

Conscience, Catholicism, and Politics

Theological Studies
2017, Vol. 78(1) 171–192
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DOI: 10.1177/0040563916682388
journals.sagepub.com/home/tsj



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Abstract

Reviewing the literature on conscience, Catholicism, and politics, especially from the last ten years, the author argues that there are two views of conscience emerging: the ecclesial view and the personalist view. The author also discusses the significance of historical context for the development of theological thought about conscience in relation to politics.

Keywords

conscience, freedom, politics, religious freedom, politics, rights, rights of conscience, secularism

Since the Second Vatican Council, the theology of conscience has been applied more to the internal life of the Roman Catholic Church than to the engagement of the church with the world. To be sure, this intra-ecclesial focus has not always been the intention of theologians. The magisterial work of Bernard Häring in texts like *The Law of Christ* situated conscience squarely in the Church and the world—even if his ideas about conscience have more commonly been invoked with regard to matters like the decision of Catholic married couples to use artificial birth control despite the prohibition of such methods in Catholic moral doctrine.¹ Joseph

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1. Bernard Häring, *The Law of Christ: Moral Theology for Priests and Laity*, trans. Edwin G. Kaiser (Westminster, MD: Newman, 1961) 1:135–88.

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Ratzinger's seminal essay "Conscience and Truth" provided a theoretical basis for the pro-active exercise of hierarchical authority in the face of claims of conscience within the church that marked both his papacy and that of John Paul II. But Ratzinger's essay can also be understood as a powerful critique of an unhinged subjective conscience in contemporary culture.² Similar observations about conscience in its intra- and extra-ecclesial dimensions can be made of important works by theologians such as Charles Curran, Linda Hogan, Robert Smith, Louis Janssens, and Anne Patrick.³ Each work has substantial implications for the engagement of Catholics with the world—even if the arguments of each book are more commonly applied to the internal life of the church.

In this Note, I will consider the theology of conscience from the last decade in light of an especially significant dimension of the world—the world of politics. Of course, however Catholic theology has been applied, Catholic theologians have long been interested in conscience and politics. At times this interest arose as a response to the martyrdom of figures like Thomas More (or to the eloquent writings of More himself or to Robert Bolt's classic play about him, *A Man for All Seasons*).⁴ At other times, the interest arose because the church itself sought to silence the conscience of others and even its own—the heroic figure of Joan of Arc stands as witness to such murderous intolerance.⁵ In the 19th century, John Henry Cardinal Newman's *Letter to the Duke of Norfolk* offered a thorough theological argument to justify the possibility of a Catholic citizen of England disobeying a directive from a pope about a political matter. "Certainly," Newman famously said, "if I am obliged to bring religion into after-dinner toasts, (which indeed does not seem quite the thing) I shall drink—to the Pope, if you please,—still, to Conscience first, and to the Pope afterwards."⁶ More recently,

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2. Joseph Cardinal Ratzinger, "Conscience and Truth," in *Crisis of Conscience*, ed. John M. Haas (New York: Crossroad, 1996) 1–20.
 3. See Charles Curran, ed., *Conscience: Readings in Moral Theology No. 14* (Mahwah, NJ: Paulist, 2004); Linda Hogan, *Confronting the Truth: Conscience in the Catholic Tradition* (Ottawa: Novalis, 2000); Louis Janssens, *Freedom of Conscience and Freedom of Religion*, trans. Brother Lorenzo (Staten Island, NY: Alba House, 1966); Anne E. Patrick, *Liberating Conscience: Feminist Explorations in Catholic Moral Theology* (New York: Continuum, 1996); and Robert J. Smith, *Conscience and Catholicism: The Nature and Function of Conscience in Contemporary Roman Catholic Theology* (Lanham, MD: University Press of America, 1998).
 4. See Alvaro De Silva, ed., *The Last Letters of Thomas More* (Grand Rapids, MI: Eerdmans, 2000); and Robert Bolt, *A Man for All Seasons* (New York: Vintage, 1990).
 5. See John Noonan, "Principled or Pragmatic Foundations for the Freedom of Conscience," *Journal of Law and Religion* 203 (1987) 203–12 at 203–4, doi:10.2307/1051025; and Lisa Fullam, "Joan of Arc, Holy Resistance, and Conscience Formation in the Face of Social Sin," in *Conscience and Catholicism: Rights, Responsibilities, and Institutional Responses*, ed. David E. DeCosse and Kristen Heyer (Maryknoll: Orbis, 2015) 69–82.
 6. John Henry Newman, *Letter to the Duke of Norfolk* (New York: Longmans, Green, and Co., 1900) chap. 5, "Conscience," <http://www.newmanreader.org/works/anglicans/volume2/gladstone/>. See also Terrence Merrigan's discussion of how Newman and Thomas More's

Thomas Shannon and Paul Valadier have offered extended treatments of conscience, Catholicism, and politics. During the Vietnam War, Shannon advanced a book-length theological argument for selective conscientious objection that is a largely untapped resource for many of the conscience battles of the present day.⁷ In 1994 Valadier offered a defense of conscience in the face of a wide range of challenges, including the challenge that the inherent subjectivity of the appeal to conscience was eroding the possibilities of finding common objectives in political life.⁸ Outside theology itself, speeches by presidential candidate John F. Kennedy in 1960 and New York Governor Mario Cuomo in 1985 stand as landmark and still-disputed efforts to find the right balance for the conscience of a political leader between the dueling loyalties of church and state.⁹ But the last decade has in particular seen a burst of theological writing about conscience and politics. In democracies, much of this writing has arisen in response to the institutional church's declining capacity to influence civil laws; to the increasingly pluralist political contexts in which the institutional church now operates; and to a steady clash between Catholicism's moral teachings about gender and sexual ethics and to demands for legal status or legal prerogatives by citizens who often sharply disagree with such teachings. But theological concerns about conscience and

arguments for an enduring but historically situated self (and the role of conscience in the constitution of such a self) can be put into fruitful dialogue with postmodern thought on the social construction of selfhood. Merrigan, "Conscience and Selfhood: Thomas More, John Henry Newman, and the Crisis of the Postmodern Subject," *Theological Studies* 73 (2012) 841–69, doi:10.1177/004056391207300405.

7. Thomas Shannon, *Render Unto God: A Theology of Selective Obedience* (Mahwah, NJ: Paulist, 1974).
8. Paul Valadier, *Eloge de la Conscience* (Paris: Seuil, 1994). See also the discussion of Valadier's book in James F. Keenan and Thomas Kopfensteiner, "Moral Theology out of Western Europe," *Theological Studies* 59 (1998) 107–35 at 120–22, doi:10.1177/004056399805900106.
9. See John F. Kennedy, "Address to the Greater Houston Ministerial Association" (lecture, Rice Hotel, Houston, TX, September 12, 1960), <http://www.americanrhetoric.com/speeches/jfkhoustonministers.html>. For criticism of Kennedy's speech as beginning "the project of walling religion away from the process of governance in a new and aggressive way . . . [and dividing] a person's private beliefs from his or her public duties," see Charles J. Chaput, "The Vocations of Christians in American Public Life" (lecture, Houston Baptist University, Houston, TX, March 10, 2010), <http://www.ewtn.com/library/BISHOPS/chapxianpublife.htm>. For a critique of Chaput's speech, see Stephen F. Schneek, "President Kennedy and Archbishop Chaput: Religion and Faith in American Political Life," in *Voting and Holiness: Catholic Perspectives on Political Participation*, ed. Nicholas P. Cafardi (Mahwah, NJ: Paulist, 2012) 224–46. See also Mario Cuomo, "Religious Belief and Public Morality: A Catholic Governor's Perspective" (John A. O'Brien Lecture, University of Notre Dame, September 13, 1984), <http://archives.nd.edu/research/texts/cuomo.htm>. For critical assessments of Cuomo's speech and his approach to religion and politics, see Robert P. George, "The Mario That Might Have Been," *Public Discourse*, January 6, 2015, <http://www.thepublicdiscourse.com/2015/01/14229/>; and Peter Steinfels, "Mario the Pre-Conciliar Catholic," *Commonweal*, January 4, 2015, <https://www.commonwealmagazine.org/blog/mario-pre-conciliar-catholic>.

politics cannot be confined to such issues alone—many of which involve culture-war concerns over so-called intrinsic evils that are fast receding from the political front-lines. The magisterium of Pope Francis and his decidedly more relational and future-oriented view of conscience has pointed toward fruitful possibilities for theological work pertaining to a broader set of conscience-related issues like poverty, race, and gender.

