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On the Morality of Legislative Compromise: Some Historical Underpinnings

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In the November 1990 issue of this journal, Fr. William F. Maestri published a provocative article entitled "Abortion in Louisiana: Passion Over Prudence." As the title implies, this article is an evaluation of the recent failure of a majority of Louisiana legislators, supported by the Catholic Church, to impose legal restrictions on the practice of abortion in that state. Maestri believes that the basic cause of their failure was "the ideal being misused in the service of destroying the possible."¹ In other words:

Clearly the Catholic bishops in Louisiana wanted the most restrictive law possible. Lost in the desire to secure the most restrictive abortion law was the deeper challenge of fashioning a prudent law.²

Later in the article, he explains what fashioning such a prudent law would require:

True pro-life politicians must be prudent in building solid, secure coalitions which favor protection of the unborn. This coalition building means compromise and a willingness to write legislation which falls short of the ideal in hopes of attaining the possible.³

The context for these remarks was created by the *Webster* decision of the U.S. Supreme Court on July 3, 1989. Many hoped that this decision would create "a window of opportunity"⁴ which would allow the states to impose legal restrictions on abortion. But judging from more recent experience, including what seems to have happened in Louisiana and elsewhere, this has turned out to be a difficult task which may, at times, trouble the consciences of pro-life legislators, policy makers and even citizens at large. In addressing this situation, Maestri has produced a very timely article, one that deserves further attention. And so one of the goals of this article will be to advance the discussion he began by discussing the nature of prudent compromise in the post-*Webster* era.

In reading what follows, it is important to avoid three potential

misinterpretations. First, this should not be construed as further commentary on what happened in Louisiana. Rather the effort here is to show how traditional Catholic theology would assess certain aspects of the politics of abortion in general. Second, the article does not pretend to give a complete analysis of the relationship between ethics and politics. Rather the objective here is to defend the notion that traditional Catholic moral theology would support "coalition building through compromise" or "prudent compromise" when these phrases are understood in a certain way. Finally, there will be no systematic treatment of the fidelity of the Catholic politician to Church authority. But it might be noted at the outset that if prudence is *the* virtue of the legislator, as St. Thomas taught,⁵ a principal feature of prudence is *docilitas*, or "teachableness."⁶

After showing that political compromise is not a simple notion, this article will summarize some aspects of traditional Catholic thought on legislative ethics and suggest how that thought might apply to the issue of political compromise in the post-*Webster* era.

1. Two Notions of Compromise

Reginald W. Kaufmann once captured a common sentiment in the following remark: "Compromise is never anything but an ignoble truce between the duty of a man and the terror of a coward." In the same vein, John Langan, S.J., has written that compromise can mean:

A splitting of the difference between justice and injustice in a given situation; it can lead us to treat two poles of opinion or two sides of a dispute on an artificially equal basis; it can signal a comfortable acceptance of evils that really could be changed.⁷

These authors remind us that the word compromise often implies destructive or immoral activity. But many hold that to act in defense of basic human rights should be to act in a "principled" way and avoid making compromises, however personally advantageous.⁸

Politicians have sometimes been identified with this sort of compromise, a fact that has helped to create what philosophers have called, after the title of one of Jean-Paul Sartre's plays, "the problem of dirty hands."⁹ This problem is founded on the belief that one cannot exercise political power effectively and yet remain morally good or innocent.

In the 16th century, for example, Niccolo Machiavelli advised rulers that they must be ready to trespass against accepted moral norms if they wished to maintain themselves in power.¹⁰ If he were alive today, he might advise politicians that since pleasing their constituencies and following their consciences sometimes conflict, they must always be ready to make compromises, i.e., to violate their consciences, in order to get elected and/or reelected. A more sophisticated piece of advice might be to profess two contradictory and independent "moralities," one to direct their private affairs and another to shape their stances on public policy.¹¹ In either case, however, they would have to accept the belief that, on some level, one cannot remain morally good and still be politically effective.

It seems that it is just this sort of compromise that the National Conference of Catholic Bishops criticized in 1989 when they said, "No Catholic can responsibly take a 'pro-choice' stand when the 'choice' in question involves the taking of human life."¹² And obviously this is not the sort of compromise which Maestri was advocating in his article. When he endorsed fashioning prudent law through compromise, he did not mean that law should be designed to serve political expediency. Furthermore, few politicians would admit that political expediency is the basis of their stance on abortion legislation.

For the remainder of this article, this sort of compromise for the sake of political expediency will be designated "Compromise A," and we will see that traditional Catholic legislative ethics strove mightily to avoid it.

There is, however, a second usage of the word compromise that has quite positive connotations in the popular mind. According to its first definition in most dictionaries, compromise is a method of settling differences by making mutual concessions. This can be a productive way to resolve conflicts between individuals or groups. For example, imagine that there are several qualified candidates seeking a political party's nomination for office, but the party contains two large factions, each with its own favorite candidate but neither with enough votes to gain the nomination. In this kind of situation, factions sometimes compromise on one of the other candidates. Thus a confrontation which might create division within the party and even leave the party without a nominee is resolved in a way that both maintains party unity and produces a viable candidate. As some organizational theorists might characterize this solution, through compromise a "zero-sums" game becomes a "win-win" proposition.

From the perspective of any single member of either faction, such a choice "falls short of the ideal in hopes of obtaining the possible." That is, it appears that the very best candidate failed to get the nomination, but at least the party was able to settle on a good one. Traditional Catholic moral theology could bless this decision as long as the compromise candidate was qualified for office.¹³

This kind of neat political solution will be designated "Compromise B."

