

## ABORTION, BISHOPS, EUCHARIST, AND POLITICIANS: A QUESTION OF COMMUNION

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#### INTRODUCTION

In 1947, Archbishop Joseph E. Ritter, as one of his opening acts as the new leader of the St. Louis Archdiocese, became the first to integrate a school system in a former slave state by ordering the admission of blacks to the Catholic schools.<sup>1</sup> When segregationist parishioners protested, Archbishop Ritter issued a pastoral letter to be read in every parish warning that any Catholic who participated in a proposed lawsuit to enjoin racial integration in the parochial schools would be automatically excommunicated.<sup>2</sup> Archbishop Ritter's episcopal decree had concrete effects, as the St. Louis Catholic schools at long last were opened fully for children of all ethnic backgrounds when the school year began that fall.<sup>3</sup>

At the time, those who wanted to maintain separation of the races protested Archbishop Ritter's actions as beyond his ecclesial authority—although an appeal to the Vatican's apostolic delegate in Washington, D.C. was rebuffed—while advocates of racial justice hailed the prelate “both for his decision and for his resolve in enforcing it.”<sup>4</sup> There is evidence that

<sup>1</sup> Patricia Rice, *Cardinal Ritter Integrated Archdiocesan Schools in '47: He Threatened Opponents with Excommunication if They Took Legal Action*, ST. LOUIS POST-DISPATCH, Dec. 14, 2003, at 23.

<sup>2</sup> *Id.*; Robert Tabscott, *A Man of Faith and Justice*, ST. LOUIS POST-DISPATCH, Feb. 1, 1996, at 11B.

<sup>3</sup> See Tabscott, *supra* note 2, at 11B.

<sup>4</sup> *Three Centuries of Catholicism*, Archdiocese of St. Louis, at <http://www.archstl.org/history/chap5.html> (last visited Oct. 1, 2004).

Archbishop Ritter's appointment and actions were strongly endorsed by the Vatican, which believed the prior bishop had improperly acquiesced in the evil of racial segregation.<sup>5</sup>

Nearly sixty years later, in January 2004, another newly installed Archbishop of St. Louis, Raymond L. Burke, warned publicly that presidential candidate and professing Catholic John Kerry should not present himself for communion in the archdiocese.<sup>6</sup> (Senator Kerry had habitually opposed legislative efforts to restrict the availability of abortion at any stage, had even voted against a proscription on transporting pregnant minor girls across state lines for abortions without parental permission, had proclaimed that he would nominate for the Supreme Court only those committed to abortion rights, and had embraced the endorsement of the abortion industry.<sup>7</sup>) This was not Archbishop Burke's first such action. While serving earlier that year as Bishop of LaCrosse in Wisconsin, he had issued a pastoral letter pronouncing that Catholic legislators who approved of abortion or euthanasia committed a manifestly grave sin and were a cause of scandal to others, thereby precluding their admission to the Eucharist.<sup>8</sup>

As had been the case more than a half-century earlier, the archbishop's statement drew both rebuke and praise. Forty-eight Catholic members of Congress signed a letter to the Cardinal Archbishop of Washington, D.C., calling the denial of the Eucharist to politicians supporting abortion rights "deeply hurtful" and insisted such actions risked

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<sup>5</sup> See Florence Shinkle, *Go Write Your Little Letters*, ST. LOUIS POST-DISPATCH, June 22, 1997, at 1C.

<sup>6</sup> Patricia Rice, *Archbishop Burke Says He Would Refuse Communion to Kerry*, ST. LOUIS POST-DISPATCH, Jan. 31, 2004, at 24.

<sup>7</sup> Charlotte Allen, *Religion, The Do-It-Yourself Doctrine*, LOS ANGELES TIMES, May 23, 2004, at M1 ("Kerry is also campaigning as the candidate of NARAL Pro-Choice America, the abortion-industry advocacy group, whose endorsement he won with an absolutist stance on abortion rights."); Helen Dewar & Dan Balz, *Kerry's 19 Years in Senate Invite Scrutiny*, WASH. POST, Feb. 8, 2004, at A1 (reporting that Senator Kerry has "one of the Senate's most consistent records in support of abortion rights," including voting against a ban on partial-birth abortion and opposing proposals for parental notification before a minor could receive an abortion); David E. Rosenbaum & Robin Toner, *High-Profile Inquiries, Not Bills, Dominate Kerry Record*, N.Y. TIMES, Feb. 8, 2004, at 23 (reporting that Kate Michelman, president of NARAL Pro-Choice America, said that "[e]ven on the most difficult issues, we've never had to worry about John Kerry's position"). See generally National Right to Life Committee, *Senator Kerry's Voting Record on Abortion Legislation*, at <http://www.capwiz.com/nrlc/bio/keyvotes/?id=298&lvl=C> (last visited Oct. 27, 2004).

<sup>8</sup> BISHOP RAYMOND L. BURKE, PASTORAL LETTER: CATHOLICS AND POLITICAL RESPONSIBILITY (Diocese of LaCrosse, WI, January 2004), available at <http://catholiceducation.org/articles/politics/pg0116.html>; see also Rice, *supra* note 6 (reporting that Burke sent an official episcopal notification that three Wisconsin legislators were barred from communion).

“miring the Church in partisan politics.”<sup>9</sup> Detractors characterized the decision by Archbishop Burke and a few brother bishops as “politicizing the Eucharist.”<sup>10</sup> Other observers, however, praised the action as long overdue, saying that “[t]he fact that so many Catholics hold public office and flout church teaching is a scandal that many of us have waited a long time to see addressed.”<sup>11</sup> And, in another parallel with events sixty years previously, there again is evidence that the Vatican was encouraging a more assertive approach by the American episcopate toward pro-abortion Catholic politicians.<sup>12</sup>

In this article, we seek to provide the faithful reader with the underlying substance, references to sources, and a précis of ecclesiastical essentials necessary for a fuller understanding of this present-day controversy from the perspective of the Catholic Church and its teaching and longstanding traditions. Our commitment to the Church’s consistent teaching on the sanctity of innocent human life, as well as our admiration for those Church leaders who in diverse ways have borne powerful witness to that teaching, inevitably emerges in what we have written here. But our primary purpose is not polemical but rather explanatory, to enable the general reader to better appreciate the nature of the controversy, by providing scriptural, historical, and canon law context on the Church’s solicitude for innocent human life, on the duty of the bishops to instruct and protect their flocks, on the obligations of the Catholic lay faithful in public life and particularly of those with political power, on the preparation for and proper attitude of those who present themselves for communion, and on the meaning of communion, including the appropriate circumstances in which the Eucharistic sacrament may or should be withheld.

With this background in mind, we especially welcome the thoughtful recent response of the Catholic bishops in the United States, which we hope and believe may herald a renewed and more insistent witness by the Church in America to the sanctity of human life and against the intrinsic

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<sup>9</sup> Letter from 48 Members of the U.S. House of Representatives, *On Denying Communion as a Sanction, to Cardinal Theodore McCarrick, Diocese of Washington D.C.* (May 10, 2004) (signed by 48 House members and published in various Catholic news sources and websites), available at [http://www.catholicculture.org/docs/doc\\_view.cfm?recnum=6016](http://www.catholicculture.org/docs/doc_view.cfm?recnum=6016).

<sup>10</sup> Laurie Goodstein, *Democrats Criticize Denial of Communion by Bishops*, N.Y. TIMES, May 20, 2004 at 16 (quoting Rep. Bart Stupak, D-Mich.).

<sup>11</sup> *Id.* (quoting Deal Hudson, publisher of CRISIS magazine).

<sup>12</sup> Sandro Magister, *The Kerry Affair: What Ratzinger Wanted from the American Bishops*, L’ESPRESSO, July 3, 2004, at [http://213.92.16.98/ESW\\_articolo/0,2393,42196,00.html](http://213.92.16.98/ESW_articolo/0,2393,42196,00.html) (translated from Italian into English).

evil of abortion.<sup>13</sup> We conclude that those bishops who determine in light of pastoral circumstances in their dioceses that the Eucharist should be withheld from a particular person or that political leaders with certain attitudes should be directed to voluntarily refrain from approaching the altar have acted comfortably within Church tradition and ecclesial authority. At the same time, we acknowledge that other bishops may determine that withholding of this sacrament is not the appropriate pastoral or prudential response to different circumstances and people in their dioceses, instead being committed to other affirmative actions or expressions as better suited to promote the Church's witness to life. If dedicated toward vigorous and insistent means to promote the sanctity of unborn human life in their dioceses, all of these bishops should be recognized as upholding their pastoral responsibilities and as striving to act in accordance with canon law expectations and prerogatives.

Accordingly, we intend here neither to advocate the denial of the Eucharist to any particular Catholic politician who arguably has trespassed against the innocent life of the unborn nor to undermine those prelates who determine that a declaration of ineligibility for the sacrament on the part of a particular public leader is the correct response in a particular pastoral context. Rather, as the American bishops have forcefully reaffirmed in their most recent statement, the Church, present in each of its dioceses and parishes, has an affirmative and urgent obligation to say and do *something*. When those exercising political power exhibit contemptuous and public disregard for Church teaching on the fundamental matter of innocent human life, passive silence is not a moral or pastoral option. And as the successors to the apostles, this pastoral responsibility belongs most directly to the bishops, who as shepherds always remain accountable to the Master for their flocks.