Accordingly, this Note will proceed in three steps: First, I will discuss what I call the ecclesial conscience and politics; second, the personalist conscience and politics; and finally, emerging possibilities for theological reflection on conscience and politics. To be sure, the ecclesial and personalist views are not hard and fast categories. Within each category is a sense of conscience as a personal locus of fundamental moral awareness having its basis in a divine ground of obligation; of a process by which conscience is informed; of conscience as a personal act of judgment on concrete matters; and of conscience in relation to community and to the authority of the Catholic Church.¹⁰ But there are crucial differences across these categories, too. Some of these differences pertain to the relationship of conscience to truth, prudence, dignity, ecclesiastical authority, and God. Other differences pertain to the way conscience is understood in light of religious freedom or of the moral theological principle of cooperation. Still others pertain to the meaning of the relationality of conscience: Is conscience more fundamentally related to the truth or to persons?¹¹

One other caveat is in order before beginning the discussion of these categories. John Noonan has described the persuasive logic of the development of doctrine as a complex process often moving in fits and starts via the path of the interpretation of negative and positive experience in light of the human good and the Gospel.¹² Indeed, Newman's understanding of the primacy of conscience over the pope—"On the law of conscience and its sacredness are founded both his authority in theory and his power in fact," Newman said¹³—supplies a way of understanding the logic of Noonan's argument: The attraction of conscience toward the love of God and neighbor supplies the driving force in the process of development. But the category of experience is also crucial and here—in terms of politics—it is important to consider specifically the political contexts amid which theology has reflected on conscience in terms of negative and positive experiences. For however brilliantly Augustine evoked the freedom of the act of faith, the great Doctor of the Church found ready justification in his

10. For the threefold distinction of conscience as fundamental moral awareness, a process of informing conscience, and moral judgment, see Timothy E. O'Connell, *Principles for a Catholic Morality* (San Francisco: HarperCollins, 1990) 110–14.

11. For a discussion of such similarities and differences as they relate to the ecclesial and personal conscience, Catholicism, and politics, see David E. DeCosse et al., "Conscience Issue Separates Catholic Moral Camps," *National Catholic Reporter*, November 10, 2009, <https://www.ncronline.org/news/conscience-issue-separates-catholic-moral-camps>.

12. John Noonan, *A Church That Can and Cannot Change: The Development of Catholic Moral Teaching* (Notre Dame, IN: University of Notre Dame, 2005).

13. Newman, *Letter to the Duke of Norfolk* chap. 5.

interpretation of the Gospel of Matthew for suppressing heretics—and found ready support for the task in the imagery of subordination and in the machinery of punishment of the Roman Empire. The articulation of the primacy of conscience by Thomas Aquinas pointed toward the personalist turn centuries later that played a major role in the development of the rights of conscience. But Thomas himself bracketed the implications of his own thought on conscience and favored the power of the state, even to the point of death, to compel heretics to recant. Whatever progress there has been in the positive theological appreciation of the rights of conscience in political society, Noonan argues, was initially confined within narrow bounds by the ready access of the church to the power of the state. What helped theological thought on conscience break out of such confinement was reflection on the experience of religious persecution in the Wars of Religion and on the peaceful achievement of religious freedom in places like the colony of Rhode Island in colonial America.¹⁴

Indeed, we can see in other ways the effect of history and political context on the development of the theology of conscience. John O'Malley, for instance, has argued that conscience is one of the key "interiority" words by which to interpret the documents of the Second Vatican Council. O'Malley also notes that among other factors that brought that word to such conciliar significance were the negative experiences of many churches amid the totalitarian regimes of the 20th century and the positive experience of many churches in modern democracies.¹⁵ James Keenan has drawn on such history to argue forcefully that World War II as a political event had a differential and profound effect on the development of conscience on each side of the Atlantic. European theologians confronted a complicity of Catholics with fascist regimes and in response engaged conscience in terms of past and future: The past in a collective examination of conscience in order to repent of a culpable obedience to dictators and the future in the development of a theology of a responsible conscience capable of saying no to another tyrant. By contrast, Keenan says, in the victorious United States, Catholic Americans lapsed into a self-satisfied complicity, their consciences perhaps pricked by the saturation and atomic bombings, but nevertheless content to remain within the closed confines of ecclesiastical positivism. Thus, they were indifferent to moral demands arising from outside that closed world, like the demands for justice of the civil rights movement.¹⁶ Theological reflection on conscience closely follows that on religious freedom and, in a 2005 essay assessing the interpretation of the *Declaration on Religious Freedom* from the Second Vatican Council, Leslie Griffin draws on the work of Herminio Rico to argue that there have been three stages in the interpretation of the conciliar teaching on religious freedom. The first was represented by the work of the

14. Noonan, "Principled or Pragmatic Foundations for the Freedom of Conscience."

15. John O'Malley, *What Happened at Vatican II* (Cambridge, MA: Harvard University, 2010) 53–92.

16. James F. Keenan, "Redeeming Conscience," *Theological Studies* 76 (2015) 129–47 at 133–38, doi:10.1177/0040563914565296; and Keenan, "To Follow and to Form over Time: A Phenomenology of Conscience," in DeCosse and Heyer, *Conscience and Catholicism* 1–15 at 1–12.

council itself: the affirmation of the human right to religious freedom in opposition to the long history of Catholic arguments on behalf of establishment. The second stage was the claim of religious freedom in opposition to Communist dictatorships, especially of the Soviet bloc. Here John Paul II was the leader, taking his insistence that religious freedom was essentially freedom for the truth directly into the fray against regimes which denied the existence of truth outside of the materialist apparatus of the state. Finally, the church's affirmation of religious freedom has been brought to bear on the relativist tendencies of contemporary democracies: Against the view that there is no truth, the church's doctrine of religious freedom insists that there is and that civil laws should embody such truth as much as possible.¹⁷ Noonan, O'Malley, Keenan, Rico, and Griffin all provide important points of reference for seeing how the church's theology of conscience has often developed in opposition to or in agreement with the principles and practices of different political contexts. I note this in part because a theology of conscience developed in response to one political context may not be adequate for a different political context. And I note this, too, because of the unsettled, emerging political contexts around the world—in particular, the weakening power of the democratic state in the face of forces of economic globalization and the increasing appeal of authoritarian rule as a response to such powerful forces. What models of conscience, developed from the moral tradition of the church, are appropriate for these emerging times?

The Ecclesial Conscience and Politics

In a recent essay on *Amoris Laetitia*, James Bretzke argued that Catholic theology is facing a disputed question over the meaning of conscience.¹⁸ And so we are—about conscience in relation to matters of the family that Pope Francis discusses in *Amoris Laetitia* and about conscience and politics, too. In this section, I will discuss the ecclesial view of conscience—a view that more or less follows the lines laid down by the papacies of John Paul II and Benedict XVI. In the next section, I will turn to the personalist view—long in existence but now gaining more traction. During the postconciliar papacies, the classic teaching on the primacy of conscience given exceptional rhetorical power in *Gaudium et Spes* 16—conscience as the “the most secret core and sanctuary” of a person—was acknowledged but constrained.¹⁹ The *Catechism of the Catholic Church* elaborated on the conditions that would disqualify a claim to the

17. See Leslie Griffin, “Commentary on *Dignitatis Humanae* (Declaration on Religious Freedom),” in *Modern Catholic Social Teaching: Commentaries and Interpretations*, ed. Kenneth R. Himes et al. (Washington, DC: Georgetown University, 2005) 244–65 at 256–60, and Herminio Rico, *John Paul II and the Legacy of Dignitatis Humanae* (Washington, DC: Georgetown University, 2002).