Some have argued that compromise of this sort is inevitable and is at the very core of political process in a pluralistic society.¹⁴ Since by definition pluralism includes diversity in "personal preferences," politicians must be ready to make such compromises and often have to be satisfied with incremental change. After all, as they say, politics is the art of the possible!

But despite its obvious appeal, from a moral point of view, Compromise B is not automatically justifiable. In the post-*Webster* era, in particular, the choices confronting the pro-life legislator are not so often between good and better but between bad and worse, i.e., between a law that still allows a significant number of abortions and one that allows even more. In this context, as Prof. Leslie Griffin has pointed out, "The perplexing issue becomes whether or not there are criteria or norms by which one can distinguish good compromises from bad."¹⁵ To develop such criteria, it is necessary to examine more carefully some of the

tasks which confront the legislator or policy maker and to offer some traditional Catholic perspectives on the moral issues involved, particularly regarding the issue of compromise.

2. Legislation and Compromise

The Catholic tradition has long held that the task of the legislator is a noble task and that the primary purpose of civil law itself is to promote virtue and the public welfare. St. Thomas, who did so much to shape that tradition, held that the authority to make laws in society was established by the will of the Creator and did not come about as a result of sin.¹⁶ He also taught that the more powerful the officeholder, the more the officeholder needs to be virtuous, not only to resist temptations, but also because one cannot instill in others what one does not have.¹⁷

But despite this optimism, St. Thomas did not equate civil law with morality, or crime with sin.¹⁸ It is true that he did hold that a civil law is valid and just only if it is consistent with natural law, i.e., with moral principle. But not all which is immoral should be prohibited by civil law because civil law works under limitations which can fail to constrain moral principle. For example, law is aimed primarily at controlling external behavior and cannot always ensure proper motivation.¹⁹ And law prohibits only grave evils which "the average man can avoid."²⁰

Thomas Gilbey, O.P., once summed up as follows:

Legality . . . was limited to what was expedient for the political community, that is to the outward acts of certain virtues . . . the mode of virtue lay outside the scope of positive law . . . Not impatient with common weaknesses, restrained in moral indignation, the ruler should accept human nature as it is, knowing that people's habits cannot suddenly be changed by legislation.²¹

Here, it may be asked, are we already dealing with a potential criteria for justifying some political compromises? That is, the very process of legislation sometimes forces the legislator to "depart from" moral principle in order to address the actual conditions of society, to bridge the gap between the ideal and the possible. Perhaps it is this kind of legal realism that some public officials believe they are embracing when they advocate a dual morality on the abortion issue. For example, a legislator might claim not to support a particular legal prohibition of abortion (despite personal reservations) because it would demand too much of women or because there is not enough public consensus to support the proposed law.

But further analysis of the traditional Catholic thinking on the relationship of law to morality would raise serious questions about this use of the tradition. First, although the law cannot be expected to prohibit everything that is morally wrong, at least it should prohibit the infringement of human rights. And what right is more fundamental than the right to life?²² Second, while laws must have a measure of public support if they are to succeed, "natural law theorists would never have admitted that law is merely the expression of the standards

of a particular group or society.”²³ As in the case of modern civil rights legislation, should not good law mold or strengthen consensus?

Moreover, it is really helpful to consider the legislator’s task here as having anything to do with compromising in the first place? Rather it seems that the task should be interpreted only as applying truths from one sphere of life, the personal, to another sphere, the social, an application which must respect the peculiar nature of society and of the norms which can govern it effectively.²⁴

Here the Thomistic notion of prudence is relevant, particularly that kind of political prudence known as “regnative” prudence. As St. Thomas saw it, prudence in general helps the agent make the right decision about the morality of a specific action under consideration, or guides the agent in applying general moral principles to cases in all their concreteness and complexity. Prudence, he said, “has to do with contingent human doings.”²⁵ It is soundness of judgment in such matters.

Now there is a particular form of this virtue that guides public authorities in what St. Thomas calls the “master art” of legislation, seeing to it that a given law is really at the service of the common good. This form of prudence is called “regnative” and it is the highest form of prudence.²⁶ Just as the validity of any moral judgment is dependent upon an accurate reading of the circumstances, so the applicability or even the soundness of a given law can be affected by particular social conditions. For example, in making laws, “A person cannot be guided only by norms which are simply and of necessity true, he must also appreciate what happens in the majority of cases [*ut in pluribus*].”²⁷ In short, the prudent legislator knows that he or she cannot envision every conceivable set of circumstances in which a particular law might be invoked.

So it turns out that the very process of making laws is not only not a form of compromise (although it can lead to compromises of all sorts) but is actually the exercise of a moral virtue. That is, prudence adapts moral principle to the specific work of civil law, and as St. Thomas advised us, just because civil law cannot do everything, the “something it does do should not be disapproved of.”²⁸

But we have not yet completely eliminated the possibility that in some circumstances, the process of making laws may include a version of Compromise A, particularly when the legislator chooses *not to forbid* certain immoral practices in society. To rule out this possibility, it is necessary to explain in more detail how “the possible,” i.e., “the legal,” contends with the problem of evil. For as Abraham Lincoln once reminded us:

There are few things wholly evil or wholly good. Almost everything, especially of government policy, is an inseparable compound of the two.²⁹

3. Toleration and Compromise

In his treatment of legislation and political prudence, St. Thomas

discussed the issue of evil many times. For example, he noted that specific laws can backfire; they can accidentally cause evils greater than those which they aspire to prohibit.³⁰ Moreover, he noted, "It happens at times that some precept that is for people's benefit in most cases is not helpful for this particular person or in this particular case either because it stops something better from happening or because it brings in some evil."³¹ These are merely the observations of an experienced student of politics but what might sound something like a kind of Compromise A is his statement, "In human government, the authorities rightly tolerate certain evils lest certain goods be impeded or greater evils be incurred."³² To interpret this passage correctly, it is necessary to review some history.

