have done things, “in contradiction to the Gospel.”⁴⁸ Commenting on the I.T.C. statement in the Jesuit weekly *America*, Francis A. Sullivan, SJ, a professor of ecclesiology at the Pontifical Gregorian University in Rome from 1956 to 1992 and now a professor of theology at Boston College, writes:

[T]he hierarchical structure of the church is such that there have always been those who were authorized to act and speak “in the name of the church,” and in her name have proclaimed the church’s doctrine, enacted its laws and determined its official policy. The I.T.C. text recognizes the possibility that what was done “in the name of the church” could have been done “in contradiction to the Gospel.” . . . [O]bviously, it is only members of the hierarchy who have been authorized to act and speak “in the name of the church,” and only they could be meant as those who, in doing so, have acted in contradiction to the Gospel. . . . [Those] things in the history of the church that call for repentance and a request for forgiveness are the official policies and practices that were established or sanctioned by those who were authorized to act and speak in the name of the church, but that were objectively “in contradiction to the Gospel.” . . . What is needed is the frank recognition that some official policies and practices of the church have been objectively in contradiction to the Gospel and have caused harm to many people.⁴⁹

We may say, in the light of the I.T.C. statement, that for a Catholic to dissent from one or more of the doctrines, policies, and practices established by the

⁴⁵*Origins* 29 (2000): 625. The “preliminary note” to the document states:

The study of the topic “The Church and the Faults of the Past” was proposed to the International Theological Commission by its president, Cardinal Joseph Ratzinger, in view of the celebration of the jubilee year 2000. A subcommission was prepared to prepare this study. . . . The general discussion of this theme took place in numerous meetings of the subcommission and during the plenary session of the International Theological Commission held in Rome from 1998 to 1999. By written vote, the present text was approved in *forma specifica* by the commission and was then submitted to the president, Cardinal Ratzinger, prefect of the Congregation for the Doctrine of the Faith, who gave his approval for its publication.

⁴⁶*Ibid.*, 629.

⁴⁷*Ibid.*

⁴⁸*Ibid.*, 635.

⁴⁹Francis A. Sullivan, SJ, “The Papal Apology,” *America* (8 April 2000): 17, 19, 22.

hierarchy in the name of the Church, which can be, and some of which have been, in contradiction to—and in that sense unfaithful to—the Gospel, is not for her to compromise her calling to be faithful to the Church as Holy Mother, possessed of “indefectible fidelity,” the church as “the bride of Christ ‘with neither blemish nor wrinkle . . . holy and immaculate.’ ” (Not that this understanding of “the Church” is uncontroversial or unproblematic.⁵⁰ But because it is the understanding of “the Church” advanced by the present Pope and by the I.T.C., including Cardinal Ratzinger, I want to work with it here.)

How are Catholics to judge whether an official Church doctrine (or policy or practice) that some Catholics fear might be untrue to the Gospel is true to the

⁵⁰See Garry Wills, “The Vatican Regrets,” *New York Review* (25 May 2000): 19. “This constant distinction between ‘the Church’ and its children, or members, or erring sons and daughters, goes against the [Second] Vatican Council’s definition of the Church as the whole ‘people of God.’ ” (ibid.). See also Gregory Baum, “The Church We Love: A Conversation with Miroslav Volf,” *The Ecumenist* (Winter 2000): 13, 15:

I still remember my excitement when reading—in the fifties!—Hans Urs von Balthasar’s long essay, “*Casta Meretrix*” (in English: “The Chaste Whore”). In this essay, von Balthasar argues that church fathers and medieval theologians often spoke of the Church in paradoxical language; they saw the Church as at once holy and sinful, ever faithful and ever in need of conversion, as both *virgo* (virgin) and *meretrix* (whore). These authors recognized contradictory dimensions in the history of the believing community. On the one hand, there is the indefectible divine presence in the Church, while on the other hand there are the Church’s alliance with the powerful, its subservience to the rich, and its unwillingness to be led by the spirit. Again, these failures are met by the divine gifts, the gospel message and the sacraments, ever summoning and enabling the Church to repent and renew its fidelity. After the Reformation, this paradoxical discourse was no longer used in the Catholic Church.