18. James T. Bretzke, “Conscience and the Synod: An Evolving *Quaestio Disputata*,” *Journal of Moral Theology* 5, no. 2 (June 2016) 167–72 at 167.

19. *Gaudium et Spes* (December 17, 1965) 16 (hereafter cited in text as *GS*), http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html.

primacy of conscience.²⁰ And over against the classic teaching was mounted a faith ethic that did not dismiss primacy so much as assume its problematic subjectivity and offer the papal magisterium as a highly confident interpreter of what conscience ought anyhow to know. This view finds expression in *Veritatis Splendor*:

It follows that the authority of the Church, when she pronounces on moral questions, in no way undermines the freedom of conscience of Christians. This is so not only because freedom of conscience is never freedom “from” the truth, but also because the Magisterium does not bring to the Christian conscience truths which are extraneous to it; rather it brings to light the truths which it ought already to possess, developing them from the starting point of the primordial act of faith.²¹

The ecclesial view can also be found in the work of John Finnis, Germain Grisez, and David Schindler.²²

The ecclesial view of conscience and politics has distinctive characteristics. Conscience is related to law more than to prudence. Conscience is oriented to practical decisions but is often rendered in abstractions. Conscience is only capable of seeing what a person wants to see: Sinful habits constrain such sight. It is assumed that every conscience—and certainly every conscience of a Catholic—should know certain moral laws, especially laws understood as proscribing acts of what the ecclesial view terms “intrinsic evil.” Conscience is primarily understood as witness in a defensive, tutorist mode in a darkening culture, building on Joseph Ratzinger’s description of the fundamental orientation of conscience toward the good as “anamnesis” or memory.²³ Conscience is understood as an attribute of humans as such but is often more specified as the “Christian conscience” or the “Catholic conscience,” with the “Christian” or “Catholic” designation especially linked to the demand for public, political support for measures that outlaw or at least sharply limit actions considered to be intrinsically evil.²⁴ Thus in the ecclesial view, conscience is closely identified

20. *Catechism of the Catholic Church* 1790–93, http://www.vatican.va/archive/ccc_css/archive/catechism/p3s1c1a6.htm.

21. John Paul II, *Veritatis Splendor* (August 6, 1993) 64, http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_06081993_veritatis-splendor.html.

22. See, for instance, Finnis’s criticism of Newman’s *Letter to the Duke of Norfolk* for failing to make a sound case for the primacy of conscience in part because of failing to take sufficient account of the possibility of exceptionless moral norms in the teaching of the church. Finnis, “Conscience in the *Letter to the Duke of Norfolk*,” in *Religion and Public Reasons*, Collected Essays of John Finnis 5 (1990; repr., Oxford: Oxford University, 2011) 209–24; on the primacy good of religion, see especially Germain Grisez, *Beyond the New Morality: The Responsibilities of Freedom* (Notre Dame, IN: University of Notre Dame, 1980); and on the need more explicitly to reconnect religious freedom to truth, see David Schindler, “Freedom, Truth, and Human Dignity: An Interpretation of *Dignitatis Humanae* on the Right to Religious Liberty,” *Communio* 40 (2013) 208–316, <http://www.communio-icr.com/files/dlschindler40-2.pdf>.

23. Ratzinger, “Conscience and Truth” 12–15.

24. Congregation for the Doctrine of the Faith, *Doctrinal Note on Some Questions regarding the Participation of Catholics in Political Life* (November 21, 2002) 1, 4, 6, <http://www>.

with the collective and with the church and, accordingly, freedom of conscience is also understood in close association with the freedom of the church. As the late Cardinal Francis George of Chicago said in 2012 in criticism of then-Illinois Governor Pat Quinn's stands in favor of civil unions and abortion rights: "A personal conscience that is not consistent with authentic Catholic teaching is not a Catholic conscience."²⁵

At the heart of the ecclesial view of conscience and politics is a desire not to bring back the days of religious establishment but to contest an aggressive union of secularism and state power. "The just and necessary nondenominational character of the state ended up hiding—behind the idea of neutrality—the state's support of a secular world without God," said Cardinal Angelo Scola of Milan in 2012. The problem today, Scola added, does not arise so much from a diversity of beliefs in a pluralist society but from a sharp division between secularism and the religion.²⁶ Viewed in such a light, the offending liberal democratic states of today can often appear in the ecclesial view as slouching toward the avowedly anti-religious character of the regimes of the Soviet era and before. Robert George, in *Conscience and Its Enemies*, likens a reigning liberal ideology of conscience as self-will to the totalitarian experience and Marxist analysis of the recent past.²⁷ Moreover, at the heart of the ecclesial view is an

vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20021124_politica_en.html. See also Julie Clague's insightful discussion of the use of the phrase "Christian conscience" by John Paul II and Benedict XVI: "In *Veritatis Splendor*, therefore, the term 'Christian conscience' is used to express a conscience that is or is capable of being in harmony with magisterial teaching. The effect is to introduce a distinction between the sense communicated in the phrase 'a Christian's properly formed conscience' (indicating that sincere and thorough efforts have been made by a Christian to form conscience and render it authentic and binding) and 'a properly formed Christian conscience' (which can imply specific content giving to it the quality of being authentically Christian)." Julie Clague, "Christian Conscience, Catholic Teaching, and Lay Participation in Public Life," *International Journal of Public Theology* 5 (2011) 296–313 at 308, doi:10.1163/156973211x581551.

25. Robert McClory, "Illinois Bishops, Governor Meet, Discuss Conscience," *National Catholic Reporter*, January 3, 2012, <https://www.ncronline.org/news/politics/illinois-bishops-governor-meet-discuss-conscience>.
26. Quoted in Carol Glatz, "Being 'Neutral toward Religion Hurts Religious Freedom, Says Cardinal," *Catholic News Service*, December 7, 2012, <http://www.catholicnews.com/services/englishnews/2012/news-briefs-cns-1205144.cfm>.
27. Robert George, *Conscience and Its Enemies: Confronting the Dogmas of Liberal Secularism* (Wilmington, DL: ISI, 2013) 114. In a speech at Notre Dame in 2012, the highly influential American papal nuncio Archbishop Carlo Maria Viganò likened religious freedom concerns raised by the Affordable Care Act to the concerns of Pius XI in the face of threats posed by German and Italian fascists in the 1930s. In that speech, Viganò appeared to diminish the claims of conscience of non-Christian citizens when he offered a bracing description of religious freedom as the "exercise of fidelity to God and his holy church without compromise." Viganò, "Religious Freedom, Persecution of the Church, and Martyrdom" (keynote address, Institute for Church Life conference, "Seed of the Church: Telling the Story of Today's Christian Martyrs," November 4, 2012), video at <https://www>.

assumption that the union of secularism and state power is fueled by the notion of conscience as self-will or indifferentism or a radical subjectivity. Such a relativist conscience in a democratic society lives off a paradox: to guard its radically individualistic decisions, it insists on the absolute protection of non-negotiable moral and legal rights. But such absolute rights require a foundation in shared reasons that specify what it is in persons that obliges such absolute protection. Relativism, committed as it is to the impossibility of such shared reasons, cannot provide this foundation. And so a democratic politics rife with relativism often deals with issues like abortion less like a scene of reasoned discourse and more like a battleground of unyielding efforts to assert a right to abortion that, finally, rests on little more than an arbitrary assertion of will.²⁸