In 1954, Pope Pius XII endorsed and explained this teaching in a widely quoted address.³³ He began in an "uncompromising" tone: "No human authority, no state, no community of states, whatever be their religious character, can give a positive authorization to teach or to do that which would be contrary to religious truth or moral good." But he went on to qualify that statement by saying, the proposition that "religious and moral errors must always be impeded, when it is possible, because toleration of them is in itself immoral, is not valid *absolutely and unconditionally*." Rather, he concluded:

The duty of repressing moral and religious error cannot therefore be an ultimate norm of action. It must be subordinate to *higher and more general* norms, which *in some circumstances* permit, and even perhaps seem to indicate as the better policy toleration of error in order to promote a *greater good*.

Thus in certain circumstances, legislators are justified in not prohibiting a particular social evil if foregoing such a prohibition is necessary in order to promote a greater social good.

A. Religious Toleration

Although the principle of toleration is not particularly hard to understand, it can be very hard to apply, especially in dealing with the toleration of moral evil. Before addressing this difficulty, it might be helpful to outline briefly the careful use of this principle by Fr. Francis Connell in his justification for the toleration of religious diversity prior to the "Declaration on Religious Freedom" of Vatican II.³⁴ Connell began by repeating the teaching that the Roman Catholic Church "is the only religious society entitled to exist . . . and all men have the obligation to be numbered among its members." For this reason, ideally civil law should favor the true Church.

However, the fact is, Connell continued, that there is religious pluralism in America and in many other places, and it is not the duty of the state to impose Catholicism on the consciences of non-believers. Consequently, "for the sake of securing some great good or of preventing some evil . . . there can be circumstances . . . in which it is the more prudent course for the civil rulers, even of a Catholic country, to grant equal rights and full freedom of worship

to all religions.” Although he made it clear that he deemed these rights and freedoms not as “real” but as “*purely subjective*,” he did consider the rights in question to be legally binding since he argued that even a Catholic president would have to accept them. Archbishop Karl Alter described well this kind of uncompromising compromise when he wrote in 1960:

There are two kinds of religious tolerance: the one civil, which means equality before the law; the other doctrinal, which means one religion is as good as another — even when they are contradictory. The Catholic Church subscribes wholeheartedly to civil tolerance, but rejects so-called doctrinal tolerance.³⁵

Some features of this theology of religious toleration should be highlighted. First, religious toleration is not considered to be an instance of Compromise A, i.e., a denial of firm convictions of conscience. Second, toleration is presented as the work of prudence, and so it is really only an aspect of the process of legislating. Third, toleration is not wholly passive in that rulers “may grant” certain rights to non-believers.³⁶ And fourthly, an adequate reason for toleration can be to avoid greater evils *and/or* to obtain greater goods. More on this below.

B. Toleration and “The Many Faces of AIDS”

As was mentioned above, the principle of toleration seems more difficult to apply to those cases where “moral evil” is the primary concern (as it may be, of course, in compromises over abortion). It is useful to recall especially the storm of controversy spawned by the “The Many Faces of AIDS,” the statement of the Administrative Board of the USCC which was published December 1987. As everyone knows by now, the controversy swirled around the correct interpretation of these two sentences:

In such situations, education efforts, if grounded in the broader moral vision outlined above, could include accurate information about prophylactic devices.

This has been the appropriate forum [the forum of a doctor-patient or a similar relationship] for such advice because the health care profession is concerned with both the well-being of the individual and public health.³⁷

Before summarizing the relevant parts of this controversy, it would be good to begin with an important observation by Fr. Michael Place:

In the response to the administrative board’s AIDS statement, no one seems to argue seriously against the *principle* of toleration of evil. Rather, they criticize its *application* to two areas of the statement.³⁸

For our purposes, the main criticisms of the application were two. First, more than one critic argued that the principle was applied to the wrong agent, i.e., it should have been applied to the state, not to the Church.³⁹ And second, some critics said that the principle itself was being used incorrectly, i.e., it was used to justify the *promotion or advocacy of evil* and not the mere toleration of it.⁴⁰

Let us begin with this last criticism. There is some reason to agree with Fr. James Keenan that the toleration principle *as traditionally formulated* was intended to allow only the passive permission of, not the active furtherance of an evil.⁴¹ He notes that Pope Leo XIII said that the civil ruler who rightly tolerates evil imitates the Ruler of the universe in *only* permitting some evils to go unpunished.⁴²

But in either case, does not the traditional formulation also insist that the principle of toleration only applies to one *who has the power to prevent* error or evil in the first place? And so Keenan also seems to be correct when he suggests that the one who allows evil to happen, *when he or she has the power to prevent it*, is in some sense actually furthering the evil and thereby making some sort of compromise.

Nevertheless, traditional Catholic thought seems to hold that this fact does not mean that the state necessarily does wrong to practice such toleration; when a sufficient reason is present - when toleration is necessary to obtain a greater good or avoid a greater evil - the state does not have a *duty* to suppress the evil. This may be another way to say what Pope Pius XII meant when he said that a higher norm takes precedence in some cases.