Volf’s critique of Zizioulas’s and Ratzinger’s ecclesiology is well taken. According to both of these theologians, Christ’s identification with the Church is so complete that the Church must be seen as his earthly body, a sacred subject, the bride of Christ “without spot or wrinkle,” standing over and above the historical gathering of the faithful. Since the Reformation, the Catholic Church, relying upon this ecclesiology, has been increasingly unable to acknowledge its faults and failures. In this view, the Church *qua* Church cannot sin. The members of the Church are sinners, and some of them sin in the name of the Church. However, the Church remains holy, ever free of sin. Today Pope John Paul II wants the Catholic Church in various parts of the world to confess its infidelities. Nonetheless, he continues to insist that these betrayals were committed by the sons and daughters of the Church and not by the Church itself, which remains immaculate, as sacred subject. If the Church’s approval of slavery, its blessing on colonialism, its identification with the powerful, its teaching of contempt for Jews and other outsiders and its opposition to religious liberty and human rights are simple failings of the Church’s sons and daughters, and do not involve the Church as such, then the Church is no longer a visible, historical entity. Instead, it follows the Lutheran proposal and becomes an invisible church.

Gospel—or, instead, betrays the Gospel? Clearly, the fact that the doctrine is official—the fact that the doctrine bears the imprimatur of the magisterium—cannot be conclusive, because, *pace* the I.T.C. statement, official Church doctrines can be, as some have been, “in contradiction to the Gospel.” An example: the once-official Church doctrine “that war gives a right to enslave and that ownership of a slave gives title to the slave’s offspring.”⁵¹ (“Six different popes justified and authorised the use of slavery.”⁵²) Another: the once-official Church doctrine “that error has no rights and that fidelity to the Christian faith may be physically enforced.”⁵³ (“Pope Leo X . . . declared that the burning of heretics is in accord with the Holy Spirit.”⁵⁴) Another: “the explicit centuries-long papal teaching that Jews and heretics go to hell unless they convert to the Catholic faith.”⁵⁵

Again: How are Catholics to judge whether an official Church doctrine (policy, practice) is in conformity with the Gospel? The claim is abroad that the official Church doctrine that homosexual sexual conduct is always immoral, because always hostile to human well-being, is a betrayal of the Gospel. Listen to Robert Bellah:

A principled rejection of gay sexuality, whether put forward by the church or any other sector of society, is morally indefensible. It has the same status today as arguments for the inferiority of women. To remain stuck in that position, as the church for the time being seems likely to do, is not only unfortunate: it makes the church collaborate in continuing forms of domination. To put it even more strongly: it makes the church collaborate in sin.⁵⁶

⁵¹Noonan, “Development in Moral Doctrine,” 669.

⁵²Seán Fagan, SM, “Interpreting the Catechism,” *Doctrine & Life* 44 (1994) 412, 416-17.

⁵³Noonan, “Development in Moral Doctrine,” 669.

⁵⁴Fagan, “Interpreting the Catechism,” 416.

⁵⁵Seán Fagan’s entire paragraph (*ibid.*, 416-17) bears quotation here:

A catechism is supposed to “explain,” but this one does not say why Catholics have to take such a rigid, absolutist stand against artificial contraception because it is papal teaching, but there is no reference to the explicit centuries-long papal teaching that Jews and heretics go to hell unless they convert to the Catholic faith, or to Pope Leo X, who declared that the burning of heretics is in accord with the will of the Holy Spirit. Six different popes justified and authorised the use of slavery. Pius XI, in an encyclical at least as important as *Humanae Vitae*, insisted that co-education is erroneous and pernicious, indeed against nature. The Catechism’s presentation of natural law gives the impression that specific moral precepts can be read off from physical human nature, without any awareness of the fact that our very understanding of “nature” and what is “natural” can be coloured by our culture.