#### I. ABORTION, INFANTICIDE, AND THE CATHOLIC RESPONSE

“You formed my inmost being; you knit me in my mother’s womb.”<sup>14</sup>

##### A. *Early Christian Response to Infanticide and Abortion*

From the beginning of the Christian tradition, the Church has stood firmly and reliably in favor of innocent human life and has regularly

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<sup>13</sup> UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, CATHOLICS IN PUBLIC LIFE (2004) [hereinafter CATHOLICS IN PUBLIC LIFE], available at <http://www.usccb.org/bishops/catholicsinpubliclife.htm>.

<sup>14</sup> *Psalm* 139:13 (New American).

sought to uphold the sanctity of life in the public realm.<sup>15</sup> Thus, from the outset of the Church's interaction with the ancient Roman world, Christian theologians denounced the Roman tolerance of infant exposure. Athenagoras, a second-century Greek apologist for Christianity, placed his attack on infanticide in the context of a larger defense of Christian attitudes about the sanctity of life.<sup>16</sup> The pagan charges that Christians practiced ritual murder or cannibalism were scurrilous, Athenagoras asserted, in light of the fact that Christians avoided gladiatorial games as akin to taking part in homicide, condemned abortion as the taking of human life, and treated as murderers those fathers who exposed their offspring.<sup>17</sup>

In launching a moral offensive against a deplorable pagan practice, Christians were challenging the established authority of the father under Roman custom to govern his household.<sup>18</sup> Fathers in ancient Rome theoretically were held to have the power of life and death over the members of their household.<sup>19</sup> In actual observance, this paternal right had contracted to the paternal prerogative to accept or reject newborn children; when a father chose not to receive a newborn infant into the family, that child would be exposed.<sup>20</sup>

Almost immediately upon gaining political power, Christian emperors sought first to discredit and then to abolish the practice of infanticide.<sup>21</sup> In the opening years of the fourth century, the Emperor Constantine, the first Christian sovereign, criticized the practice.<sup>22</sup> However, it remained for succeeding Christian emperors in that century, namely Valentinian, Valens, and Gratian, to prohibit exposure and declare it a capital crime.<sup>23</sup>

Early Christian writers viewed abortion in terms similar to infanticide and denounced it as evil almost from the beginning of the Christian

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<sup>15</sup> On the early tradition and history of the Church on the illicitness of abortion, see generally SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, DECLARATION ON PROCURED ABORTION ¶¶ 6–7 (1974) [hereinafter DECLARATION ON PROCURED ABORTION], available at [http://www.vatican.va/roman\\_curia/congregations/cfaith/doc\\_doc\\_index.htm](http://www.vatican.va/roman_curia/congregations/cfaith/doc_doc_index.htm).

<sup>16</sup> *Id.* ¶6.

<sup>17</sup> CHARLES J. REID, JR., POWER OVER THE BODY, EQUALITY IN THE FAMILY 73 (forthcoming 2004); Athenagoras, *Legatio*, § 35, in LEGATIO AND DE RESURRECTIONE 83–85 (William R. Schoedel, ed. & trans., 1972).

<sup>18</sup> REID, *supra* note 17, at 73–74.

<sup>19</sup> *Id.* at 73.

<sup>20</sup> *Id.*; Mirielle Corbier, *Child Exposure and Abandonment*, in CHILDHOOD, CLASS, AND KIN IN THE ROMAN WORLD 52 (Suzanne Dixon, ed., 2001).

<sup>21</sup> REID, *supra* note 17, at 74.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 74, 243 n.51 (discussing *Codex Theodosianus* 9.14.1).

tradition.<sup>24</sup> The Christian position was in keeping with ancient medical practice. The Hippocratic Oath required medical practitioners to promise not to administer abortifacients.<sup>25</sup> The earliest code for Christian living found outside the New Testament, the *Didache*, composed in Greek for a first-century Syriac Christian community, condemned abortion as contrary to the Christian life.<sup>26</sup>

*B. The Church's Continuing Witness to Protect Innocent Human Life*

The teaching of the early Church regarding the sanctity of human life, which arose in the context of the Church's moral witness against infanticide and abortion, has remained a constant feature of Christian life until our own day. Catholic teaching especially remains unequivocal on the "question of human life, a primordial value, which must be protected and promoted."<sup>27</sup>

The Church's *Pastoral Constitution (Gaudium et Spes)* ("On the Church in the Modern World"), issued by the Second Vatican Council, declares with respect to abortion:

God, the Lord of life, has conferred on men the surpassing ministry of safeguarding life—a ministry which must be fulfilled in a manner which is worthy of man. Therefore from the moment of its conception life must be guarded with the greatest care, while abortion and infanticide are unspeakable crimes.<sup>28</sup>

The papal Encyclical *Evangelium Vitae* ("The Gospel of Life") contains a particularly strong condemnation of abortion, placed in the context of the affirmative duty of all Christians to preserve the command of the Decalogue not to commit murder. Pope John Paul II wrote:

The deliberate decision to deprive an innocent human being of his life is always morally evil and can never be licit either as an end in itself or as a means to a good end. It is in fact a grave act of disobedience to the moral law, and indeed to God himself, the author and guarantor of that law; it contradicts the fundamental virtues of justice and charity.<sup>29</sup>

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<sup>24</sup> John T. Noonan, Jr., *An Almost Absolute Value in History, in THE MORALITY OF ABORTION: LEGAL AND HISTORICAL PERSPECTIVES* 4–5, 8–9 (John T. Noonan, Jr., ed., 3rd prtg. 1972).

<sup>25</sup> *Id.* at 4.

<sup>26</sup> *Id.* at 9.

<sup>27</sup> DECLARATION ON PROCURED ABORTION, *supra* note 15, ¶ 1.

<sup>28</sup> SECOND VATICAN COUNCIL, PASTORAL CONSTITUTION ON THE CHURCH IN THE MODERN WORLD *GAUDIUM ET SPES* ¶ 51 (1965) [hereinafter *GAUDIUM ET SPES*].

<sup>29</sup> JOHN PAUL II, ENCYCLICAL LETTER *EVANGELIUM VITAE* ¶ 57 (1995) [hereinafter *EVANGELIUM VITAE*].

The Pope's Encyclical further reminds the faithful that the obligation to respect innocent life plainly includes a prohibition on aborting an unborn human being:

[T]he Church has always taught and continues to teach that the result of human procreation, from the first moment of its existence, must be guaranteed that unconditional respect which is morally due to the human being in his or her totality and unity as body and spirit: "*The human being is to be respected and treated as a person from the moment of conception*"; and therefore from that same moment his rights as a person must be recognized, among which is in the first place is the inviolable right of every innocent human being to life."<sup>30</sup>

### C. *Abortion as a Crime Under Canon Law*

Gratian's *Decretum*, the first systematic compilation and analysis of canon law in the medieval period, confirmed the universal condemnation of abortion.<sup>31</sup> The *Decretum* quoted the unequivocal declaration of Pope Stephen V: "That person is a murderer who causes to perish by abortion what has been conceived."<sup>32</sup>

The *Code of Canon Law* of 1983, the *ius vigens* ("the law now in force") of the Catholic Church, declares abortion to be a crime that subjects the one who commits it to automatic excommunication.<sup>33</sup> In a section bearing the title *De Delictis Contra Hominis Vitam et Libertatem* ("Delicts [Offenses] Against Human Life and Liberty"), the *Code* provides: "A person who procures a successful abortion incurs an automatic (*latae sententiae*) excommunication."<sup>34</sup>

This treatment of abortion as a crime distinguishes it from other immoral activities censured by Church teaching, and thus the Church's response to those who have participated in this singularly evil act is of a different nature. Thus, for example, while papal Encyclicals criticize the use of contraceptives by married persons,<sup>35</sup> it is not the subject of ecclesial

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<sup>30</sup> *Id.* ¶ 60 (citations omitted).

<sup>31</sup> DECLARATION ON PROCURED ABORTION, *supra* note 15, ¶ 7.

<sup>32</sup> *Id.* (discussing GRATIAN, *CONCORDANTIA DISCORDANTIUM CANONUM*, c. 20, C. 2, q. [2] (n.d.)). While Gratian did not endorse every position taken by his sources, his opposition to abortion is definite. Nor does his adoption of fetal "quickening" as the standard for determining when abortion constituted homicide reflect a qualified stance on the evil of abortion. See Noonan, *supra* note 24, at 20. Gratian, and the medieval canon law generally, merely followed the prevailing scientific view of the period that quickening represented the time at which the fetus was "vivified," defined as the time at which it was "ensouled." *Id.* at 20–21.

<sup>33</sup> CODEX IURIS CANONICI c.1398 (Canon Law Society of America trans., 1983) [hereinafter CIC-1983].

<sup>34</sup> *Id.*

<sup>35</sup> See, e.g., PAUL VI, ENCYCLICAL LETTER *HUMANAE VITAE* ¶ 14 (1968).

criminal sanction. Similarly, the new *Catechism of the Catholic Church* questions the moral legitimacy of the death penalty and finds execution, as a practical matter, rarely if ever justified—although execution is not said to be a categorical evil and thus may be justified to protect society if effective incarceration is not possible.<sup>36</sup> Still, participation in executing a death sentence is not a crime under canon law. Abortion, like its ancient cousin infanticide, stands out as a particularly grave crime against innocent life and thus draws the sternest of condemnations by the Church.

## II. THE DUTIES OF THE BISHOP TO TEACH AND SUSTAIN THE FLOCK ENTRUSTED TO HIS PASTORAL CARE

“So I exhort the presbyters among you . . . [t]end the flock of God in your midst.”<sup>37</sup>

### A. *Early Church Teaching on the Duties of the Bishop*

From the beginning of the Christian tradition, it was the special responsibility of the bishop to see to the spiritual health and discipline of the diocese entrusted to his care. The letters of St. Ignatius of Antioch, writing at the beginning of the second century, are early evidence of this directive. Ignatius had been arrested by the Roman authorities in Antioch and composed his letters to other eastern dioceses while being transported to Rome to face death in the arena.<sup>38</sup> The constant refrain of his letters was the charge of the bishop to look after the diocese.<sup>39</sup> These letters are original and important records of the venerable nature of the episcopal duty of pastoral care.