And secondly, we come to the other criticism of the statement, namely that the principle of toleration was being applied to the wrong agent, namely to the Church. It is important to make two comments on this. On the one hand, it is true that the principle, again as classically formulated, applies only to the state or to the ruler. But is not the classical wording merely a specification of a more basic and universal moral principle, namely that when faced with only bad alternatives, one would be well advised to avoid choosing the greater evil?⁴³

In the second place, this criticism indirectly underlines the fact that public statements on complex issues related to public policy are easily misinterpreted. As an editorial in *America* put it, "Even such cautious statements are liable to be distorted and misunderstood, as evidenced by the front page headline of the Dec. 11 New York Times: 'U.S. Bishops Back Condom Education as a Move on AIDS.'"⁴⁴ Such misinterpretation construes the application of the principle of toleration as an instance of Compromise A. And so, as Prof. Edward Sunshine has pointed out, "Though often absent from public discussions, scandal is a key factor in official church considerations for determining whether there is sufficient reason to tolerate evil."⁴⁵

So it seems that the following conclusions are warranted. First, the principle of toleration, as usually interpreted, allows the state to permit the perpetration of certain evils only when that is unavoidable and, in the words of Pius XII, is done in order "to promote a greater good." That is, the duty of the state to repress evil is not an absolute moral requirement. Second, such toleration should not be construed as an example of Compromise A. In Compromise A the agent violates his/her conscience for the sake of expediency or promote certain desirable outcomes. But despite the fact that acts of toleration are easily misconstrued, justifiable toleration is not a violation of conscience; rather it is obedience to "higher and more general norms" (again, the words of Pius XII).

Third, the classical doctrine of toleration, especially in regard to moral evils, stops short of endorsing any positive actions which will, willingly or unwillingly, promote or further those evils. This limitation leads us to search for another moral framework that can deal more effectively with some of the moral ambiguities generated by the *Webster* decision.

4. Cooperation and Compromise

There is such a framework in traditional Catholic legislative ethics. It consists in a series of principles regulating “cooperation in evil” (*cooperatio ad malum*).

It might be helpful to begin with a brief summary of standard traditional teaching on the morality of cooperating in evil in general.⁴⁶ Bernard Haering once defined cooperation in this way: “Cooperation in the sin of another, in general, is any and every physical or moral assistance in the commission of a sinful action in union with others.”⁴⁷ Now the one who participates can be a co-conspirator, one who consents to the evil which is being done, or else the participant can be an unwilling accomplice, one who personally dissents from the evil being done. The former kind of complicity is called “formal” and is the kind of cooperation with evil which should not be made.⁴⁸ The latter kind is called “material” and is the kind of cooperation which may be justifiable under certain conditions. This distinction recalls the debate over a 1974 video tape that documented Patty Hearst’s involvement in a bank robbery by the Simbianese Liberation Army: did she participate while approving the robbery (formal cooperation) or was she an unwilling victim, there out of fear or mental confusion (material cooperation)?

For our purposes it is necessary to focus on several of the distinctions used to assess cases of material cooperation. First, material cooperation is “positive” (or “direct,” to use the terminology of St. Thomas⁴⁹) when the assistance consists of the performance of an action on the part of the cooperator. It is “negative” (or “indirect”) when the help offered is by way of failing to impede the evil when one has a duty to do so. To cite a current example, an abused wife can materially cooperate in her own beating either by fetching a blunt instrument when ordered to do so or by failing to call the police when abuse was imminent.

Second, material cooperation can be “immediate” when one participates directly in the evil action itself or “mediate” when one is somewhat removed from the action. Although not all authors agreed on this point,⁵⁰ immediate material cooperation, when fully immediate, was usually considered virtually or implicitly formal and was not permitted. For example, my poisoning someone at the orders of a mafia boss would not be justified even though I was forced to commit murder and even though the boss would probably be considered the principal agent in the crime. But my selling drugs or chemicals in a public pharmacy would not necessarily be considered wrong even if I was aware that someone with evil intent might misuse them to murder someone (mediate).

Since the only way to avoid all cooperation would be to withdraw from society altogether, the key questions were two. First, is my action good or indifferent, i.e., was it clearly not evil for some other reason? And second, do I have a sufficient, or proportionate reason for doing what I am doing?

Finally, a number of other distinctions were made in the course of explaining the notion of material cooperation. The two most important were: the involvement could be either proximate (close) or remote (distant); it could be either necessary (indispensable) or contingent (easily replaceable). But these distinctions function like the ones already explained. That is:

There are reasons which justify material cooperation, which may even suggest and advise it, if they do not go so far as to oblige it. These reasons must be the more valid and weighty *the greater the evil* to which our actions are perverted, *the more proximate our contribution or cooperation* in the sinful action of others, *the more certain that our work will really be misused or perverted, the more probable that our refusal to cooperate could prevent the sin*, and, finally, *the greater the danger of scandal* to others.⁵¹

In light of this summary, it is possible to develop the connection between material cooperation and compromise. In the recent article cited above, Keenan moved the discussion in this direction by applying the theory of cooperation to the debate over "The Many Faces of AIDS." To justify this move, he gave some examples of how the theory of cooperation was applied traditionally to several other issues affecting the common good.⁵² It is possible, however, to strengthen his case by adding a review of traditional Catholic teaching about voting. At the same time, this review can serve to link foregoing discussion of cooperation more clearly to the issue of political compromise in the post-*Webster* era.