But if conscience as self-will is the problem, conscience oriented to the church or to truth or to religion is the solution. Richard Garnett has written extensively on the need to recover a renewed appreciation for the “freedom of the Church” as the first freedom in Western political history and as an evident if often overlooked, at least overlooked in the individualistic societies of the West, corollary of the social nature of human beings.²⁹ Other writers working within the ecclesial view have sought to recover a link between conscience, truth, and religion. Barrett Turner argues that “religious liberty needs a deeper grounding than individual conscience. Rather, appeals to conscience in religious liberty are strong insofar as they are grounded in religion itself, for “conscience is our ‘secret core and sanctuary’ where we discover the will of God found in the moral law.”³⁰ Similarly, Robert George grounds conscience in the architectonic basic good of religion.³¹

youtube.com/watch?v=-LAHbc3NAAU, transcript at https://icl.nd.edu/assets/84679/religious_freedom_persecution_martyrdom_nd_vigano.pdf. Vigano also is widely believed to have played a significant role in the controversial meeting between Pope Francis and Kim Davis, the Kentucky county clerk and conscientious objector to issuing marriage licenses for gay and lesbian couples. See Daniel Burke, “Pope Replaces Ambassador to U.S. Who Set Up Kim Davis Meeting,” *CNN*, April 12, 2016, <http://edition.cnn.com/2016/04/12/europe/pope-vigano-resign/>.

28. DeCosse et al., “Conscience Issue Separates Catholic Moral Camps.”

29. See Garnett, “Freedom of Religion and Freedom of the Church,” *Liberty Law Forum* (blog), *Online Library of Law and Liberty*, August 3, 2014, <http://www.libertylawsite.org/liberty-forum/freedom-of-religion-and-the-freedom-of-the-church/>; Richard W. Garnett, “‘The Freedom of the Church’: (Towards) An Exposition, Translation, and Defense,” *Journal of Contemporary Legal Issues* 33 (2013) 33–57, http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1284&context=law_faculty_scholarship; Richard W. Garnett, “Religious Liberty, Church Autonomy, and the Structure of Freedom,” in *Christianity and Human Rights: An Introduction*, ed. J. Witte and F. Alexander (Cambridge: Cambridge University, 2011); Richard W. Garnett, “The Freedom of the Church,” *Journal of Catholic Social Thought* 59 (2007) 59–86, doi:10.5840/jcathsoc2007415.

30. Barrett Turner, “Is Conscience the Ultimate Ground of Religious Liberty?” *Political Theology Today*, June 10, 2016, <http://www.politicaltheology.com/blog/is-conscience-the-ultimate-ground-of-religious-liberty-barrett-turner/>.

31. George, *Conscience and Its Enemies* 111–13.

We can see the ecclesial view of conscience doing decisive, practical work in a brief filed in the United States Supreme Court case known as *Zubik vs. Burwell*, also commonly known as the case of the Little Sisters of the Poor, involving plaintiffs challenging the Obama administration's contraception mandate.³² More specifically, plaintiffs sought relief from an "accommodation" offered by the Federal government in which they could inform the government or their insurer of their moral objection to contraception and not be required to include contraceptive coverage in their insurance plans; in turn the federal government or insurers would make separate arrangements with the plaintiffs' employees who wished to have contraceptive coverage. The brief in the *Zubik* case asked, according to the moral theological principle of cooperation, are the plaintiffs' consciences formally or materially complicit in moral evil by participating with the federal government's proposed accommodation? To this question, the brief answers with a resounding yes.

First, the brief argues that any compliance by the plaintiffs with the accommodation or the contraceptive mandate would constitute clearly impermissible formal cooperation in evil, with "formal" understood as sharing in the intention of the wrongdoer; the three acts understood as intrinsically evil at the heart of the brief's concern are contraception, abortion, or sterilization. Thus informing the government or their insurer of their moral opposition to these wrong acts—a notice that would signal to the government or the insurer that separate arrangements may need to be made with plaintiff's employees wanting insurance coverage of such matters—would be culpable moral complicity in evil. In effect, saying no would be saying yes. Moreover, having a contractual relationship with an insurer through which the government—after knowing of a plaintiff's objection—would facilitate employee access to insurance for these matters would also constitute formal cooperation in moral evil. The specifically formal nature of this cooperation is explained first by the moral principle, "One who knowingly obeys a command to act in furtherance of a wrongful objective typically shares thereby in the intention to achieve the wrongful objective,

32. "Brief of 67 Catholic Theologians and Ethicists as Amici Curiae in Support of Hobby Lobby Stores, Inc., and Conestoga Wood Specialists Corp.," January 28, 2014, <http://www.becketfund.org/wp-content/uploads/2014/01/bsac-13-354-and-13-356-Brief-of-67-Theologians-and-Ethicistspdf.pdf>. Also, for related work on conscience claims and a critical view of US federal health care reform, please see, among many articles, the exceptionally clear article by Christopher Tollefsen, "Conscience, Religion and the State," *American Journal of Jurisprudence* 54 (2009) 93–115, doi:10.1093/ajj/54.1.93; Bruce Frohnen, "The Problem with Empathy: Constitutional Agnosticism, the Rights of Conscience, and the Quest for Community," *The Catholic Social Science Review* 18 (2013) 119–38, doi:10.5840/cssr20131810; and Elliott Bedford, "Catholic Social Teaching and the Women's Preventive Health Services Mandate," *Nova et Vetera* 10, no. 4 (Fall 2012) 909–22. For an excellent document that provides an overview of the conscience rights debate within both religious and secular communities in the USA, see William A. Galston and Melissa Rogers, "Health Care Providers' Consciences and Patients' Needs: The Quest for Balance" (report, Governance Studies, Brookings Institute, February 23, 2012); https://www.brookings.edu/wp-content/uploads/2016/06/0223_health_care_galston_rogers.pdf.

even if the cooperation is performed reluctantly or under duress.”³³ The formality is also explained by saying that submitting the notice to the government or insurer in effect involves plaintiffs in “a means that is specifically designated and intended for a unique wrongful purpose.”³⁴ The notice to the government or insurers, the brief adds, has the “sole purpose and function . . . to facilitate the Government’s execution of a forbidden action [and thus] would necessarily involve sharing in the intention to perform the action.”³⁵

Of course, saying that any such involvement with the accommodation constitutes formal cooperation with evil rules out any such involvement. But the brief also addresses another possible line of argument: Whether involvement with the accommodation could be understood as material cooperation with evil that could be justified by a proportionate reason. That approach, however, is also rejected. There can be no proportionate reason, the brief says, that could justify even material cooperation with the “grave wrongs”³⁶ of abortion, sterilization, and contraception. One thing that can be said about the brief is that it appears to have worked: Its careful argument provided reasons—whether one likes the reasons or not—that surely passed constitutional standards as sincere and non-arbitrary and that likely factored in the plaintiffs at least not losing the case (the Court deadlocked in a 4 to 4 vote and sent the case back to federal appeals courts for further argument). But another thing that can be said about the brief is that its use of the principle of cooperation is oddly lacking context and missing prudence. The categories of time and space crucial to the principle of cooperation—usually rendered in the terms of mediacy/immediacy and proximity/remoteness—play almost no role in the analysis.

The ecclesial view of conscience has called attention to problematic matters of global significance: The use of state power to compel Catholics and others to act contrary to their consciences about fundamental and long-standing matters of sexuality, gender, and health care. From a different analytical framework, Australian legal theorist Frank Brennan’s latest book takes up similar problems.³⁷ The websites of the bishops of the Philippines, Ireland, and Canada also reveal similar concerns.³⁸ Moreover, the ecclesial view raises important concerns about the collective dimension of

33. *Ibid.* 3.

34. *Ibid.*

35. *Ibid.* 4.