In his *Letter to the Ephesians*, Ignatius admonished the people that “it is fitting that you should live in harmony with the will of the bishop, as indeed you do.”<sup>40</sup> In his *Letter to the Magnesians*, Ignatius urged the local church to be obedient to her bishop, despite the bishop’s extreme “youth”: “[I]t is right that we yield obedience without hypocrisy, for a man does not merely deceive this bishop who is seen, but is dealing wrongly with him who is invisible. And in this matter his reckoning is not with flesh, but

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<sup>36</sup> See CATECHISM OF THE CATHOLIC CHURCH ¶¶ 2266–67 (2d ed. 1997).

<sup>37</sup> 1 *Peter* 5:1–2 (New American).

<sup>38</sup> See Ignatius of Antioch, *The Epistles of Ignatius*, in I THE APOSTOLIC FATHERS 166 (Kirsopp Lake trans., Harvard Univ. Press, 1977) (1912).

<sup>39</sup> See Ignatius of Antioch, *Letter to the Ephesians* §§ IV.1, V.1, in I THE APOSTOLIC FATHERS, *supra* note 38, at 177–79.

<sup>40</sup> *Id.* § IV.1.

with God, who knows the secret things.”<sup>41</sup> In his *Letter to the Trallians*, Ignatius added:

For when you are in subjection to the bishop as to Jesus Christ it is clear to me that you are living not after men, but after Jesus Christ, who died for our sake, that by believing on his death you may escape death. Therefore it is necessary . . . that you should do nothing without the bishop.<sup>42</sup>

Writing to the same effect later in the second century was St. Irenaeus, who had studied under Bishop Polycarp of Smyrna, a disciple of the Apostle John. Irenaeus, who became bishop of Lyons in Southern Gaul, invoked the principle of apostolic succession among the bishops to refute the arguments of heretics and confirm the validity and authority of episcopal teaching.<sup>43</sup> He wrote:

True knowledge is . . . the doctrine of the apostles, and the ancient constitution of the Church throughout all the world, and the distinctive manifestation of the body of Christ according to the successions of the bishops, by which they have handed down that Church which exists in every place, and has come even unto us, being guarded and preserved.<sup>44</sup>

Thus, since the earliest years of the Church, the bishop has been understood to stand in the place of Jesus Christ, to have received the teaching charism from God, and to have succeeded to the authority of the apostles.

#### B. *Continuing Church Teaching on the Duties of the Bishop*

The Second Vatican Council spoke authoritatively on the office of bishop in two distinct ways. First, the Council affirmed, as a matter of formal doctrine, the position of bishop as successor of the apostles. Second, the Council presented a powerful restatement of the rights, powers, and obligations of the bishop to maintain orthodoxy within his diocese.

The *Dogmatic Constitution on the Church (Lumen Gentium)*, adopted during the Second Vatican Council, stresses the unbroken connection between those who govern as bishops today and their ancient predecessors, the apostles. Paragraph 20 provides:

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<sup>41</sup> Ignatius of Antioch, *Letter to the Magnesians*, § III.2, in I THE APOSTOLIC FATHERS, *supra* note 38, at 199.

<sup>42</sup> Ignatius of Antioch, *Letter to the Trallians*, § II.1–2, in I THE APOSTOLIC FATHERS, *supra* note 38, at 213–15.

<sup>43</sup> Irenaeus, *Adversus Haereses*, bk. III, ch. 3, ¶¶ 1–2, in I THE ANTE-NICENE FATHERS (Rev. Alexander Roberts & James Donaldson eds., New Advent, 1996) (1885).

<sup>44</sup> *Id.*, bk. IV, ch. 33, ¶ 8.

Among those various ministries which, according to tradition, were exercised in the Church from the earliest times, the chief place belongs to the office of those who, appointed to the episcopate, by a succession running from the beginning, are passers-on of the apostolic seed. Thus, as St. Irenaeus testifies, through those who were appointed bishops by the apostles, and through their successors down in our own time, the apostolic tradition is manifested and preserved.<sup>45</sup>

Paragraph 21 explains how the bishop embodies for his flock the continuing presence of Christ:

In the bishops, therefore, for whom priests are assistants, Our Lord Jesus Christ, the Supreme High Priest, is present in the midst of those who believe. For sitting at the right hand of God the Father, He is not absent from the gathering of His high priests, but above all through their excellent service He is preaching the word of God to all nations, and constantly administering the sacraments of faith to those who believe, by their paternal functioning He incorporates new members in His Body by a heavenly regeneration, and finally by their wisdom and prudence He directs and guides the People of the New Testament in their pilgrimage toward eternal happiness. These pastors, chosen to shepherd the Lord's flock of the elect, are servants of Christ and stewards of the mysteries of God, to whom has been assigned the bearing of witness to the Gospel of the grace of God, and the ministration of the Spirit and of justice in glory.<sup>46</sup>

The Second Vatican Council also issued the *Decree Concerning the Pastoral Office of Bishops in the Church (Christus Dominus)*, which spells out in greater detail the responsibilities of the bishop for the governance and spiritual welfare of his diocese. First, bishops are teachers, proclaiming “the Gospel of Christ to men.”<sup>47</sup> As part of this proclamation of the Gospel, the bishops are also to “show . . . that earthly goods and human institutions according to the plan of God the Creator are also disposed for man's salvation,” including the high value placed on “the human person with his freedom and bodily life.”<sup>48</sup> In presenting doctrine “in a manner that will respond to the difficulties and questions by which people are especially burdened and troubled,” the Church's mission is “to converse with the human society in which it lives,” meaning that it is

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<sup>45</sup> SECOND VATICAN COUNCIL, DOGMATIC CONSTITUTION ON THE CHURCH *LUMEN GENTIUM* ¶ 20.2 (1964).

<sup>46</sup> *Id.* ¶ 21.

<sup>47</sup> SECOND VATICAN COUNCIL, DECREE CONCERNING THE PASTORAL OFFICE OF BISHOPS IN THE CHURCH *CHRISTUS DOMINUS* ¶ 12.1 (1965).

<sup>48</sup> *Id.* ¶ 12.

“especially the duty of bishops to seek out men and both request and promote dialogue with them.”<sup>49</sup>

Second, the bishops have a special responsibility to see to the holiness of the flock entrusted to their care. Thus, “[a]s those who lead others to perfection, bishops should be diligent in fostering holiness among their clerics, religious, and laity according to the special vocation of each.”<sup>50</sup>

Furthermore, bishops have a responsibility to interact with and influence public authority to fulfill the teachings of the natural law:

Assuredly, while sacred pastors devote themselves to the spiritual care of their flock, they also in fact have regard for their social and civil progress and prosperity. According to the nature of their office and as behooves bishops, they collaborate actively with public authorities for this purpose and advocate obedience to just laws and reverence for legitimately constituted authorities.<sup>51</sup>

As well-summarized by a Bishops’ Synod in 2001, “[e]nduring problems today require the Church, in exercising her mission, to be the source of a hope which leads to the continuous renewal of the world and society. In concrete ways, this is the case also in the ministry of the Bishop in his particular Church.”<sup>52</sup>

### C. Canon Law on the Duties of the Bishop

The great compilation of papal legislation in the thirteenth century, the *Liber Extra* of Pope Gregory IX, granted the bishop wide latitude in the governance of his diocese.<sup>53</sup> Medieval canonists came to call the bundle of rights and powers exercised by bishops the *ius episcopale* (the “episcopal right”).<sup>54</sup> This *ius episcopale* was, in turn, analyzed in terms of the bundle of discrete rights that comprised it. Among the most important rights were the *ius iudicandi* (“the right of judging”) and the *ius corrigendi* (“the right of correction”).<sup>55</sup> Thus, the bishop was charged with both the duty and the right to maintain a faithful and orthodox diocese.

<sup>49</sup> *Id.* ¶ 13.

<sup>50</sup> *Id.* ¶ 15.

<sup>51</sup> *Id.* ¶ 19.

<sup>52</sup> SYNOD OF BISHOPS X ORDINARY GENERAL ASSEMBLY, *INTRUMENTUM LABORIS* ¶ 17.2 (2001) (“The Bishop: Servant of the Gospel of Jesus Christ for the Hope of the World.”).

<sup>53</sup> GREGORY IX, *LIBER EXTRA* (1234) (the standard text of this work can be found in II CORPUS IURIS CANONICI, (Aemilius Friedberg ed., 1881)). See generally Charles J. Reid, Jr., *Rights in Thirteenth-Century Canon Law: An Historical Investigation* 196 (1995) (Ph.D. dissertation, Cornell University).

<sup>54</sup> See BERNARD OF PARMA, ORDINARY GLOSS, X.2.31.16, V. CANONICAM. See generally Reid, *supra* note 53, at 199–242.

<sup>55</sup> BERNARD OF PARMA, GLOSSA ORDINARIO, X.1.31.13, V. PER CAPITULUM. See generally Reid, *supra* note 53, at 208–16.