But first, a presupposition must be stated. Since in a democracy, the people rule in a real, if indirect way, what was taught about the morality of voting by the public was also applicable, *mutatis mutandis*, to voting by their representatives. Moreover, what was said about the election of candidates was also applicable, again *mutatis mutandis*, to voting for bills.

It is necessary to begin our review by considering, in general, the basis for the obligation to vote. In a classic article published 50 years ago, John Schwarz wrote: "Nearly all the moralists who have considered this point agree that voting belongs to legal justice." That is, the citizen is obligated to vote by virtue of his or her duty to promote the common good.⁵³ According to Frs. John A. Ryan and Francis Boland:

Citizens are bound to promote the common good in all reasonable ways. The franchise enables them to further or to hinder the common wealth greatly and fundamentally, inasmuch as the quality of the government depends upon the kind of officials they elect.⁵⁴

If a citizen acts on this obligation, what moral principles might be used to guide a specific vote? In 1840, the U.S. Catholic bishops put the first duty of the voter this way:

Reflect that you are accountable not only to society but to God, for the honest independent and fearless exercise of your own franchise, that it is a trust confided to you not for your private gain but for the public good, and that if yielding to any undue influence you act either through favor, affection, or the motives of dishonest gain against your own deliberative view of what will promote your country's good, you have violated your trust, you have betrayed your conscience, and you are a renegade to your country.⁵⁵

This teaching clearly forbade voters to resort to Compromise A. And the following comment made by a student of the tradition makes it clear that formal cooperation in evil was being forbidden also:

The responsibility of voting comes from the fact that balloters are considered to approve the principles of those for whom they vote and that they in a way cooperate in all the evils that their elected candidates carry out against Church and state.⁵⁶

Second, there were traditional guidelines for abstaining from voting altogether. Given the moral obligation to vote and the possibility that an abstention might be read as assent,⁵⁷ normally only a serious reason would excuse a voter from participating in an election. According to Tanqueray, for example:

A slight cause will relieve the citizen from the obligation of voting only when he is morally certain that he cannot affect the immediate result. Even then, he ought to take part in the election to show good example, and to hasten the day when the cause which he supports will command a majority of the voters.⁵⁸

Therefore, as Schwarz held, "It must not be forgotten, either, that cooperation can be said to be negative as well as positive; thus a citizen may rightly be said to cooperate in the election of an unworthy candidate if without a sufficient reason he neglects to cast his vote."⁵⁹

There were, however, some qualifications to these guidelines. That is, it was generally taught that there were times when one was required to abstain from voting. Two important examples of this would be the following. First, if an election were set up as a device to secure legitimacy for an unjust and tyrannical government or for an unjust policy, it would be right to abstain.⁶⁰ Second, the magisterium could require Catholics to abstain from a vote when it sensed that the vital interests of the Church would be served by non-participation.⁶¹

Third, what about those difficult situations where all the options are bad? Again Schwarz gave a good summary of traditional teaching. After pointing out that both St. Thomas Aquinas and St. Robert Bellarmine believed that anarchy can be worse than an evil ruler, he continued:

It is lawful to vote for an unworthy candidate if there be a cause proportionate to the evil that would be done and the good that would be lost if the unworthy candidate is elected. This is considering the act of voting for an unworthy candidate in itself and does not involve such things as the scandal that may result, the encouragement that may thereby be given to evil candidates and the discouragement to good candidates, and the influence it may have on others' votes. If any of these elements are present, the excusing cause will have to be proportionately greater. It is quite evident, of course, that to vote for a candidate in order that he do evil is unlawful, for this is formal cooperation in evil.⁶³

Then he added, "it is not only lawful but may be obligatory to vote for an unworthy candidate, even one who will inflict grave injury on Church or state if elected, provided it is necessary to do so in order to prevent the election of a candidate who is even more evil."⁶³

In saying this, of course, he made it clear that he supported the widely held opinion that voting is not an intrinsically evil act. Therefore, it was assumed that voting would not be an implicit form of formal cooperation with evil or be morally objectionable on other grounds.

5. Compromise and Cooperation in the Post-*Webster* Era

The material just discussed seems to have at least three very important implications for pro-life politics in the post-*Webster* era. First, the language of cooperation is clearly the most apt traditional language for evaluating the most perplexing compromises facing many pro-life politicians and voters, often the more difficult cases of Compromise B. This language is particularly apt for these reasons: it has a solid track record in evaluating choices directly affecting the common good, it clearly distinguishes those choices which are examples of formal cooperation (Compromise A) from those which are instances of material cooperation (justified Compromise B), and it does not force the Catholic politician or voter to opt out of the political process when great good can be done or evil avoided.⁶⁴

Second, using this approach, it seems possible to give some specific guidance to pro-life politicians. Cardinal John O'Connor, for example, seemed to be relying on a version of this approach when he wrote recently that voting for "imperfect" legislation to protect the unborn is not necessarily morally unacceptable. It depends upon the circumstances. The Cardinal wrote:

It certainly seems to me, however, that in cases in which perfect legislation is clearly impossible, it is morally acceptable to support a pro-life bill, however reluctantly, that contains exceptions [e.g., abortion in the case of incest] if the following conditions prevail:

- A) There is no other feasible bill restricting existing permissive abortion laws to a greater degree than the proposed bill.
- B) The proposed bill is more restrictive than existing law, that is, the bill does not weaken the current law's restraint on abortion. And,
- C) The proposed bill does not negate the responsibility of future more restrictive laws.