36. *Ibid.*

37. Frank Brennan, *Amplifying That Still, Small Voice: A Collection of Essays* (Adelaide: ATF Theology, 2015) 181–206.

38. See, for instance, Catholic Bishops’ Conference of the Philippines, “Pastoral Guidance on the Implementation of the Reproductive Health Law” (July 7, 2014), <http://www.cbcpnews.com/cbcpnews/?p=38104>; “Bishops’ Briefing Note on Ireland’s ‘Protection of Life during Pregnancy Bill,’” *Zenit*, July 8, 2013, <https://zenit.org/articles/bishops-briefing-note-on-ireland-s-protection-of-life-during-pregnancy-bill/>; and “Canadian Religious Leaders Call on Government to Protect the Vulnerable, Improve Palliative Care, and Protect Freedom of Conscience,” Canadian Conference of Catholic Bishops, April 19, 2016, <http://www.cccb.ca/site/eng/media-room/4459-canadian-religious-leaders-call-on-government-to-protect-the-vulnerable-improve-palliative-care-and-protect-freedom-of-conscience>.

conscience. Conscience is the most singular of realities. And, even if it is debatable whether an institution has a conscience,³⁹ it is less debatable that consciences are deeply shaped and informed by institutions of all sizes. Such a claim about the role of institutions in conscience formation raises crucial normative questions about the vitality of a pluralism of individuals and associations in political society.

Personalist View of Conscience

The personalist view of conscience is not new. The characteristic personalist emphases on freedom, embodiment, relationship, history, and concrete context are evident in the works of Häring, Hogan, Patrick, Janssens, Curran, Smith, and more. Indeed, it is time to return to those works and recover their insights for the present challenges of conscience and politics. But many new works on conscience in a personalist key have been written in the last years—beginning with Pope Francis and extending broadly. Moreover, a personalist approach to conscience and politics correlates well with narratives that compete with the story of the alliance of secularism and state power at the heart of the ecclesial view. Charles Taylor and Jocelyn MacLure, for instance, argue that the problem of secularism has shifted. The issue is no longer primarily whether secularism is anti-religious or whether religions should have preferred—even if not established—status in democratic societies. Rather, the fact of remarkable moral and religious diversity is what must be addressed. Taylor and MacLure favor what they call a “liberal-pluralist” model of pluralism in which democratic society is committed to the moral equality and freedom of conscience of its citizens (and freedom of religion is understood as derivative from freedom of conscience). Such a society is also committed to an “ethics of dialogue” in which citizens of markedly different worldviews are willing to engage with each other about fundamental political matters in a spirit of forthrightness and respect.⁴⁰

From his first months in office, Pope Francis signaled a new personalist direction in the theology of conscience. Three aspects of this new direction are especially relevant to conscience and politics: the primacy of conscience; conscience and relationship; and conscience and the future. First, Francis recovered a more robust sense of the primacy of conscience and, in doing so, also advanced a less judgmental and more receptive attitude to the pluralism of contemporary culture. The key initial moment in this recovery was the pope’s widely noted and, by conservatives, widely criticized letter to atheist Italian newspaper editor Eugenio Scalfari. Francis said in that letter,

Given the premise, and this is fundamental, that the mercy of God is limitless for those who turn to him with a sincere and contrite heart, the issue for the unbeliever lies in obeying his

39. Daniel K. Finn argues that organizations do not have a conscience. “Organizations can have a kind of collective agency . . . But an organization has no consciousness and acts only through the actions of individuals within it.” See Finn, “Can an Organization Have a Conscience? Contributions from Social Science to Catholic Social Thought,” in DeCosse and Heyer, *Conscience and Catholicism* 167–81.

40. Jocelyn MacLure and Charles Taylor, *Secularism and Freedom of Conscience*, trans. Jane Marie Todd (Cambridge, MA: Harvard University, 2011).

or her conscience. There is sin, even for those who have no faith, when conscience is not followed.⁴¹

For the last decades, the church's approach to conscience and politics assumed a widespread culpability of citizens who, in the final words of paragraph 16 from *Gaudium et Spes*, "[care] but little for truth and goodness, or [who have] . . . a conscience which by degrees grows practically sightless as a result of habitual sin" (GS 16). But Pope Francis's praise for the primacy of conscience has brought back to the church's approach to culture and politics the long-overlooked and more hospitable penultimate phrase of paragraph 16: "Conscience frequently errs from invincible ignorance without losing its dignity."⁴² Second, Pope Francis has more explicitly connected conscience and relationship. Shortly before becoming pope in 2005, Josef Ratzinger had described the contemporary challenge of conscience as similar to the problem of conscience raised during the Soviet era: "The decline of a moral conscience grounded in absolute values is still our problem today," he said.⁴³ This way of putting things correlates conscience both with access to absolute values and to abstractions like truth and religion. By contrast, Francis rejected the language of absolutes—at least as a human possibility—and turned instead to the language of relationship. In the letter to Scalfari, he noted,

To begin with, I would not speak about "absolute" truths, even for believers, in the sense that absolute is that which is disconnected and bereft of all relationship. Truth, according to the Christian faith, is the love of God for us in Jesus Christ. Therefore, truth is a relationship. As such each one of us receives the truth and expresses it from within, that is to say, according to one's own circumstances, culture and situation in life, etc. This does not mean that truth is variable and subjective, quite the contrary. But it does signify that it comes to us always and only as a way and a life.⁴⁴

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41. Pope Francis, "Letter to a Non-Believer: Pope Francis Responds to Dr. Eugenio Scalfari, Journalist of the Italian Newspaper 'La Repubblica,'" September 4, 2013, http://w2.vatican.va/content/francesco/en/letters/2013/documents/papa-francesco_20130911_eugenio-scalfari.html. Important work could be done comparing the approaches to conscience of Benedict XVI and Francis with the approaches, respectively, of Bonaventure and Thomas Aquinas. See, for instance, Eric D'Arcy, *Conscience and Its Right to Freedom* (New York: Sheed and Ward, 1961) and Dennis J. Billy, "The Authority of Conscience in Bonaventure and Aquinas," *Studia Moralia* 31 (1993) 237–63.
42. Brian Johnstone offers an excellent analysis of this significance of these final phrases of GS 16 in the ecclesial's view's approach to conscience. "If a personal conscience retains its dignity, even when mistaken as the result of invincible ignorance, then conformity to an objective moral order alone cannot be the fundamental constitutive element of moral personhood." See Johnstone, "Conscience and Error," in Curran, *Conscience: Readings in Moral Theology* 14 163–74.
43. Joseph Ratzinger, "The Spiritual Roots of Europe: Yesterday, Today, Tomorrow," in Ratzinger and Marcello Pera, *Without Roots: The West, Relativism, Christianity, Islam* (New York: Basic, 2006) 51–80 at 73–74.
44. Pope Francis, "Letter to a Non-Believer."

This emphasis on relationality resituates conscience in a horizontal fashion, oriented in the world toward circumstances, culture, nature, history, and especially the encounter with the poor and oriented in the Church toward the conscientious mutuality of the *sensus fidelium*.⁴⁵ I will turn to Pope Francis's third category of the personalist view—conscience and the future—in the conclusion of the article.