The bishop, as a successor of the Apostles, stands in a collegial relationship with other bishops who equally are successors to the Apostles. The medieval canonists emphasized that the bishop *always* must use his rights constructively for the building up of Christ's Church. With this as the broadly understood measuring rod, the bishop was free to determine how orthodoxy should be maintained.<sup>56</sup>

The *Code of Canon Law* of 1983 codified the diocesan bishop's responsibility for "all the Christian faithful" entrusted to his care.<sup>57</sup> Canon law stresses the role of teacher for the diocese, whereby the "diocesan bishop is bound to present and explain to the faithful the truths of the faith which are to be believed and applied to moral issues."<sup>58</sup> The duty of the bishop to maintain discipline is also confirmed by Canon law, which explains that "[s]ince he must protect the unity of the universal Church, the bishop is bound to promote the common discipline of the whole Church and therefore to urge the observance of all ecclesiastical laws."<sup>59</sup>

As the Church is the bride of Christ,<sup>60</sup> so then does the bishop stand in the place of Christ as the head of the diocesan household. However, this dwelling is emphatically not a boarding house of tenant strangers who are disparate, disconnected, and without obligations to one another. Nor are we the spoiled children of indulgent parents, left to lounge around the house serenely untroubled by any words or actions by our elders that might offend our selfish sensibilities. If the Church were to devolve into a mere social club, devoid of principled content and reluctant to exert any call upon its members, then it would cease to be the Church. The leadership vocation to prevent that dissolution belongs to those in the apostolic succession.

Sustained by the sacraments and the Gospel message, the faithful properly regard the Church as our spiritual home, a place of sanctuary and familial welcome. To fully achieve the joy and fellowship of full membership in our Catholic Church, we likewise must accept the responsibilities that accompany that affiliation. In a truly loving home, wayward children are called to account for their behavior and are instructed in how they must behave in order to be restored to full communion with their siblings. If we have trespassed against the Family of God, we must repent and be reconciled before we may join our brothers

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<sup>56</sup> See generally Reid, *supra* note 53, at 211–12.

<sup>57</sup> CIC-1983 c.383, § 1.

<sup>58</sup> *Id.* c.386, § 1.

<sup>59</sup> *Id.* c.392, § 1.

<sup>60</sup> See *John* 21:2 (New American); *Ephesians* 5:21–33.

and sisters at the Table of the Lord, which brings us to the next topic—admission to the Eucharist.

### III. ADMISSION TO THE EUCHARIST

#### A. *Early Church Teaching on Admission to Holy Communion*

The Church's teaching regarding the proper attitude for admission at the Table of the Lord is grounded in St. Paul's admonition to the Corinthians that "whoever eats the bread or drinks the cup of the Lord unworthily will have to answer for the body and blood of the Lord."<sup>61</sup> For that reason, St. Paul wrote, "[a] person should examine himself," because "anyone who eats and drinks without discerning the body, eats and drinks judgment on himself."<sup>62</sup>

In the second century, St. Justin Martyr further affirmed the nature of Holy Communion as an expression of union with the Church and its teaching: "We call this food the Eucharist, of which only he can partake who has acknowledged the truth of our teachings, who has been cleansed by baptism for the remission of his sins and for his regeneration, and who regulates his life upon the principles laid down by Christ."<sup>63</sup>

Early Christian leaders were unafraid to challenge the political authority of their day when that authority transgressed moral boundaries, especially when it concerned the protection of human life, including withholding the Eucharist to transgressors. In a notable episode, St. Ambrose of Milan denied communion to the Roman Emperor Theodosius until he should do penance for the massacre of political opponents he perpetrated in 390 A.D.<sup>64</sup> In this way, a principled bishop condemned the unjust use of political power and upheld the sanctity of both life and communion.

#### B. *Continuing Church Teaching on Admission to Holy Communion*

The new *Catechism of the Catholic Church* articulates the Church's continuing teaching on the dual personal and communal aspects of Holy Communion: "The Eucharist is properly the sacrament of those who are in full communion with the Church."<sup>65</sup>

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<sup>61</sup> 1 *Corinthians* 11:27.

<sup>62</sup> *Id.* 11:28–29.

<sup>63</sup> SAINT JUSTIN MARTYR, *The First Apology*, in SAINT JUSTIN MARTYR (Thomas B. Falls trans., 1948).

<sup>64</sup> Charles J. Reid, Jr., *Review Essay: A Brief Account of Western Constitutional History*, 46 *EMORY L.J.* 791, 803 (1997).

<sup>65</sup> CATECHISM OF THE CATHOLIC CHURCH, *supra* note 36, ¶ 1394.

In the Encyclical *Ecclesia de Eucharistia* (“The Church from the Eucharist”), Pope John Paul II summarized the Church’s teaching on the communal nature of communion, on the need for a penitent conscience to receive the sacrament, and on the Church’s pastoral responsibility to the community with respect to admission to the Eucharist:

The two sacraments of the Eucharist and Penance are very closely connected. Because the Eucharist makes present the redeeming sacrifice of the Cross, perpetuating it sacramentally, it naturally gives rise to a continuous need for conversion, for a personal response to the appeal made by Saint Paul to the Christians of Corinth: “We beseech you on behalf of Christ, be reconciled to God.” If a Christian’s conscience is burdened by serious sin, then the path of penance through the sacrament of Reconciliation becomes necessary for full participation in the Eucharistic Sacrifice.

The judgment of one’s state of grace obviously belongs only to the person involved, since it is a question of examining one’s conscience. However, in cases of outward conduct which is seriously, clearly and steadfastly contrary to the moral norm, the Church, in her pastoral concern for the good order of the community and out of respect for the sacrament, cannot fail to feel directly involved. The *Code of Canon Law* refers to this situation of a manifest lack of proper moral disposition when it states that those who “obstinately persist in manifest grave sin” are not to be admitted to Eucharistic communion.<sup>66</sup>

On another occasion, when addressing the particular situation of divorced persons who have remarried, and using language that may also be pertinent to the situation of political leaders who fail to protect the unborn, John Paul II stated that “the Church reaffirms her practice . . . of not admitting [them] to Eucharistic communion . . . from the fact that their state and condition of life objectively contradict that union of love between Christ and the Church which is signified and effected by the Eucharist.”<sup>67</sup>

Accordingly, the Eucharistic sacrament has multiple dimensions, as an extension by God’s grace of the real presence of Christ to his followers, as our faithful expression in partaking of our desire to be counted in the communion of saints, and as a sign of unity within the Church.

### C. *Canon Law on Admission to Holy Communion*

Under the *Code of Canon Law* of 1983, the Church admonishes the faithful to ensure they have the proper attitude to receive the Eucharist,

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<sup>66</sup> JOHN PAUL II, ENCYCLICAL LETTER *ECCLESIA DE EUCHARISTIA* ¶ 37 (2003) [hereinafter *ECCLESIA DE EUCHARISTIA*] (quoting 2 *Corinthians* 5:20 and CIC-1983 c.915 respectively).

<sup>67</sup> JOHN PAUL II, APOSTOLIC EXHORTATION *FAMILIARIS CONSORTIO* ¶ 84 (1981).

thus ordinarily leaving reception of Holy Communion to the conscience of each supplicant.<sup>68</sup> However, in circumstances of excommunication, interdiction, or obstinate persistence in manifest grave sin, the canon law directs withholding of the sacrament.

The general rule regarding admission to the Eucharist is stated in Canon 916:

A person who is conscious of grave sin is not to celebrate Mass or to receive the Body of the Lord without prior sacramental confession unless a grave reason is present and there is no opportunity of confessing; in this case the person is to be mindful of the obligation to make an act of perfect contrition, including the intention of confessing as soon as possible.<sup>69</sup>

Canon 915 directs affirmative withholding of the Eucharist in certain extreme circumstances:

Those who are excommunicated or interdicted after the imposition or declaration of the penalty and others who obstinately persist in manifest grave sin are not to be admitted to Holy Communion.<sup>70</sup>

In sum, the Church places original responsibility on each individual, generally assumes good faith on the part of congregants, and, thus, ordinarily offers communion to all who come to the altar at Mass. The Church, however, always has retained and sometimes has exercised the power and obligation to deny admission to Holy Communion when scandal to the faithful would occur because of the public character of the Eucharist and the notoriety of the supplicant.

#### IV. RESPONSIBILITIES OF THE LAITY AND OF POLITICAL LEADERS IN ADVANCING CATHOLIC TEACHING IN PUBLIC LIFE

##### A. *The Duty of the Laity to Transform the World*

The laity were encouraged by the Second Vatican Council to bring to bear in the secular world fundamental principles of justice and morality. The Catholic laity, in short, have an affirmative duty to transform the world. Thus, the decree *Apostolicam Actuositatem* (“Apostolate of the Laity”) declares:

The laity must take up the renewal of the temporal order as their own special obligation. Led by the light of the Gospel and the mind of the Church and motivated by Christian charity, they must act directly and in

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<sup>68</sup> CIC-1983 c.912–23.

<sup>69</sup> *Id.* c.916.

<sup>70</sup> *Id.* c.915.

a definite way in the temporal sphere. As citizens they must cooperate with other citizens with their own particular skill and on their own responsibility. Everywhere and in all things they must seek the justice of God's kingdom. The temporal order must be renewed in such a way that, without detriment to its own proper laws, it may be brought into conformity with the higher principles of the Christian life and adapted to the shifting circumstances of time, place, and peoples. Preeminent among the works of this type of apostolate is that of Christian social action which the sacred synod desires to see extended to the whole temporal sphere, including culture.<sup>71</sup>

Catholic Christians are encouraged to participate in the political order and thereby to transform it. The Pastoral Constitution, *Gaudium et Spes*, also from the Second Vatican Council, teaches: "All Christians must be aware of their own specific vocation within the political community. It is for them to give an example by their sense of responsibility and their service of the common good."<sup>72</sup>

In his address to a group of American bishops on the occasion of their *ad limina* visit to the Holy See in 2004, Pope John Paul II accentuated both the responsibility of the laity for transforming the world and the duty of bishops to provide pastoral guidance to the laity in fulfilling this responsibility.<sup>73</sup> In particular, he noted that the concept of rights has become distorted and has lost its anchor in a proper understanding of the human person:

Detached from this vision of the fundamental unity and purpose of the whole human family, rights are at times reduced to self-centred demands: the growth of prostitution and pornography in the name of adult choice, the acceptance of abortion in the name of women's rights, the approval of same sex unions in the name of homosexual rights.<sup>74</sup>

The Pope concluded that the American bishops "must do everything possible to encourage the laity in their 'special responsibility' for 'evangelizing culture . . . and promoting Christian values in society and public life.'"<sup>75</sup>

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<sup>71</sup> SECOND VATICAN COUNCIL, DECREE *APOSTOLICAM ACTUOSITATEM* ¶ 7 (1965).