In addition, it would have to be made clear that we do not believe that a bill which contains exceptions is ideal and that we would continue to urge future legislation which would more fully protect human life.⁶⁵

Third, using the concept of negative cooperation, a case might be made that in some circumstances it is obligatory to vote for imperfect or compromise legislation. An example of such a case might be when an abstention would serve to further the less perfect of two or more imperfect alternatives. Though this

point needs further discussion, one might use this traditional concept to argue that to abstain when that choice will enable the more harmful bill to pass is to act against both charity and justice.⁶⁶

Conclusion

In discussing how traditional Catholic moral theology might approach the issue of political compromise, this article has dealt with only one small aspect of a complex ethical issue. Fr. Maestri would rightly remind us of the importance of issues like the need for cultural analysis and for a view of the mission of the Church in the world.⁶⁷ But at this point in time, what he calls “the legislative challenge” seems to be very urgent, namely how to utilize the window of opportunity afforded by *Webster* to extend effective legal protection to the unborn.

This article began by referring to Maestri’s rejection of the misuse of the ideal in the service of destroying the possible and his advocacy of coalition building through willingness to compromise. Hopefully this review of traditional thinking has contributed to a clearer understanding of just what these expressions might mean and how certain kinds of compromise might be defended.

Although compromise is a bad word in the minds of many people, willingness to employ Compromise B, at least in some situations, is a necessary condition for political effectiveness in a democracy. The challenge is to make such compromises without falling into moral insincerity (Compromise A) or formal complicity with evil. Though some might tackle this challenge by employing the classical notion of prudent legislation or the principle of toleration, we have seen that such a route is somewhat problematic. Rather this article has recommended the theory of justified material cooperation as the most productive and time-honored course to follow. This amounts to a pursuit of “the possible” and, in light of how law is made today, is certainly also a work of political prudence.

In conclusion, then, it appears that traditional Catholic thought would say that with a sufficient reason and in a certain concrete situation where there is no other viable way to limit the harm being done by a law, one should not necessarily be ashamed to work out a compromise with those who support an imperfect, non-ideal proposal. And in some cases one may even have an obligation to do so.

References

1. Rev. William F. Maestri, “Abortion in Louisiana: Passion Over Prudence,” *The Linacre Quarterly* 57, no. 4 (November, 1990): 36.
2. *Ibid.*, 39.
3. *Ibid.*, 42. In an earlier article, Maestri had written: “The realization of a human life amendment should not be viewed as an all or nothing strategy. Legislation is a process of prudent compromise.” See Rev. William F. Maestri, “The Abortion Debate After *Webster*: The

Catholic-American Moment," *The Linacre Quarterly* 57, no. 1 (February 1990): 53.

4. See, for example, Most Rev. Howard J. Hubbard, "After 'Webster': Bishops and Catholic Officeholders," *Origins* 19, no. 29 (Dec. 21, 1989): 476. Maestri also used this expression in "The Abortion Debate," 56. The new problematic created by *Webster* is explained at length by Philip A. Smith, "Abortion: From *Roe* to *Webster*," *The Catholic Lawyer* 33, no. 3 (1990): 237-260.

5. St. Thomas Aquinas, *Summa Theologiae* II-II, q. 50.

6. II-II, q. 49, a. 3. In the same article, in the reply to the third objection, he added: "Even people in authority ought themselves to be teachable sometimes, for, as we have mentioned, in matters of prudence no one is wholly self-sufficient."

7. John Langan, S.J., "Politics — Good, Bad, or Indifferent? A Philosophical Assessment," in *Between God and Caesar, Priests, Sisters and Political Office in the United States*, ed. M. Kolbenschlager (New York: Paulist Press, 1985), 133.

8. David Granfield, *The Abortion Decision* (N.Y.: Doubleday and Co., Inc., 1969): 198.

9. This issue is carefully analyzed in Leslie Griffin, "The Problem of Dirty Hands," *Journal of Religious Ethics* 17, no. 1 (Spring 1989): 31-61.

10. See, for example, Niccolò Machiavelli, *The Prince*, Ch. XVIII.

11. This kind of compromise has been challenged by many bishops. For example, see Most Rev. James McHugh, "Abortion and the Officeholder" *Origins* 20, no. 3 (May 31, 1990): 40-42. Cardinal O'Connor recently quoted Pope Leo XIII as follows: "Further, it is unlawful to follow one line of conduct in private and another in public, respecting privately the authority of the church and publicly rejecting it: For this would amount to joining together good and evil, and to putting man in conflict with himself; whereas, he ought always to be consistent and never in the least point nor in any condition of life to swerve from Christian virtue." See his "Abortion: Questions and Answers" *Origins* 20, no. 7 (June 28, 1990): 105.

12. National Conference of Catholic Bishops, "Resolution on Abortion," *Origins* 19, no. 24 (Nov. 16, 1989): 395.

13. According to John H. Schwarz, St. Thomas' opinion on such a situation was as follows: "The voter may . . . for a sufficient reason cast his ballot for the less worthy candidate, who still must in no way be unfit for the office The reason for choosing the less worthy of the candidates must be proportionate to the loss which the state will suffer by the better candidate failing to be elected." See John H. Schwarz, "The Moral Obligation of Voting," *The Ecclesiastical Review* 105, no. 4 (October 1941): 295.

14. Leslie Griffin, "The Church, Morality and Public Policy," in *Moral Theology: Challenges for the Future*, ed. Charles E. Curran (New York: Paulist Press, 1990): 334-339. The Catholic bishops of Wisconsin said this: "In our pluralistic society, the consistent ethic of life will only be realized through coalitions — and dialogue with others Participation in coalitions with those who disagree with some Catholic teachings is not a betrayal of the Church when the goals of the coalition advance the value and dignity of life." See *Origins* 19, no. 28 (Dec. 14, 1989): 464.