⁵⁶Robert N. Bellah, “Foreword” to Richard L. Smith, *AIDS, Gays, and the American Catholic Church* (Cleveland: Pilgrim Press 1994) xii-xiii.

How are Catholic citizens/legislators/policymakers to judge whether official Church doctrine about homosexual sexual conduct is in conformity to the Gospel—or is, instead, a betrayal of it?

David Hollenbach's comments can serve as a partial response to this question:

Faith and understanding go hand in hand in both the Catholic and Calvinist views of the matter. They are not adversarial but reciprocally illuminating. As [David] Tracy puts it, Catholic social thought seeks to correlate arguments drawn from the distinctively religious symbols of Christianity with arguments based on shared public experience. This effort at correlation moves back and forth on a two-way street. It rests on a conviction that the classic symbols of Christianity can uncover meaning in personal and social existence that common sense and uncontroversial science fail to see. So it invites those outside the church to place their self-understanding at risk by what Tracy calls conversation with such "classics."⁵⁷

Hollenbach then adds, following Tracy: "At the same time, the believer's self-understanding is also placed at risk because it can be challenged to development or even fundamental change by dialogue with the other—whether this be a secular agnostic, a Christian from another tradition, or a Jew, Muslim, or Buddhist."⁵⁸

Or, we may add, even if this be a homosexual man or woman living in a same-sex marriage. Recall, here, Margaret Farley's reference to "the testimony of women and men whose sexual preference is for others of the same sex." It is, she writes, "clear and profound testimon[y] to the life-enhancing possibilities of same-sex relations and the integrating possibilities of sexual activity within these relations." In what Hollenbach calls "dialogue with the other," Christian believers may come to concur in Farley's judgment that "[w]e have the witness that homosexual activity can be a way of embodying responsible human love and sustaining Christian friendship" and that "this witness alone is enough to demand of the Christian community that it reflect anew on the norms for homosexual love."⁵⁹ But whether or not a Christian believer comes to concur in that particular judgment, "dialogue with the other" is essential:

[D]isagreements actually lodged in contradictory interpretations of human experience are not without some possibilities of adjudication. Here the requirement is communication, and the potential is for enlargement of experience and expansion of its sources for interpretation. It would be naive in the extreme to suggest that all disagreements about experience are only apparent, and sufficient dialogue will in every case bring harmony. Nonetheless, what communication prevents is a premature acceptance of unbridgeable gaps. What it makes possible is the actual bringing together of diverse experiences in their concreteness and particularity.⁶⁰

⁵⁷See David Hollenbach, SJ, "Contexts of the Political Role of Religion: Civil Society and Culture," *San Diego Law Review* 30 (1993): 877, 894.

⁵⁸*Ibid.*, 894-95.

⁵⁹See n. 32 above.

⁶⁰Farley, "The Role of Experience in Moral Discernment," 148.

But, with respect to the issue of the morality of same-sex marriage, what would the point of such "communication" be if Catholics, on condition of being "faithful," were required to give "religious assent" to the position of the magisterium?⁶¹ What would the point of "dialogue with the other" be if Catholics, to be "faithful," had to deem the issue closed? In any event, such an understanding of the requirements of "faithfulness" is mistaken. Again, and as the statement of the International Theological Commission on "the church and the faults of the past" makes clear, Catholics are called to be faithful to the Church. We may also say that Catholics, like all Christians, are called to be faithful to the Gospel; they are called to be faithful both to the person and to the teaching of Jesus Christ. This call obviously demands that Catholics be discriminating in the exercise of their faith. (Recall John Mahoney's point: "[I]f there is a historical shift, through improvement in scholarship or knowledge, or through an entry of society into a significantly different age, then what that same fidelity requires of the Church is that it respond to the historical shift, such that it might be not only mistaken *but also unfaithful* in declining to do so."⁶²) As I said, this call must not be confused or conflated with a call to indiscriminate obedience to the Church's "sons and daughters," even when they are promulgating doctrines, policies, or practices "in the name of the church."