<sup>72</sup> *GAUDIUM ET SPES*, *supra* note 28, ¶ 75.

<sup>73</sup> John Paul II, Ad Lima Address of Pope John Paul II to the Bishops of the Church in Colorado, Wyoming, Utah, Arizona, New Mexico and Western Texas ¶ 5 (June 4, 2004).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* ¶ 5 (quoting JOHN PAUL II, APOSTOLIC EXHORTATION *PASTORES GREGIS: ON THE BISHOP, SERVANT OF THE GOSPEL OF JESUS CHRIST FOR THE HOPE OF THE WORLD* ¶ 51 (2003)).

B. *The Special Duty of Lay Catholic Officeholders to Protect Innocent Human Life*

The *Catechism of the Catholic Church* stresses that in order to be legitimate, political authority must act in furtherance of the common good:

Authority does not derive its moral legitimacy from itself. It must not behave in a despotic manner, but must act for the common good as a “moral force based on freedom and a sense of responsibility”:

“A human law has the character of law to the extent that it accords with right reason, and thus derives from the eternal law. Insofar as it falls short of right reason it is said to be an unjust law, and thus has not so much the nature of law as of a kind of violence.”<sup>76</sup>

The *Catechism* stresses that the common good presupposes a respect for human life as a cornerstone of social responsibility,<sup>77</sup> and further that abortion is a violation of this respect: “Human life must be respected and protected absolutely from the moment of conception. From the first moment of his existence, a human being must be recognized as having the rights of a person—among which is the inviolable right of every innocent being to life.”<sup>78</sup>

Pope John Paul II has singled out for rebuke those office-holders whose support for abortion rights has contributed to a climate of permissiveness where abortion is concerned: “[R]esponsibility likewise falls on the legislators who have promoted and approved abortion laws, and, to the extent that they have a say in the matter, on the administrators of the health-care centres where abortions are performed.”<sup>79</sup>

In 2002, in light of the growing disconnection between Church teaching and the public behavior of many professing Catholic political officials, the Congregation for the Doctrine of the Faith issued a *Doctrinal Note on Some Questions Regarding the Participation of Catholics in Political Life*.<sup>80</sup> In this document, approved by the Pope, the Congregation

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<sup>76</sup> CATECHISM OF THE CATHOLIC CHURCH, *supra* note 36, ¶ 1902 (quoting *GAUDIUM ET SPES*, *supra* note 28, ¶ 74 and ST. THOMAS AQUINAS, *SUMMA THEOLOGIAE* pt. I–II, Q. 93, art. 3).

<sup>77</sup> *Id.* ¶ 1907.

<sup>78</sup> *Id.* ¶ 2270; *see also* DECLARATION ON PROCURED ABORTION, *supra* note 15, ¶ 11 (“The first right of the human person is his life.”).

<sup>79</sup> *EVANGELIUM VITAE*, *supra* note 29, ¶ 59.

<sup>80</sup> CONGREGATION FOR THE DOCTRINE OF THE FAITH, *DOCTRINAL NOTE ON SOME QUESTIONS REGARDING THE PARTICIPATION OF CATHOLICS IN POLITICAL LIFE* ¶ 2 (2002) [hereinafter *CATHOLICS IN POLITICAL LIFE*]; *see* Frank Bruni, *Vatican Cautions Faithful on Laws Against Doctrine*, N.Y. TIMES, Jan. 17, 2003, at A6 (stating that “the guidelines seek to remind Catholics of what the Vatican cast as their duty at a time when legislation in many countries has moved in directions displeasing to church officials”).

reiterated the Church's clear stance against the "kind of cultural relativism" that prevails in many countries and that "sanctions the decadence and disintegration of reason and the principles of the natural moral law."<sup>81</sup> The document disputed the excuses often offered by lawmakers that they are merely "respecting . . . freedom of choice by enacting laws which ignore the principles of natural ethics and yield to ephemeral cultural and moral trends, as if every possible outlook on life were of equal value."<sup>82</sup> Furthermore, "[t]he Church recognizes that while democracy [is] the best expression of the direct participation of citizens in political choices, it succeeds only to the extent that it is based on a correct understanding of the human *person*."<sup>83</sup>

The calling of the Catholic "in this difficult situation" is to "recall society to a deeper understanding of human life and to the responsibility of everyone in this regard."<sup>84</sup> The Congregation document then notes that the Holy Father "has reiterated many times that those who are directly involved in lawmaking bodies have a '*grave and clear obligation to oppose*' any law that attacks human life. For them, as for every Catholic, it is impossible to promote such laws or to vote for them."<sup>85</sup>

Nor is the argument that Catholic politicians are constrained by respect for the separation of Church and State at all telling in this context, as the Church seeks neither to impose theological dogma on the public nor presents a vision of the common good that can be seen only through the eyes of faith. Rather, the fundamental right of life possessed by all human beings from the moment that a unique genetic organism is formed at conception is as much the ineluctable conclusion of right reason and natural law as is the demand for equality of persons of different races or the prohibition on genocide waged against people of a certain ethnic, religious, or cultural background. As Pope John Paul II has said with respect to the hope for a culture of life, while this "*vision . . . [is] put forward by the Church . . . [it is] also part of the patrimony of the great juridical traditions of humanity*."<sup>86</sup>

When it comes to questions of conscience and integrity in the public life, we have the example of St. Thomas More, long patron saint of lawyers and now elevated by Pope John Paul II as patron saint of political

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<sup>81</sup> CATHOLICS IN POLITICAL LIFE, *supra* note 80, ¶ 2.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* ¶ 4 (emphasis in original).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* (alteration in original) (quoting *EVANGELIUM VITAE*, *supra* note 29, ¶ 73).

<sup>86</sup> *EVANGELIUM VITAE*, *supra* note 29, ¶ 71.

leaders, as well.<sup>87</sup> As the reader will recall, Thomas More resigned as Lord Chancellor of England rather than endorse the actions of King Henry VIII who challenged the authority of the Pope over the Church of England when the Pope denied the king's request to divorce his wife, Catherine of Aragon, to marry Anne Boleyn.<sup>88</sup> When More then refused to take an oath required under the Act of Succession of 1534, which also challenged the Pope's authority over the Church, he was imprisoned and eventually executed for treason.<sup>89</sup> As Professor Randy Lee explains, Robert Bolt's famous play about More, *A Man for All Seasons*, was "a story about how people in government respond when the issue is simple, but the choice can hardly be called easy."<sup>90</sup> By refusing to surrender even "in the face of dire consequences or grand temptations," More demonstrated "the highest level of integrity" and acted in a selfless manner.<sup>91</sup> As depicted in the play, More as a government official acted with "integrity" with respect to the "laws of society," by "remaining faithful to one's conscience but accepting the law's protections and penalties as they apply."<sup>92</sup>

Despite the circumstances of More's death, Professor Thomas Shaffer says the enduring appeal of More as an historical figure is "the virtue of hope."<sup>93</sup> Shaffer sees "hope [as] the connection between habitual truthfulness and habitual optimism."<sup>94</sup> Thomas More demonstrates that "[t]hese habits of truthfulness and optimism do not disappear when the cause is lost. . . . [Rather,] [t]he virtue of hope survives failure [because] it has to do with the spirit as well as the mind."<sup>95</sup> In other words, and as directly pertinent to the abortion crisis in America, the faithful political leader is called not always to succeed, but never to surrender hope that the culture may be renewed and the sanctity and dignity of human life be restored.

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<sup>87</sup> JOHN PAUL II, APOSTOLIC LETTER *PROCLAIMING SAINT THOMAS MORE PATRON OF STATESMEN AND POLITICIANS* ¶ 5 (2000), available at [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/motu\\_proprio/documents/hf\\_jp-ii\\_motu-proprio\\_20001031\\_thomas-more\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/motu_proprio/documents/hf_jp-ii_motu-proprio_20001031_thomas-more_en.html).

<sup>88</sup> Randy Lee, *Robert Bolt's A Man for All Seasons and the Art of Discerning Integrity*, 9 WIDENER J. PUB. L. 305, 305–06 (2000).

<sup>89</sup> *Id.* at 306.

<sup>90</sup> *Id.* (citing ROBERT BOLT, *A MAN FOR ALL SEASONS* xiii (First Vintage Int'l ed., 1990) (1960)).

<sup>91</sup> *Id.* at 306, 318.

<sup>92</sup> *Id.* at 333.

<sup>93</sup> Thomas L. Shaffer, *More's Skill*, 9 WIDENER J. PUB. L. 295, 298 (2000).

<sup>94</sup> *Id.* at 300.

<sup>95</sup> *Id.* at 300–01.