Pope Francis's personalist approach to conscience and politics has been slow to take hold at the United States Conference of Catholic Bishops. But contrasting assumptions about conscience—and about strategic priorities—have begun to appear nonetheless. At their November 2015 meeting, the American bishops experienced a rare but revealing dispute. In an open session, Houston Cardinal Daniel DiNardo argued that the American bishops should continue to educate the consciences of the Catholic laity for engagement in public life by emphasizing the priorities established during the time of Pope Benedict and associated with intrinsic evils: to fight abortion, gay marriage, and restrictions on religious freedom. Moments later, San Diego Bishop Robert McElroy rose to object, saying that the cardinal's priorities failed to reflect the new theological moment being ushered in by Pope Francis. Chiefly, McElroy said, it was time for the bishops' conference to turn its pastoral attention as well to the great issues articulated by the new pope: the environment and the poor in the context of the global common good. By a large majority, the bishops in 2015 followed DiNardo's lead and made only minor changes to the existing edition of their election-related document, *Forming Consciences for Faithful Citizenship: A Call to Political Responsibility*.⁴⁶

Indeed, McElroy's writing in the last decade has been widely influential in advancing a more personalist view of conscience in the church's engagement with politics. During the height of the controversy in 2005 over whether Catholic politicians who support abortion rights could receive communion, McElroy published an essay arguing for the indispensable role of prudence in assessing such situations. In effect, the essay blunted the force of the view that a "Catholic conscience" could per se be incompatible with a more permissive legislative position on abortion.⁴⁷ More recently,

45. See International Theological Commission, "*Sensus Fidei* in the Life of the Church" (2014), http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_20140610_sensus-fidei_en.html.

46. Tom Roberts, "Bishops Pass 'Faithful Citizenship,' Some Call for New Document," *National Catholic Reporter*, November 17, 2015, <https://www.ncronline.org/news/vatican/us-bishops-pass-revised-faithful-citizenship-some-call-new-document>. For a related discussion that compares the view on conscience of Francis with the views on conscience of John Paul II and Benedict XVI in the context of the US Catholic bishops, see David E. DeCosse, "Conscience, Missionary Discipleship, and a Church for the Poor," in *Pope Francis and the Future of Catholicism in the United States: The Challenge of Becoming a Church for the Poor*, The Lane Center Series 3 (San Francisco: University of San Francisco, 2015) 83–88; <https://dgmssnschw7.cloudfront.net/sites/default/files/pdfs/lane-center-series-03.pdf>.

47. Robert McElroy, "Prudence and Eucharistic Sanctions," *America*, January 31, 2005, <http://www.americamagazine.org/issue/516/article/prudence-and-eucharistic-sanctions>.

McElroy's widely influential article called "A Church for the Poor" argued for a strategic shift toward the poor in the priorities of the Catholic Church in the United States. And, at the heart of such a shift, he argued, was a recovery of the role of prudence (in effect, rejoining conscience and prudence) in the approach of Catholics to the political sphere:

The role of prudence has been one of the most misused elements in the Catholic political conversation in the United States in recent years. It is frequently asserted, particularly in election years, that issues pertaining to intrinsic evils do not necessitate prudential judgment, while other grave evils like war, poverty or the unjust treatment of immigrants are merely prudentially laden issues on which people of good will can disagree. The truth is that prudence is a necessary element of any effort to advance the common good through governmental action.⁴⁸

Other writers have argued on behalf of a personalist view of conscience by insisting on the importance of prudence in voting or by speaking of the concrete role of a politician and the inevitably prudential judgments politicians and voters must make. In his comprehensive work *Christianity and the Political Order*, Kenneth Himes argues that prudence is an indispensable element of our conscience formation with regard to voting and the assessment of policy.

A political vote cannot be a simple translation of one's moral values. Voting always requires a measure of the classical virtue of prudence. . . . Prudence is crucial to responsible voting because it permits sound judgment not just about proper values and principles but also concerning how to choose the best policy and candidate to enact one's moral convictions.⁴⁹

Gregory Kalschauer notes that the language commonly used today to describe the disposition needed by Catholics as they face political questions—that they should "form" their consciences according to Church teaching—was in fact specifically rejected by the drafters of the Declaration on Religious Freedom at the Second Vatican Council. There, Kalschauer notes, the conciliar fathers rejected the language of "form" in favor of the phrase that Catholics in their political decisions "ought carefully to attend to the sacred and certain doctrine of the Church."⁵⁰ Here the more spacious sense suggested by the latter phrasing opens up possibilities for the conscience of Catholics to turn to the virtue of prudence in making political decisions.⁵¹ Thomas Massaro carves out space for the personalist conscience by emphasizing the distinctive role and vocation

48. Robert McElroy, "A Church for the Poor," *America*, October 21, 2013, <http://www.americamagazine.org/church-poor>.

49. Kenneth Himes, *Christianity and the Political Order: Conflict, Cooptation, and Cooperation* (Maryknoll, NY: Orbis, 2013) 270.

50. *Dignitatis Humanae* (December 7, 1965) 14, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html.

51. Gregory A. Kalschauer, "Conscience and Citizenship: The Primacy of Conscience for Catholics in Public Life," in Cafardi, *Voting and Holiness* 107–25 at 113–14.

of a politician—and the often agonizing choices facing the men and women who occupy such roles. Moreover, Massaro nicely situates the issue of conscience in terms of the rightful independence, responsibility, and expertise of the laity as voters and political actors.⁵² In a creative essay, William O’Neill resituates the issue of conscience and prudence away from their usual individual referents and into decidedly public space. He argues:

Precisely *as* citizens of faith, we must seek to frame our differences (for example, regarding the constituents of basic healthcare, the scope and limits of religious liberty, and fitting modes of participation) within a moral consensus—one, that is, constrained and informed by the political maxims of our *con-scientia*—conscience in the public sphere. A wise (prudential) decision in the case of abortion will recognize that rights we hold in common do, *pro tanto*, conflict, but just so, permit us to make sense of our differences.⁵³

In a noteworthy essay to appear in a forthcoming book called *Conscience and Catholic Health Care: From Clinical Contexts to Government Mandates*, Cathleen Kaveny addresses the conscience issues in the Supreme Court case of the Little Sisters of the Poor.⁵⁴ Kaveny notes the changed context in which the case has appeared. Several decades ago, the issue was whether general laws that prohibited practices like abortion or gay marriage “impermissibly burden the consciences of those who do not share the relevant religious or moral beliefs.” Today, she says, the problem has shifted to exemptions from generally applicable laws in a context where abortion and gay marriage are protected as constitutional rights. Thus the issue today is, “Is it morally justified for religiously motivated institutions and persons to claim exemptions from legal requirements operationalizing these rights, on the grounds that they believe the requirements implicate them in moral wrongdoing?”⁵⁵

52. Thomas Massaro, “The Role of Conscience in Catholic Participation in Politics Since Vatican II,” in *The Church in the Modern World: Fifty Years After Gaudium et Spes*, ed. Erin Brigham (Lanham, MD: Lexington, 2015). For another insightful discussion of conscience, politics, and the laity, see Julie Clague, “Christian Conscience, Catholic Teaching, and Lay Participation in Public Life.”

53. William R. O’Neill, “The Wisdom of Serpents: Conscience, Power, and Politics in the Abortion Controversy,” in DeCosse and Heyer, *Conscience and Catholicism* 183–98 at 198.

54. Cathleen Kaveny, “Law, Religion, and Conscience in a Pluralistic Society: The Case of the Little Sisters of the Poor,” in *Conscience and Catholic Health Care: From Clinical Contexts to Government Mandates*, ed. David E. DeCosse and Thomas Nairn (Maryknoll, NY: Orbis, 2017). All quotations are from the manuscript of Kaveny’s essay. For related commentary on the dispute between groups like the Little Sisters of the Poor and the Obama administration over the contraception mandate, see David E. DeCosse, “Bishops’ Conscience Model Makes Light of Practical Reason,” *National Catholic Reporter*, January 23, 2012, <https://www.nronline.org/news/politics/bishops-conscience-model-makes-light-practical-reason>.