Bellah's point, I take it, is that fidelity to the Gospel—to the person and teaching of Jesus Christ—is objectively inconsistent with fidelity to the position of the magisterium on the morality of same-sex marriage. Now, Bellah may be wrong, but Catholics are not required, as a condition of being "faithful" to the Church, to conclude that Bellah must be wrong *just because he has come to reject the position of the magisterium*. "Faithful" Catholics may and indeed should decide for themselves, in conversation with the teaching of the magisterium, whether Bellah is wrong—and they should make a political choice on the basis of their own judgment about the matter, even if their own judgment is a "dissenting" judgment. It may be useful to recall here Margaret O'Brien Steinfels's questions in a November 1994 issue of *Commonweal*:

If one doubts whether real communion implies dissent, imagine a church where dissent had been rendered unthinkable, impermissible, or inexpressible.

⁶¹For an illustrative statement of the position that "faithful" Catholics owe "religious assent" to the teaching of the magisterium, see Gerard V. Bradley, "Grounds for Assent" (letter to the editor), *Commonweal* (9 September 1994): 29. Compare Garry Wills, *Papal Sin* (New York: Doubleday, 2000) 6:

The priests [cannot] keep a straight face or an honest heart—to be truly concerned for those they serve—if they echo what Rome is saying about women or the priesthood, marriage or natural law. Their own integrity rebels against the calculus of personal gain or the pressures of careerism. The arguments for much of what passes as current church doctrine are so intellectually contemptible that mere self-respect forbids a man to voice them as his own.

⁶²See n. 23 above.

Would such a church be likely to resemble the interpersonal, vital, ever-deepening, always outstretching encounter of hearts and minds that is communion? Or would it be more likely to resemble the bureaucracy of a government, the conformity of a corporation, the discipline of an army, of even the ideological unanimity of a totalitarian political movement?⁶³

Now, I concur in Steinfels's further statement—she says she “take[s] it for granted”—“that somewhere a line must be drawn between the dissent that is an inevitable and healthy aspect of communion and the dissent that is no longer compatible with communion.” (Like Steinfels, “I do not question the efforts of bishops and theologians [it is important to include both] to resolve where, exactly, that line should be drawn in principle.”⁶⁴) Indeed, the position I am recommending here—namely, that a Catholic citizen/legislator/policymaker should work out her own position on the moral issue at hand, albeit in conversation with the teaching of the magisterium, and then make a political choice on the basis of her own position even if her position is contrary to the position of the magisterium—contains this important proviso: *with respect to moral issues that have become widely controversial among those Catholics and other Christians engaged by the issues*. The morality of slavery, for example, is not widely controversial among Christians—not any longer. Nor is the question of the true and full humanity of nonwhites, or of women, widely controversial among Christians. But the morality of same-sex unions is now widely controversial among Christians. As is the morality of some (many) abortions.⁶⁵

⁶³Margaret O'Brien Steinfels, “Dissent and Communion,” *Commonweal* (18 November 1994); reprinted in *Commonweal Confronts the Century: Liberal Convictions, Catholic Tradition*, ed. Patrick Jordan and Paul Baumann (New York: Simon & Schuster 1999) 324, 326-31.

⁶⁴*Ibid.*, 326-27. Steinfels adds: “But I do want to argue . . . that in the practical, everyday life of the church, the question of distinguishing between responsible and irresponsible dissent, between dissent in the service of communion and dissent destructive of it, is less than we often suppose a matter of intellectual propositions, and more often a matter of conduct, of attitude, of affection, and of heart” (*ibid.*).