## V. ABORTION, POLITICIANS, AND THE COMMUNION QUESTION

A. *Identifying Abortion as the Foundational Social Issue of Our Time*

Archbishop Charles J. Chaput of Denver has aptly said that “abortion is the central social issue of this moment in our national history—not the only issue, but the foundational issue; the pivotal issue. For Catholics to ignore it or downplay it or ‘contextualize’ it would be an act of cowardice.”<sup>96</sup>

Likewise, the bishops in the United States collectively expressed the singular importance of protecting human life several years ago:

Any politics of human dignity must seriously address issues of racism, poverty, hunger, employment, education, housing and health care. . . . *But being “right” in such matters can never excuse a wrong choice regarding direct attacks on innocent human life.* Indeed, the failure to protect and defend life in its most vulnerable stages renders suspect any claims to the “rightness” of positions in other matters affecting the poorest and least powerful of the human community.<sup>97</sup>

Most questions of public policy involve prudential judgments that should be guided by moral principles, but upon which persons of good will and common faith reasonably may differ.<sup>98</sup> Thus, for example, whether certain circumstances present the occasion for the use of military force in accord with principles of just war or whether a particular piece of legislation regarding provision of governmental benefits to the disadvantaged or disabled is the best means to advance the preferential option for the poor are questions that demand both morally sensitive and realistically pragmatic evaluations.<sup>99</sup> In answering such policy questions, the decision maker often must balance conflicting moral precepts or justifiable human interests, or at least may find that the underlying moral principles do not point unambiguously in one direction. Church leaders contributing to a moral dialogue in public society appropriately may opine

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<sup>96</sup> Eric Gorski, *Bishops in Colorado for Crucial Dialogue Progress on Abuse-Related Reforms and the Role of Catholics in Public Life are on this Week’s Agenda*, DENVER POST, June 13, 2004, at A1.

<sup>97</sup> UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *LIVING THE GOSPEL OF LIFE: A CHALLENGE TO AMERICAN CATHOLICS* ¶ 23 (1998), available at <http://www.usccb.org/prolife/gospel.htm>.

<sup>98</sup> See *INTRUMENTUM LABORIS*, *supra* note 52, ¶ 140.1 (“It is not the specific task of the Church to offer solutions to economic and social questions. However, her teachings contain general principles which are indispensable for the construction of a just social and economic order.”).

<sup>99</sup> See JOHN PAUL II, *ENCYCLICAL LETTER CENTESIMUS ANNUS* ¶ 53 (1991) (“The Church respects the *legitimate autonomy of the democratic order* and is not entitled to express preferences for this or that institutional or constitutional solution.”).

as to whether a particular measure or proposed course of action contributes to or undermines the common good. But policy suggestions by clerical or lay leaders in the Church must not be mistaken for the teaching of the Magisterium on matters of doctrine and morals to which all faithful Catholics must confess.<sup>100</sup>

In sum, most policy choices involve the exercise of prudential judgment, and the Church respects the expertise and special vocation of those holding public office in making those decisions. Only in a rare case when a policy decision manifestly and egregiously departs from unequivocal Church teaching in nature or extreme degree might it be said that a public official who made a particular executive decision or cast a vote on a particular piece of legislation had thereby removed him or herself from communion with the Church.

With regard to another issue of public moment, the imposition of the death penalty upon convicted murderers does not, as yet, fall into the exceptional category of plainly proscribed public-regarding decisions—although Church teaching appears to be gravitating toward such a conclusion.<sup>101</sup> Within the last few decades, a growing number of civilized countries have developed refined criminal justice systems, in which incarceration of violent offenders offers secure protection of society from criminal predation. This modern political development has led the Church to reappraise the validity of execution. If lethal measures are no longer necessary for societal protection, then they become difficult or impossible to justify when other available means of punishment are “more in conformity with the dignity of the human person.”<sup>102</sup>

This deduction regarding the legitimacy of the death penalty in societies with well-structured penal systems, while appearing to be that of a growing consensus among Catholic prelates and theologians, has not yet solidified into the kind of teaching that can be said to be believed *semper et ubique* (“always and everywhere”), and thus to be regarded as part of the ordinary Magisterium.<sup>103</sup> It may well be that Church preaching and teaching on this subject will develop into a categorical directive for

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<sup>100</sup> See *GAUDIUM ET SPES*, *supra* note 28, ¶ 43 (noting that while “the Christian view of things will itself suggest some specific solution in certain circumstances . . . [that] frequently, and legitimately so, . . . [faithful people of] equal sincerity” may disagree and in such situations no one may “appropriate the Church’s authority for his opinion”).

<sup>101</sup> See *CATECHISM OF THE CATHOLIC CHURCH*, *supra* note 36, ¶ 2267 (explaining that, “the cases in which the execution of the offender is an absolute necessity ‘are very rare, if not practically non-existent’”) (quoting *EVANGELIUM VITAE*, *supra* note 29, ¶ 56).

<sup>102</sup> *Id.*

<sup>103</sup> See JOHN CARDINAL O’CONNOR, *A MOMENT OF GRACE* 297 (1995) (explaining, in commentary on the *Catechism*, that the bishops “recommend against the use of capital punishment, but we recognize the right of the state to use capital punishment”).

modern circumstances, or at least may resolve into an unequivocal condemnation of the frequent and unreflective resort to execution that prevails in certain regions of this country. That day, however, has not yet come.

In contrast with prudential policy judgments, certain forms of societal behavior that implicate public policy are so manifestly and grievously wrong as to be categorically prohibited. As the United States Conference of Catholic Bishops recently confirmed: “It is the teaching of the Catholic Church from the very beginning, founded on her understanding of her Lord’s own witness to the sacredness of human life, that the killing of an unborn child is always intrinsically evil and can never be justified.”<sup>104</sup> In these instances of intrinsic evil—slavery, genocide, racist oppression, and abortion—moral principle and public policy effectively merge, sharply circumscribing prudential judgment. Nor is room left for equivocation, qualification, or compromise of an elemental principle.

*B. Pastoral Counseling of Politicians Regarding the Sanctity of Innocent Human Life*

The vocation of the diocesan bishop is to teach, lead, and build up the faithful in his diocese. In the recent statement on *Catholics in Political Life* by the United States Conference of Catholic Bishops, the American prelates highlight their primary obligation to “teach clearly.”<sup>105</sup> This duty to teach flows naturally into the pastoral role of instructing the faithful in the ways of salvation. Thus, the bishops rightly have committed themselves to “counsel Catholic public officials that their acting consistently to support abortion on demand risks making them cooperators in evil in a public manner.”<sup>106</sup>

Those who too hastily criticize the American episcopate for not acting more aggressively with respect to certain political figures should be reminded that spiritual counseling, and the development of a pastoral relationship between a bishop and any congregant, ordinarily occurs in a private and confidential environment. Even as a politician transgresses against human life through his or her political advocacy or public action, Archbishop Chaput advises that “[t]he first step, and probably the second, third, and fourth step, is for a bishop to speak with the politician privately.”<sup>107</sup>

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<sup>104</sup> CATHOLICS IN PUBLIC LIFE, *supra* note 13.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Mark Stricherz, *Blood on Their Hands: Exposing Pro-abortion Catholic Politicians*, CRISIS, May 2, 2003, at 20.

Indeed, the bishop who serves as pastor to a political figure should be the beneficiary of a substantial degree of patience by observers. Pastoral counseling progresses in stages—after all, the formation of conscience is an ongoing process. As the *Catechism of the Catholic Church* reminds us, “[t]he education of the conscience is a lifelong task.”<sup>108</sup> Thus, for example, while ultimately unsatisfactory and thus acceptable only as a provisional sign of gradual conversion, profession of personal opposition to abortion by a Catholic politician who combines that easily-made assertion with at least some actions to limit or reduce abortions—as well as with frequent and unequivocal public condemnation of abortion and refusal to collaborate with those performing such evils—may satisfy the interim predicates for continued admission to the altar.

Of course, if a public leader fails ever to mature in appreciation that the evil of abortion demands a more vigorous public response, any preliminary worthiness for the sacrament may unravel. If an increase in understanding does not produce a greater insistence on positive action, then the formation of conscience is gravely flawed. In other words, if the pastoral approach is not well received or the process of conversion becomes permanently suspended, then pastoral exchange may reach a point of impasse.<sup>109</sup>

Importantly, if at any stage a politician affiliates with, speaks to, or accepts honors, endorsements, or campaign funds from groups advancing abortion, especially those affiliated with the abortionists themselves, then any protestation of personal opposition is revealed as deceptive rhetoric. Reaping pastoral fruits will be difficult in such fallow ground.

Even during a period in which pastoral interaction between a bishop and a Catholic officeholder or political aspirant proceeds confidentially, the bishop still must uphold the apostolic obligation to teach clearly and publicly about the intrinsic evil of abortion. Private appeals cannot substitute for regular public warnings that those who facilitate the extermination of innocent unborn life sin against the common good and place their souls at risk. The bishop must remember his pastoral obligations to the whole flock, who may be led astray by the perception of any approval or indulgence toward the politically powerful who flout Church teaching on the sanctity of life. The teaching of the Church on life

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<sup>108</sup> CATECHISM OF THE CATHOLIC CHURCH, *supra* note 36, ¶ 1784.

<sup>109</sup> See ARCHBISHOP ALEXANDER J. BRUNETT, PASTORAL LETTER *SIGN OF FAITH . . . BREAD OF LIFE* (Archdiocese of Seattle 2004), available at <http://www.seattlearch.org/ArchdioceseWorking/PastoralLettersOfficials> (stating that “due process requires dialogue” with those political positions are “patently contrary to the moral principles of our Catholic faith,” but that “[t]hose who persist in such public opposition indicate that they are personally denying their communion with the Church”).

must be consistent and energetic throughout the diocese, never to be undermined by any perception of undue solicitude for the elite or by the failure of any priest in any parish to champion this fundamental principle.