15. Griffin, "The Church, Morality and Public Policy," 339.

16. I, q. 92, a. 1, ad 2.

17. I-II, q. 105, a. 1. When St. Thomas spoke about political authority, he was not only referring to the supreme authority but to lesser authorities as well. See Rev. Gerald J. Lynam, "The Good Political Ruler According to St. Thomas Aquinas" (Ph.D. diss., The Catholic University of America, 1953), 24.

18. For a detailed study of these distinctions which draws heavily on the thought of St. Thomas, see Joseph V. Dolan, S.J., "Natural Law and Modern Jurisprudence," *Laval théologique et philosophique* 15 (1959), no. 1: 32-63; "Natural Law and Judicial Function," *Laval théologique et philosophique* 16 (1960), no. 1: 94-141; and "Natural Law and Legislation," *Laval théologique et philosophique* 16 (1960), no. 2: 237-264.

19. I-II, q. 100, a. 9, resp.

20. I-II, q. 96, a. 2, resp.

21. Thomas Gilbey, O.P., *The Political Thought of Thomas Aquinas* (Chicago: The University of Chicago Press, 1958), 183.

22. When St. Thomas gave examples of the kinds of evils which law should prohibit, he explicitly included murder. See I-II, q. 96, a. 2, resp. In this vein, Pope John Paul II just wrote, "A true democracy can only be established on the basis of a consistent recognition of the rights of each individual." See Pope John Paul II, "Letter on Combatting Abortion and Euthanasia," *Origins*, vol. 21, no. 8 (July 4, 1991): 136.

23. A. P. d'Entreves, *Natural Law*, 2nd Edition (London: Hutchinson University Library, 1970), 79. Also, see Pope John Paul II, *ibid.*, where he insists on the educative function of civil law as affecting public values. Moreover, it should be added that there is no real American *consensus* in favor of abortion-on-demand. See, for example, the statistics cited in Lynn D. Wardel, "The Road to Moderation: The Significance of *Webster* for Legislation Restricting Abortion," *Law, Medicine and Health Care* 17, no. 4 (Winter 1989): 376-383.

24. Of course, compromises of the second type may become possible, for example, when the warring factions come to an agreement, presumably for different reasons, that a particular proposed piece of legislation does not qualify as good law.

25. II-II, q. 49, a. 1, resp.

26. II-II, q. 50, a. 1 & a. 2.

27. II-II, q. 49, a. 1.

28. I-II, q. 96, a. 2, ad 3.

29. Lynam, 192.

30. I-II, q. 96, a. 2, ad 2.

31. I-II, q. 97, a. 4, resp.

32. II-II, q. 10, a. 8.

33. The following quotations come from Pope Pius XII, "International Community and Religious Tolerance," *The Pope Speaks*, First Quarter, 1954: 67 & 68. See also Pope Leo XIII, "Libertas. Encyclical Letter On the Nature of Human Liberty. June 20, 1888," in *The Papal Encyclicals 1878-1903*, ed. Claudia Carlen, IHM (The McGrath Publishing Co., 1981), 178.

34. The following citations are taken from these works by V. Rev. Francis J. Connell, C.S.S.R.: "The Relationship Between Church and State," *The Jurist* 13, no. 4 (Oct., 1953): 398-414; *Morals in the Professions: a Guide for Catholics in Public Life* (Westminster, MD: The Newman Press, 1958); "A Catholic for President" *American Ecclesiastical Review* 142, no. 4 (April, 1960): 271-273.

35. Most Rev. Karl J. Alter, "Nineteen Questions about a Catholic President," *Catholic Mind* 18, no. 1151 (Sept.-Oct. 1960): 447.

36. The further implications of this point are not easy to formulate. For example, the legal right supported here might be construed as an immunity which allows one to live according to one's sincere conscience (although the existence of the right might also enable one to try to spread what one wrongly believes to be true). But it seems to be quite a different matter when the right under discussion allows one to cause grave harm to others (even though it also allows one to live according to one's own sincere conscience).

37. *Origins* 17, no. 28 (Dec. 24, 1987): 486 & 487. The first of these two statements received the most attention.

38. Rev. Michael D. Place, "The Many Faces of AIDS: Some Clarifications of the Recent Debate," *America* 158, no. 6 (Feb. 13, 1988): 139.

39. See, for example, Most Rev. J. Francis Stafford, "A Response to the USCC's AIDS Statement," *International Review of Natural Family Planning* 11, no. 4 (Winter, 1987): 313; and Msgr. William Murphy, "The Moral Substance of AIDS Education," a letter to the editors, *America* 158, no. 6 (Feb. 13, 1988): 173.

40. Msgr. Carlo Caffarra, "AIDS: General Ethical Aspects," *Dolentium Hominum* 13 (1990): 71; and Archbishop Stafford, 113.

41. James F. Keenan, S.J., "Prophylactics, Toleration and Cooperation: Contemporary Problems and Traditional Principles," *International Philosophical Quarterly* 29, no. 2 (June 1989): 206.