Cf. Wills, *Papal Sin*, 6:

Who am I—or who is anyone except the Pope—to decide what a Catholic may or may not accept as binding doctrine? That is a serious question, not just the growling of authoritarians who feel they have some of the Pope's excommunicating power themselves. But the question is based on an assumption that is not only challengeable but extremely unhealthy. It assumes that the whole test of Catholicism, the essence of the faith, is submission to the Pope. During long periods of the church's history, that was not the rule—Saint Augustine, for one, would have flunked such a test. And today it is a test that would decimate the ranks of current churchgoers. It is not a position that has a solid body of theology behind it, no matter how common it is as a popular notion (*vulgaris opinio*).

⁶⁵The disputed question of “infallibility” rears its troublesome head here. (See Hans Küng, “Waiting for Vatican III,” *The [London] Tablet*, 16 December 1995, 1616. See also

V.

Some citizens of the United States are not religious believers. Of these, some, perhaps because they are hostile to religious belief, would like to fence religion out

Wills, *Papal Sin*, 233-74. What is the relationship between the I.T.C.'s *Memory and Reconciliation: The Church and the Faults of the Past* and the doctrine of infallibility? For one view, see Wills, "The Vatican Regrets," 19.) This is not the place—and, in any event, I am certainly not the person—to address the question. Two points bear emphasis, however. The first point was stated by Richard McCormick in an entry he wrote ("Magisterium and Morality") for the *Encyclopedia of Catholicism*:

[According to the Dogmatic Constitution on the Church (*Lumen Gentium*) promulgated by the Second Vatican Council (1962–1965),] the charism of infallibility is coextensive with the "deposit of divine revelation" (n. 25). This would seem to exclude from infallibility those moral positions that are not revealed. If that is the case, the magisterium can be competent in concrete moral questions without being infallibly competent.

This question remains a disputed one, but it is hardly very practical since, in the view of most theologians, the magisterium has never taught infallibly on the level of concrete morals, nor would such authority be required for the Church to fulfill its mandate to provide moral guidance.

The HarperCollins Encyclopedia of Catholicism, 808.

The second point was stated by Nicholas Lash in a recent essay in *The [London] Tablet*:

The teaching that the Church is incapable of ordaining women has "not been 'received' by the faithful of the Church as expressive of their Catholic belief." So we read in the report commissioned by the Australian bishops, *Woman and Man: One in Jesus Christ*, on the participation of women in the Catholic Church in Australia. Yet the Pope and the Congregation for the Doctrine of the Faith have asserted the contrary. What are we to make of this?

The First Vatican Council taught that there are—however unusually and exceptionally—certain circumstances in which we may trust that a papal utterance shares in "that infallibility with which the divine Redeemer wished to endow his Church." The reference is to the whole Church: it is because the Church is kept in truth that, in certain circumstances, we may trust that what its chief bishop says is true. But the articulation of doctrine needs normally to be recognised or "received" by the Church at large. *This is an important criterion by which a dogmatic statement may be recognized as such.* It is the discriminating exercise of Christian faith. In recent years, however, there has been an increasing tendency for the Roman congregations to behave as if faith were only exercised through indiscriminate obedience.

Nicholas Lash, "Waiting for the Echo," *The [London] Tablet*, 4 March 4, 309; emphasis added. See also Richard Westley, "We Are Makers of Love," *Praying* (May-June 1994): 28, 31: "Forgotten is the old theological dictum that the 'teaching' church can only teach what the 'believing' church believes. Having it the wrong way around skews everything; it discounts the religious experience of all us believers and allows the church to be a curator of all truth, so that no more truth can get into the enterprise."

of politics—or to fence it out as much as possible.⁶⁶ Consider, for example, the American philosopher Richard Rorty, who has written approvingly of “privatizing religion—keeping it out of . . . ‘the public square,’ making it seem bad taste to bring religion into discussions of public policy.”⁶⁷

Of the large majority of citizens of the United States who are religious believers, some—including some American Catholics—are in the grip of older, more authoritarian modes of religious believing (I am tempted to say, more monarchical modes of religious believing) that fit uneasily, if at all, the culture of liberal democracy, which, *at its best*, encourages ecumenical and self-critical deliberation of the sort suggested by, among others, David Hollenbach and Margaret Farley.