C. *Asking Politicians Who Fail to Protect Unborn Life to Acknowledge Their Withdrawal from Full Communion with the Church*

In the context of the current debate about “pro-choice” politicians soliciting the elements at Mass, theologian Michael Novak writes emphatically that “[t]o be complicit in the law and culture that encourages abortion is to step out of communion with the Catholic faith.”<sup>110</sup> In this view, while the altar should not be confused with the pulpit, neither should it be thought that what happens in the communion line during the Mass may be fully divorced from the Church’s public witness. The theme that runs through the pastoral pronouncements of those bishops who suggest that pro-choice politicians refrain from the Eucharist is that of honesty with respect to Church teaching and Church law, and especially with respect to communion with the Church. As Pope John Paul II has said, “[i]t is not by chance that the term *communion* has become one of the names given to this sublime sacrament [the Eucharist].”<sup>111</sup>

Among the first of the Church leaders in America in recent years to question whether a politician may claim communion at the altar rail while rejecting it in public life, Bishop William K. Weigand of the Diocese of Sacramento stated publicly in 2003 that “anyone—politicians or otherwise—who thinks it is acceptable for a Catholic to be pro-abortion is in very great error, puts his or her soul at risk, and is not in good standing with the Church.”<sup>112</sup> Weigand further urged that such a person “should have the integrity to acknowledge this and choose of his own volition to abstain from receiving holy Communion until he has a change of heart.”<sup>113</sup>

Writing in May 2004, Archbishop Chaput of Denver likewise admonished:

[I]f we ignore or deny what the Church teaches, or refuse to follow what she teaches, we are not ‘in communion’ with the Catholic faith. We separate ourselves from the community of believers. If we receive Communion anyway, we engage in a lie.

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<sup>110</sup> Michael Novak, *In and Out of Communion*, NAT’L REV. ONLINE, June 15, 2004, at [www.nationalreview.com/novak/novak200406150846.asp](http://www.nationalreview.com/novak/novak200406150846.asp).

<sup>111</sup> *ECCLESIA DE EUCHARISTIA*, *supra* note 66, ¶ 34.

<sup>112</sup> *Catholics & Politics*, COMMONWEAL, Mar. 14, 2003, at 5; Gill Donovan, *No Eucharist for Pro-Abortion Politicians, Bishop Says*, NAT’L. CATH. REP., Feb. 7, 2003, at 6.

<sup>113</sup> Donovan, *supra* note 112, at 6.

Claiming to be Catholic and then rejecting Catholic teaching is an act of dishonesty and a lack of personal integrity. Worse, if we then receive Communion, we violate every Catholic who does believe and does strive to live the faith fully and unselfishly. And that compounds a sin against honesty with a sin against justice and charity.<sup>114</sup>

Writing at about the same time, Archbishop John J. Myers of Newark agreed that “Catholics who publicly dissent from the Church’s teaching on the right to life of all unborn” have thereby chosen to separate themselves from the Church and “in a significant way from the Catholic community.”<sup>115</sup> He asked that such people should “honestly admit in the public forum that they are not in full union with the Church,” and that any attempt by such a person to “express ‘communion’ with Christ and His Church by the reception of the Sacrament of the Eucharist is objectively dishonest.”<sup>116</sup>

Other bishops have said similar things and undoubtedly still more will do so before this article sees publication. For example, soon after his installation as leader of the Boston archdiocese in 2003, Archbishop Sean P. O’Malley remarked that “politicians should know that if they’re not voting correctly on these life issues, that they shouldn’t dare come to communion.”<sup>117</sup> Bishop Bernard Harrington of the Diocese of Winona in Minnesota also has advised those supporting abortion “not [to] approach the Communion rail.”<sup>118</sup> Seattle Archbishop Alexander J. Brunett stated plainly that Catholic politicians “who unambiguously reject Catholic moral values” are thereby “choosing a path that leads away from the Church and inhibits their ability to gather honestly with the Catholic faith community to celebrate the Eucharist, the sign of unity and communion with the Lord and his Church.”<sup>119</sup>

The American episcopate speaking in concert has not directly endorsed this approach as a formal pastoral action. Nonetheless, the recent statement by the United States Conference of Catholic Bishops calls all Catholics to “examine their consciences as to their worthiness to receive

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<sup>114</sup> Archbishop Charles J. Chaput, *It’s a Matter of Honesty: To Receive Communion, We Need to be in Communion*, DENVER CATH. REG., May 26, 2004, [http://www.catholicculture.org/docs/doc\\_view.cfm?recnum=5982](http://www.catholicculture.org/docs/doc_view.cfm?recnum=5982)

<sup>115</sup> ARCHBISHOP JOHN J. MYERS, PASTORAL STATEMENT *A TIME FOR HONESTY* (Archdiocese of Newark, May 5, 2004), available at <http://www.archden.org/dcr/news.php?e=81&s=2&a=1976>.

<sup>116</sup> *Id.*

<sup>117</sup> Eric Convey, *Diocese Gives Nod for Kerry to Receive Eucharist*, BOSTON HERALD, April 10, 2004, at 5.

<sup>118</sup> Stephen Scott, *Abortion-Rights Backers Shouldn’t Seek Communion, Bishop Says*, ST. PAUL PIONEER-PRESS, July 8, 2004, at 4B.

<sup>119</sup> BRUNETT, *supra* note 109.

the Body and Blood of our Lord,” which “examination includes fidelity to moral teaching on the Church in personal and public life.”<sup>120</sup> This express integration of sacramental worthiness and faithfulness to moral teaching in public life leads unmistakably to the conclusion that, whether or not a bishop in a particular circumstance should affirmatively withhold the Eucharist from a particular individual, a politician who obstinately advances or facilitates, by action or inaction, the killing of the unborn cannot in good conscience present him or herself at the altar rail.

*D. Denying Communion to Pro-Abortion Politicians*

As other pastoral measures fail to produce fruit and calls for “pro-choice” Catholic politicians to honestly acknowledge their departure from communion with the Church by voluntarily abstaining from the Eucharist are met with contemptuous disregard, then a growing number of theologians and prelates are inclined toward the conclusion that a more forceful and public statement of a break in communion is appropriate. As Michael Novak states the problem:

Even legislators who almost never vote to extend the protections of life, but almost always to defend the reign of abortion, go to church and receive Communion at the Table of the Lord. And they do so without being challenged in the least, as though that is a perfectly acceptable witness.<sup>121</sup>

Pained by this scandal, a small, but prominent, group of American bishops have determined that defending a central tenet of the Church—the sanctity of innocent human life—requires taking more affirmative steps to proclaim the Gospel of Life and to protect their flocks from falling into error.

Archbishop Raymond L. Burke of St. Louis is among the two or three most important canonists in the United States episcopate today, having served in Rome as Defender of the Bond of the Supreme Tribunal of the Apostolic Signatura, the first American to hold that position on the Church’s highest court.<sup>122</sup> Prior to his appointment as Archbishop of St. Louis, he served as Bishop of the La Crosse Diocese in Wisconsin, where he authored a pastoral letter entitled *Catholics and Political Responsibility* in early 2004.<sup>123</sup> Bishop Burke premised the pastoral letter on his responsibility, set forth in the *Code of Canon Law*, “to be ‘solicitous for all

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<sup>120</sup> CATHOLICS IN PUBLIC LIFE, *supra* note 13.

<sup>121</sup> Novak, *supra* note 110.

<sup>122</sup> About the Archdiocese: Most Reverend Raymond Leo Burke, Archbishop of St. Louis, at <http://www.archstl.org/about/burke.html> (last visited Oct. 27, 2004).

<sup>123</sup> BURKE, *supra* note 8.

the faithful entrusted to [my] care.’<sup>124</sup> After reviewing the consistent teaching of the Church on the “fundamental responsibility of safeguarding and promoting the respect for human life,” he drew the conclusion that a “Catholic legislator who supports procured abortion or euthanasia, after knowing the teaching of the Church, commits a manifestly grave sin which is a cause of most serious scandal to others. Therefore, universal church law provides that such persons ‘are not to be admitted to holy communion.’<sup>125</sup>

Bishop Michael J. Sheridan of Colorado Springs issued another pastoral letter that appeared to bar Catholic anti-life politicians from the Eucharist. Bishop Sheridan wrote that “[a]nyone who professes the Catholic faith with his lips while at the same time publicly supporting legislation or candidates that defy God’s law makes a mockery of that faith and belies his identity as a Catholic.”<sup>126</sup> Bishop Sheridan urged:

There must be no confusion in these matters. Any Catholic politicians who advocate for abortion, for illicit stem cell research or for any form of euthanasia *ipso facto* place themselves outside full communion with the Church and so jeopardize their salvation. Any Catholics who vote for candidates who stand for abortion, illicit stem cell research or euthanasia suffer the same fateful consequences. It is for this reason that these Catholics, whether candidates for office or those who would vote for them, may not receive Holy Communion until they have recanted their positions and been reconciled with God and the Church in the Sacrament of Penance.<sup>127</sup>

What then of this more forward response to the continuing problem of contempt for Church teaching on the sanctity of life manifested by some politicians who nonetheless claim affiliation with the Catholic Church? As discussed earlier,<sup>128</sup> the procurement of an abortion stands among the finite number of acts that results in automatic excommunication. As the recent statement of the Catholic bishops in the United States affirms, “[i]f those who perform an abortion and those who cooperate willingly in the action are fully aware of the objective evil of what they do, they are guilty of grave sin and thereby separate themselves from God’s grace.”<sup>129</sup>

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<sup>124</sup> *Id.* (quoting CIC-1983 c.383, § 1).