55. The issue of exemption from generally applicable laws is similar to the issue of selective conscientious objection. Thomas Shannon’s excellent book *Render Unto God: A Theology of Selective Obedience* merits contemporary reconsideration. There Shannon

How this question is engaged—not only “how” in terms of argument but “how” in terms of the genre, context, gender, and roles implicated in the argument—plays a crucial role in her analysis.⁵⁶ And here she faults the reliance on litigation (and its tendency to shape arguments to win a case, often in an antagonistic culture-war style) and the specific arguments on cooperation used to support the Little Sisters. Litigation suggested a conflict between the who-doesn’t-love-them Little Sisters and an aggressively secular Obama administration. This way of putting things, Kaveny argues, might win the day in court. But it also occludes the full range of conscience claims at stake in the matter. She said, “It is not, after all, as if the Little Sisters and the Obama administration are members of rival gangs who finally come to blows on a busy street full of random passers-by. Instead, both have role-related obligations that generate legitimate expectations on the part of third parties.”⁵⁷

She also sharply criticized the arguments on the basis of cooperation featured in the brief in support of the Little Sisters. On the issue of formal cooperation, she emphasizes the role of intention in establishing such formality:

nicely summarizes the reasons why conscience ought to obey a civil law: from a consistency between the law and values derived from one’s religious tradition; as a return on a contractual basis for the benefits of safety and security provided by law; from the law having been adopted through fair political procedures; and on account of fairness understood in a spirit of the Golden Rule as each citizen being willing to accept some imperfections with which they disagree because other citizens similarly accept imperfections with which they disagree. See Shannon, *Render Unto God* 93–123. Other works on selective conscientious objection or conscientious objection could also helpfully inform the current debate, including John Courtney Murray’s short essay “Selective Conscientious Objection,” in which he argues against libertarian appeals to selective conscientious objection by insisting on the inevitable moral tension in such matters between the appeal of an individual conscience and the “conscience of the laws” of the state. See Murray, “Selective Conscientious Objection” (lecture, Western Maryland College, June 4, 1967), <http://www.library.georgetown.edu/woodstock/murray/19671>. See also Martin Luther King, Jr.’s classic “Letter from Birmingham Jail” for its insistence that the conscientious objector should accept the punishment of the law as a sign of affirmation for the moral good of political community. King, “Letter from Birmingham Jail,” April 16, 1963, https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html.

56. For a critical view of the rejection by religious groups of the Obama administration’s “accommodation” on the contraceptive mandate, see Douglas Laycock, “Religious Liberty and the Culture Wars,” *University of Illinois Law Review* 3 (2014) 101–79, <http://illinoislawreview.org/wp-content/ilr-content/articles/2014/3/Laycock.pdf>. Laycock, law professor at the University of Virginia, stands out as a critic because of his longtime defense of religious liberty claims, including his successful arguments in the United States Supreme Court in the *Hosanna v. Tabor* case.
57. For a discussion of the effect of conscience-based claims on third parties, see Douglas NeJaime and Reva Siegel, “Conscience Wars: Complicity-Based Conscience Claims in Religion and Politics,” *The Yale Law Journal* 124 (2015) 2517–91, <http://www.yalelawjournal.org/feature/complicity-based-conscience-claims>.

Formal cooperation with evil requires that the cooperator *intend* the evil that is done by the third party; mere causal connection with that harm is insufficient. To claim that signing a form objecting to providing contraceptive coverage amounts to purposefully furthering the use of contraception by employees is nothing short of nonsensical.

She also disputes the brief's rejection of material cooperation by noting the cursory nature of the appeal to proportionate reason—a kind of reason that, she argues, should not be circumscribed but should require attentiveness to the role-related obligations of all parties involved; to the full institutional setting of the dispute; to the gender-related concerns of those wishing to use birth control; and to the broader normative political framework that frames the situation. Beyond its criticism of the Little Sisters' case, Kaveny's essay also offers the categories of Rawlsian civic friendship and the Golden Rule as helpful normative tools for assessing the full meaning of respect for conscience in a pluralist context.

We can also see the personalist view of conscience and politics present in theologians working around the world. Linda Hogan extended her earlier work on conscience to engage the debate in Ireland over the legalization of same-sex marriage (the 2015 referendum in the heavily Catholic country passed with 62 percent of the vote, making Ireland the first country in the world to legalize same-sex marriage by direct popular vote). In particular, she took aim at the way that claims of conscience often work as rhetorical gambits with an air of unimpeachable and ahistorical certainty and with a goal of silencing opponents or ending debate. Instead, she argued, it's more accurate to think of conscience claims in a more provisional, tentative fashion:

In addition to justifying our deeply held moral beliefs and claims of conscience to one another, we must also have a way of adjudicating between these moral beliefs and claims of conscience, particularly when they are in conflict. It is important that we promote an approach that at the same time allows for recognition that these conclusions are ultimately provisional and therefore must be open to change.⁵⁸

Emilce Cuda of Argentina also engages the topic of conscience, Catholicism, and same-sex marriage and argues that it is impossible to understand the role of conscience in the Argentinian debate (same-sex marriage was adopted in the country in 2010) without attending to the extensive role that conscience and construction always play in

58. Linda Hogan, "Marriage Equality, Conscience, and the Catholic Tradition," in DeCosse and Heyer, *Conscience and Catholicism* 83–95 at 91. Amid the same-sex marriage debate in Ireland, Hogan also wrote a powerful opinion article in favor of passage of the referendum. See Linda Hogan, "Christians, Adherents of Most Major Religions, Support Equality for LGBT People," *Irish Times*, April 21, 2015, <http://www.irishtimes.com/opinion/christians-adherents-of-most-major-religions-support-equality-for-lgbt-people-1.2182570>. Other work from Ireland with implications for conscience and politics includes Dermot Lane, ed., *Vatican II in Ireland, Fifty Years On: Essays in Honor of Padraic Conway* (New York: Peter Lang, 2015); and Gabriel Daly, *The Church: Always in Need of Reform* (Dublin: Dominican, 2015).

interpreting normative demands—perhaps especially ones that appear as timeless, absolute truths. She noted:

The more aware that Catholics become that their judgments—that is, the results of their discernment within the interior of their conscience—are influenced not only by grace but also by culture, the more balanced and just their conclusions and actions will be. . . . [A] conscience shaped by the magisterium is always also a situated conscience permeated by culture and in need of construction.⁵⁹

In the Czech Republic, Vaclav Havel’s classic essay “Politics and Conscience” is best known for its articulation of a conscience in service to an “antipolitical politics.” But the essay also stands as a profound reflection on the personalist conscience in relation to the natural world—and to the significance of such a relation for an engagement in politics. Words near the beginning of the essay about boyhood walks marred by spewing industrial smokestacks would have worked seamlessly as a quotation on conscience and nature in *Laudato Si*: “[T]hat soiling of the heavens offended me spontaneously. It seemed to me that, in it, humans are guilty of something, that they destroy something important, arbitrarily disrupting the natural order of things, and that such things cannot go unpunished.”⁶⁰

Eric Genilo in the Philippines confronts a problem of conscience reflective of a culturally Catholic country facing a political situation in which laws specifically permit and even support practices contrary to Catholic moral doctrine. The issue at hand was the national contraception law passed in 2012—a law that the Catholic bishops of the country argued passionately and unsuccessfully against. Genilo probes a crucial contextual dimension of the scenario: whether a Catholic political office holder with responsibility for health programs should exercise conscientious objection by impeding the distribution in his municipality of legally permitted contraceptives. In effect, the case was similar to the noted case of Kim Davis in the United States—the Kentucky county clerk who refused to issue marriage licenses to same-sex couples after the United States Supreme Court ruled that same-sex marriage was a constitutional right. Genilo invites a broad view of conscience, insisting that what is at stake is not the conscience of the office holder understood as a person simply but also the conscience of an office holder understood as such. He argued,

59. Emilce Cuda, “Marriage Equality in Argentina,” in DeCosse and Heyer, *Conscience and Catholicism* 97–109 at 109. Cuda has emerged as a crucial interpreter of the theological views of Pope Francis in such works as Cuda, *Para leer a Francisco: Teología, Ética y Política* (Manantial: Buenos Aires, 2016); Cuda, “Identity as Search and Construction of Meaning by the Discourse of the People,” in *Pressing On: Next Generation of Indecent Theologians*, ed. Nicolas Panotto (United States: Borderless, 2016) 129–50; and Cuda, “Francisco and the Theology of the People,” in *Unto the Margins: Pope Francis and His Challenges*, ed. John Chathanatt (Delhi: Media House and Claretian, 2013) 61–77.