Today most American Catholics seem to me to stand somewhere between these two groups—between those, like Rorty, who would fence religion out of politics, and those who would bring an authoritarian (“dogmatic”) religion into politics. Recall the question to which, I said, this paper is a (partial) response—the question I gleaned from the U.S. bishops’ most recent statement on “political responsibility”: “What does it mean to be a Catholic and a citizen of the United States in the year 2000 and beyond?” Those Catholic citizens (including legislators and other policymakers) who stand between the two groups must forge for themselves a vision of their proper role in politics that is true *both* to their citizenship of a liberal democracy (the United States) *and* to their membership in a community of faith (the Roman Catholic Church). In forging that vision, Catholic citizens should understand and insist, against Richard Rorty and kindred spirits, that, as I argue in the book I’m now writing, neither the morality of liberal democracy nor the nonestablishment norm counsels them (or other religious believers) against banning or otherwise disfavoring conduct on the basis of a religiously grounded belief that the conduct is immoral (even if the belief lacks plausible, independent secular grounding). But at the same time they should understand and insist, against some in their own Church, that, as I have argued in this paper, a Catholic citizen/legislator/policymaker does not compromise her fidelity to the Church when, in conversation with the teaching of the magisterium, she works out her own position on the moral issue at hand, *a moral issue that has become widely controversial among those Catholics and other Christians engaged by the issue*, and then makes a political choice on the basis of her own position—even if, in the end, her position is contrary to the position of the magisterium.

As I said near the beginning of this paper, my overarching aim here would be to “reflect on the experience of being faithful disciples and free citizens in a democratic nation.”⁶⁸ After I initially drafted this paper, I had occasion to read (in

⁶⁶This is not to deny that some religious believers too would like to marginalize the role of religion in politics.

⁶⁷Richard Rorty, “Religion as Conversation-Stopper,” *Common Knowledge* 3 (1994): 1, 2.

⁶⁸See n. 16 above.

English translation) excerpts from a recent statement by the Assembly of (Catholic) Bishops of Quebec: *Annoncer l'Évangile dans la culture actuelle au Québec*. I was both struck and consoled by the extent to which my reflection in this paper seems nourished by the same spirit that animates the Quebec bishops' statement. Let me conclude, then, by quoting a few key passages from their statement:

This demand for autonomy should not be underestimated; it deserves recognition. This is a new reality, one which is far from negative for the Church. . . .

These modern sensibilities affect the way in which we think about the institutions of Christianity, whose vocation clearly sets them apart from bureaucratic structures and from the mechanisms of standardization which are the province of large public administrations. The nature of Christian institutions ought to favor relationships based on equality and brotherhood/sisterhood and to value attitudes that welcome and liberate. . . .

The democratic spirit builds a new relationship to the truth. The Church is to proclaim the Gospel in a relevant way. It is not sufficient to insist that the church is not a democracy, even if that statement is correct. Integration into the Church in a democratic society leads to a new relation to authority and a different manner of proclaiming the Gospel. What is required is a certain degree of participation and a careful listening to all the voices that want to be heard. Nothing can be imposed simply by authority: there is no single word. [Rien ne s'impose d'autorité et il n'y a pas de parole unique.]⁶⁹

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⁶⁹These passages are from a brief excerpt of the bishops' 101-page text—an excerpt translated into English—that appears on pp. 1-3 of the Winter 2000 issue of the Canadian journal *The Ecumenist*.

Bishop Roger Ébächer of the Gatineau-Hull diocese, one of two bishops who served as lead authors of the document, said that modern culture's democratic ethos can help the church recover forgotten aspects of its own tradition. "We must rediscover the truth that the church is the people of God, it's the community," he said . . . Ébächer noted that synods, collegiality and subsidiarity were Catholic ideas that helped form the basis for modern democracy.

John L. Allen, Jr., "Quebec Bishops Praise Autonomy, Democracy," *National Catholic Reporter* (21 April 2000): 5.