42. The exact words of Pope Leo XIII were: "In this, human law must endeavor to imitate

God, who, as St. Thomas teaches, in allowing evil to exist in the world, 'neither wills evil to be done, nor wills it not to be done, but wills only to permit it to be done; and this is good.' This saying of the Angelic Doctor contains briefly the whole doctrine of the permission of evil." See Pope Leo XIII, "Libertas," 178. See also St. Thomas Aquinas, *On the Truth of the Catholic Faith*, Book III: Providence, Part I, Trans. V. Bourke (New York: Doubleday and Co., 1956), 239 & 240.

43. See the treatment of this in Marcellinus Zalba, *Theologiae Moralis Summa*, Vol. I, Editio Altera (Madrid: Biblioteca de Autores Cristianos, 1957): 768-770. Zalba's extensive survey of opinions demonstrates that there has been a long-standing debate over the way in which some moralists use the principle of the lesser of two evils. This is, of course, one of the points at issue in today's controversy over "proportionalism." See, for example, Paul Ramsey and Richard A. McCormick, S.J. (eds.), *Doing Evil to Achieve Good* (Chicago: Loyola University Press, 1978).

44. Unsigned editorial, *America* 157, no. 20 (December 26, 1987): 492.

45. Edward R. Sunshine, "Toleration of Evil and Avoidance of Scandal: The Shaping of Official Roman Catholic Moral Teaching," unpublished paper given at the annual meeting of the Society of Christian Ethics in Culver City, CA, Jan. 12, 1990: 8.

46. See, for example, Zalba, 781-793.

47. Bernard Haering, C.S.S.R., *The Law of Christ*, vol. II (Westminster, MD: The Newman Press, 1964), 495.

48. When carried out in the political arena, an act of formal cooperation is practically equivalent to Compromise I. The Most Rev. John J. Myers speaks out strongly against this kind of complicity in his "Obligations of Catholics and Rights of Unborn Children," *Origins* 20, no. 5: 65-72.

49. II-II, q. 62, a. 7, resp. See also his *Epistolam ad Romanos* in *Opera Omnia*, XIII (N.Y.: Musurgia Publishers, 1949): 22. It should be noted that St. Thomas does not use the terminology of formal and material cooperation. Moreover, not all instances of positive or direct cooperation are instances of material cooperation.

50. Zalba, 783, n. 36.

51. Haering, 499.

52. In doing so, he considered himself to be at odds with Professor Germain Grisez. See Keenan, 208. For some important background to this disagreement, see Germain Grisez, "A critique of two theological papers," *Homiletic and Pastoral Review*, vol. 84 (July 1984): 10-15; Richard A. McCormick, "Medicaid and Abortion," *Theological Studies*, vol. 45 (1984): 715-21; and Germain Grisez, "Public funding of abortion: a reply to Richard A. McCormick," *Homiletic and Pastoral Review*, vol. 85 (June 1985): 32 & 49-51.

53. Schwarz, 292 & 293.

54. Rev. John A. Ryan and Rev. Francis J. Boland, *Catholic Principles of Politics, Revised Edition of "The State and the Church"* (New York: The Macmillan Co., 1950), 204 & 205.

55. Schwarz, 293. See The National Conference of Catholic Bishops, *Pastoral Letters of the United States Catholic Bishops*, vol. I: 1792-1940 (Washington, D.C.: USCC, 1984), 133 & 134.

56. José C. Aleixo, "The Catholic Church and Elections. A Study of the Catholic Thought on the Moral Obligation of Voting." (Ph.D. diss., Georgetown University, 1968), 49.

57. Schwarz, 296.

58. Ryan and Boland, 205. This recalls the dictum that no one is obliged to do what is useless.

59. Schwarz, 300.

60. Rev. Titus Cranny, S.A. *The Moral Obligation of Voting*, (Washington, D.C.: The Catholic University of America, 1952), 90. Aleixo, 91 & 92, explained that elections in communist countries may be of this kind. Some authors added, however, that an abstention in such a case would not be required if "write-ins" were permitted. On this, see Cranny, 93.

61. *Ibid.*, 56-58. This qualification is exemplified by the famous "non-expedit" decree of Pius IX, a decree renewed and modified some of his predecessors. See also Msgr. Giuseppe Monti, "Election, Civil," in *Dictionary of Moral Theology*, ed. Pietro Palazzini (Westminster, MD: The Newman Press, 1962), 451. This idea may to explain Pope Pius XII's forbidding Italian

Catholics to participate in their national election in 1948.

62. Schwarz, 302. In a justifiable compromise on abortion, the proportionate reason should be that the lives of more unborn children would be saved than under the potential alternative(s).

63. *Ibid.*, 302 and 320. See also Aleixo, 97.

64. Approaching this matter very cautiously, Bishop Myers has written: "Only in a very limited circumstances will material cooperation be consistent with Christ's command that we do unto others as we would have others do to ourself. Even in such circumstances one must take care not to slip into wrongful material or formal complicity in abortion. If one's employment or office becomes a serious occasion of sin, one's chief responsibility is to find new employment or a different office." See Bishop Myers, p. 70.

65. Cardinal O'Connor, 107. To accept such a set of principles is not to say that they are always easy to apply. Moreover, the term "imperfect law" might be construed as a reference to difficulties inherent in the process of legislation itself.

66. Cardinal O'Connor treats this issue on p. 110 of his statement. It is certainly important not to condemn those pro-life legislators who with a sincere conscience do not accept the kind of complex reasoning offered here.

67. Maestri, "The Abortion Debate," 51. Leslie Griffin has also done much to explore these broader issues in the articles cited above and also in her "The Integration of Spiritual and Temporal: Contemporary Roman Catholic Church-State Theory." *Theological Studies*. Vol. 48, No. 2 (June 1987): 225-257.