60. Vaclav Havel, “Politics and Conscience,” trans. Erazim Kohak and Roger Scruton, *Salisbury Review* 2 (January 1985), http://www.univforum.org/sites/default/files/HAVEL_Politics%20Conscience_ENG.pdf.

I believe that “being present” to one’s self before God requires an acknowledgment and integration of all the dimensions of one’s self, including the social dimension. The Catholic public official discerning in conscience how to implement the law stands before God not as an isolated person but as a person with a duty to protect and promote the common good of the community.⁶¹

In any case, the debate in the Philippines over the contraception legislation was contentious, with Catholics on both sides of the matter. The bishops of 2012 were ardently opposed and sought to muster Catholic opposition to the bill. But they were also confronted with the words from the bishops of 1991, who met in the Second Plenary Council of the Philippines and said:

Here may even be some Catholic believers who in all honesty do not see the truth the way the Church’s magisterium discerns, interprets, and teaches it. In such a situation, the Church must clearly and firmly teach what it believes is the truth and require its members to form their consciences accordingly. Yet the Church must also, with all charity and justice, hold on to its doctrine on religious freedom—that the human person is bound to follow his or her conscience faithfully, and must not be forced to act contrary to it.⁶²

Genilo is confronting a reality in which concerns about Catholicism and conscience arise in a predominantly Catholic or Christian culture. But, of course, a shift in context can also shift normative concerns: A majority religious culture may demand things from others that, if the majority were in the minority, it would never want to have the same things taken away.⁶³ Writing from India, where Christians are a small fraction of the population, Sister Eugene Rodrigues offers an argument for freedom of conscience in the face of a Hindu nationalist government’s efforts to restrict conversions to Christianity. She also argues that, in its pursuit of religious freedom, the church must be a collective conscience in itself showing how a religiously diverse country like India can live in peace.⁶⁴ In Japan, where Catholics constitute 0.5 percent of a population of 127 million, Osamu Takeuchi correlates Catholic notions of conscience with

61. Eric Genilo, “Public Officers as Conscientious Objectors,” in DeCosse and Heyer, *Conscience and Catholicism* 111–25 at 121. Genilo also weighed in on conscience issues in the reproductive health law debate in Genilo, “Crossing the Line: Church Use of Political Threats against Pro-RH Bill Legislators,” *Hapag* 7 (2010) 63–77, doi:10.3860/hapag.v7i1.1923.

62. Catholic Bishops’ Conference of the Philippines, *Acts and Decrees of the Second Plenary Council of the Philippines* (Manila: Catholic Bishops’ Conference of the Philippines, 1992) pars. 362–63.

63. For a discussion of the implications for conscience of the equality of religions in political society—and not just one or two dominant religions in a political society—see Martha C. Nussbaum, *Liberty of Conscience: In Defense of America’s Tradition of Religious Equality* (New York: Perseus, 2008).

64. Eugene Rodrigues, “Conscience, the Locus of Our Being, and Anti-Conversion Laws in India,” DeCosse and Heyer, *Conscience and Catholicism* 127–38.

Confucian and Buddhist thought in order to speak more persuasively to Asian culture—political culture and otherwise—about the orientation of conscience to a common good understood in light of the principle of *wa* or harmony.⁶⁵

In Africa, Laurenti Magesa has argued that the category of conscience is of growing theological significance.

It is increasingly argued that without addressing the question of conscience, Africa is irredeemably doomed. What kind of principles guide people—found even among the highest levels of government and in civil society—who are so deeply involved in corruption as to find it the normal way to operate public and civil institutions?⁶⁶

One answer to this challenge comes from Clement Majawa, who invites the Church to think of itself as a collective conscience for the political order—not only by what it says but by the way it lives, and not in a Hauerwasian turn from the state but in an engaged posture of cooperation specifically oriented to the political:

The Church will always remain as the Conscience of Society. To do this job effectively, the Church should be informed, listened to and be involved in the political, among other, issues of the day. The Church has a divine mandate to encourage its members to exercise their right to seek political integrity, to vote and hold political offices. Those who hold political offices should seek to be model citizens with good behaviour and integrity, as a witness to the integrity of Christ and His gospel.⁶⁷

Conclusion

In closing, I would like to recall the earlier discussion in the article about the effect of political contexts on the development of the theology of conscience. James Keenan has already pointed to one aspect of contemporary political history that profoundly affects our construal of conscience: the neglect in the United States and elsewhere of fully engaging the centuries-long, state-sponsored enslavement and oppression of African Americans.⁶⁸ In one sense, the surface of that history is familiar. In another sense, the destructive effects of the unexplored depths of that history are evident everywhere in political life: a racist “birther” movement that questioned whether President Barack Obama was born in the United States and succeeded in persuading millions of Americans that he was not; a rampant use of “dog whistle” politics that deploy coded images to stoke white racial resentment; and the unapologetic use of voter suppression techniques for African Americans and other minorities throughout the United States.

65. Osamu Takeuchi, “Three Modes of the Embodiment of Conscience,” in DeCosse and Heyer, *Conscience and Catholicism* 27–38.

66. Laurenti Magesa, review of *Formation of Christian Conscience in Modern Africa*, by Richard Rwiza, *African Ecclesial Review* 52, nos. 2–3 (2010) 220–22 at 220.

67. Clement Majawa, “Church as Conscience of the State: Christian Witness in Politics for the Transformation of Africa,” *African Ecclesial Review* 56, nos. 2–3 (2014) 151–81 at 176.

68. Keenan, “Redeeming Conscience,” 135–38.

Bryan Massingale's powerful essay "Conscience Formation and the Challenge of Unconscious Racial Bias" can provide significant assistance in facing these challenges at the heart of political life.⁶⁹

But conscience, as Keenan notes, is where we encounter sin and grace: The way back into an unredeemed past also has to be a way forward. And here Pope Francis's description of the personalist conscience as decentering and oriented toward the "always greater God" provides a helpful way to link conscience more closely with discernment, even political discernment, of the hope that lies ahead.⁷⁰ Challenges for conscience and politics abound now. An authoritarian and nationalist politics fueled by the power of economic dislocation, ethnic contempt, and reckless disregard for basic standards of truth is on the rise around the world and challenging the fundamental structures of liberal democracies. The church's moral tradition of thinking about conscience and politics is a wider current than it was generally thought to be even a short time ago. And it may be especially helpful in the years ahead to plumb that current and reconnect conscience with grace, hope, or what Maureen O'Connell movingly describes as "vision" when she speaks of the freedom that comes with acts of conscience such as voting:

No platform will be complete, no candidate ideal, no policy the definitive answer to injustice, no single vote a condemnation or absolution for human brokenness. And yet, freed from the expectations of religious ideology or political idealism that suggest the contrary, we might approach our civic responsibility to vote as just one of many ways of actively saying "Yes!" in our spiritual and political lives. "Yes!" to a deeply personal and socially invigorating relationship with God and others. "Yes!" to our central values. "Yes!" to our vision of what life in community could be. "Yes!" to our own potentials to effect change on the other side of the curtain.⁷¹

Author Biography

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69. Bryan Massingale, "Conscience Formation and the Challenge of Unconscious Racial Bias," in DeCosse and Heyer, *Conscience and Catholicism* 53–68.

70. "A Big Heart Open to God: The Exclusive Interview with Pope Francis," *America*, September 30, 2013, <http://www.americamagazine.org/pope-interview>.

71. Maureen O'Connell, "Can You Sin When You Vote?" in Cafardi, *Voting and Holiness* 197–214 at 211.