<sup>125</sup> *Id.* (quoting CIC-1983 c.915).

<sup>126</sup> BISHOP MICHAEL J. SHERIDAN, PASTORAL LETTER *ON THE DUTIES OF CATHOLIC POLITICIANS AND VOTERS* (Diocese of Colorado Springs, May 1, 2004), available at <http://www.diocese.org/bishopsOffice/PastoralLetterMay2004.pdf>.

<sup>127</sup> *Id.*

<sup>128</sup> See *supra* Part I.C.

<sup>129</sup> CATHOLICS IN PUBLIC LIFE, *supra* note 13.

Those who directly participate in the abortion of an unborn child plainly remove themselves from the Catholic communion and are barred from admission to the Eucharist. Despite the apparent reluctance of some to contemplate any circumstance in which affirmative denial of Holy Communion is appropriate, Church teaching emphatically is to the contrary and not only contemplates, but mandates, withholding of the Eucharist when warranted in egregious circumstances. As the Pontifical Council for Legislative Texts declared in interpretation of canon law, when reception of the Eucharist by one who is publicly unworthy causes scandal, it is “necessary for Pastors to act, with as much patience as firmness, as a protection to the sanctity of the Sacraments and a defense of Christian morality, and for the correct formation of the faithful.”<sup>130</sup> Thus, for example, if a notorious and well-recognized abortionist regularly were to appear at a Catholic elementary school Mass and insinuate himself into the receiving line, the priest not only would be permitted but clearly would be required to withhold the elements.<sup>131</sup>

To be sure, politicians who support abortion rights, vote to keep the abortion license unrestricted, and endorse funding of such practices do not procure abortions in the same way as the operator of the abortion clinic or those who transport women to abortion clinics. Nonetheless, should not the Catholic politician who seeks after or attains political power by publicly promising to affirmatively empower the abortionist in his deathly craft be seen in the same light as the abortionist himself? If the performance of the abortion is the appropriate occasion for Church discipline, and no one appears to dispute that conclusion, then are not political champions of that procedure complicit in the same evil and thus subject at least to a non-punitive withdrawal of the Eucharist?<sup>132</sup> Pro-abortion politicians lend aid and comfort to the “culture of death” so eloquently denounced by Pope John Paul II.<sup>133</sup> The law, it must be remembered, not only commands certain acts and forbids others; it also teaches values. Politicians who by their words and deeds endorse abortion

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<sup>130</sup> DECLARATION BY THE PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS ¶ 1 (June 24, 2000), available at [http://www.vatican.va/roman\\_curia/pontifical\\_councils/intrptxt/documents/rc\\_pc\\_intrptxt\\_doc\\_20000706\\_declaration\\_en.html](http://www.vatican.va/roman_curia/pontifical_councils/intrptxt/documents/rc_pc_intrptxt_doc_20000706_declaration_en.html).

<sup>131</sup> We appreciate Professor John O’Callaghan’s posing of this illustrative hypothetical in correspondence with him as a foundation for discussion.

<sup>132</sup> The withholding of the Eucharist under Canon 915 of the Code of Canon Law is not a penalty or sanction in the manner of excommunication, but rather should be understood as a sacramental discipline, that is, it is designed not to punish but rather to encourage the individual to return to communion as well as to protect the faithful congregation against scandal.

<sup>133</sup> *EVANGELIUM VITAE*, *supra* note 29, ¶ 12.

on demand teach a lesson at direct variance with their obligations as Catholics to uphold the common good and human life.

So then, is the political facilitation of the termination of hundreds of thousands of unborn children each year so gravely wrong and is the prospect of scandal to the Church faithful and harm to the Church's witness to life sufficiently dangerous as to justify a declaration of a break in full communion and withholding of the Eucharist?

Canon 915 of the *Code of Canon Law*, which states the bases for denial of admission to Holy Communion, sets forth four signals of the nature of the sin justifying pastoral action: (1) obstinacy, (2) persistence (sometimes translated as "perseverance"), (3) manifestness, and (4) gravity.<sup>134</sup>

First, the sin is obstinate if the person, despite the objective wrongfulness of the proposed conduct through the Church's teaching or the intrinsically evil nature of the act, nonetheless is adamant in carrying through with the deed. Thus, as discussed above, pastoral teaching and counseling ought to precede any resort to denial of communion, so as to ensure that the person involved has been instructed in the Church's unswerving solicitude for innocent human life and how this relates most forcefully to legal protection of the unborn.<sup>135</sup> If, however, the person refuses or is unaffected by pastoral counseling, the inherent evil of abortion leaves no room for the plea of ignorance as to the wrongfulness of the destruction of the unborn. In any event, it can hardly be doubted that the Church's teaching on this issue has been clearly and regularly stated, leaving no one confused as to where the Church stands.

Second, a person persists or perseveres in sin when the wrongful act is part of a pattern of behavior, that is, it "endures in time."<sup>136</sup> With respect to a politician, then, the question is not one of maintaining some type of "score-card" or evaluating each individual legislative vote on abortion in isolation. Rather, the question is whether the politician has welded in public life an unbroken chain of support for abortion rights and opposition to measures to restrict abortion on demand. Still, a politician may not excuse a consistent "pro-choice" voting record by protesting that the right to abortion is constitutionally fixed and thus he or she is a helpless spectator on the matter. As Pope John Paul II wrote in his Encyclical

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<sup>134</sup> Canon 915 provides for denial of the Eucharist to those who "obstinately persist in manifest grave sin." CIC-1983 c.915.

<sup>135</sup> *But see* DECLARATION BY THE PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, *supra* note 130, ¶ 2 (stating that when "an objective situation of sin" is not ended by the will of the person, "no other requirements (attitude of defiance, prior warning, etc.) [are] necessary to establish the fundamental gravity of the situation in the Church").

<sup>136</sup> *Id.*

*Evangelium Vitae*: “[W]hen it is not possible to overturn or completely abrogate a pro-abortion law, an elected official, whose absolute personal opposition to procured abortion was well known, could licitly support proposals aimed at *limiting the harm* done by such a law and lessening its negative consequences at the level of general opinion and public morality.”<sup>137</sup>

Third, the sin must be manifest before withdrawal of communion is directed. The word “manifest” could either be read to modify the gravity of the sin, that is, meaning that the gravity of the sin must be obvious, or as having reference to the public nature of the sin, or both. To the extent that it is an adjective attaching to the gravity of the sin, the manifest evil of abortion, and the legal regime that licenses it, has already been discussed in the first point above. To the extent that it may be argued that it is a qualifier as applied to this situation, that is, that the wrongness of supporting abortion rights is different in kind from the evil of directly procuring an abortion, that point is discussed next. In the context of politicians and abortion, the word “manifest”—having a plain meaning consistent with scriptural use of being visible and evident—implicates the public nature of political advocacy or political action. As Cardinal Joseph Ratzinger wrote to the American bishops, a politician’s cooperation with this evil is made manifest by “consistently campaigning and voting for permissive abortion and euthanasia laws.”<sup>138</sup>

Indeed, it is that very public aspect of a Catholic politician’s rejection of fundamental Church teaching that so poignantly creates scandal for the faithful. As the Pontifical Council for Legislative Texts declared, “the reception of the Body of Christ when one is publicly unworthy constitutes an objective harm to the ecclesial communion; it is a behavior that affects the rights of the Church and of all the faithful to live in accord with the exigencies of that communion.”<sup>139</sup>

Fourth, the sin must be grave, that is, a weighty matter and not a small step aside from the narrow way of salvation. It cannot be gainsaid, and indeed canon law is emphatic on this point, that procuring an abortion is a matter of grave sin. Is a political act that facilitates a deluge of abortions of the same kind and degree? Certainly, it cannot be doubted that for the politician who effectively if not explicitly advocates abortion rights as a

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<sup>137</sup> EVANGELIUM VITAE, *supra* note 29, ¶ 73.

<sup>138</sup> JOSEPH CARDINAL RATZINGER, LETTER TO BISHOPS *WORTHINESS TO RECEIVE HOLY COMMUNION: GENERAL PRINCIPLES* (2004), available at <http://www.priestsforlife.org/magisterium/bishops/04-07ratzingerommunion.htm>; see also Magister, *supra* note 12.

<sup>139</sup> DECLARATION BY THE PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, *supra* note 130, ¶ 1.2.

positive social good, welcoming endorsements from entities that are directly involved in performing abortions, the advocacy and the manifestly grave evil that is certified are closely tethered together. For a politician who professes reluctance and hesitation about abortion rights, but has not yet fully embraced the mission of protecting innocent human life, the pertinent question will be the sincerity of expressed concerns, as manifested by clear public statements and concrete actions that work against the culture of death, as well as evidence of a continual progression toward more affirmative support for unborn life.

In sum, when a public official uses political power to facilitate the annihilation of the unborn, or deliberately and calculatedly refuses to exercise governmental authority to prevent it, the argument that Church discipline should attach is a quite plausible, if not ineluctable, interpretation of canon law. Indeed, if each individual is free to claim Catholic affiliation when comfortable or advantageous, while assuming a license to emphatically and publicly reject Catholic teaching when expedient, without any fear of rebuke or discipline, then the witness of the Church to the larger society on matters of fundamental human rights could be undone.

At the same time, each bishop must act in the pastoral best interests of his diocese, which may mean that different approaches should be taken in different circumstances involving different individual relationships and different flocks of the faithful. Cardinal Theodore McCarrick, the Archbishop of Washington, D.C., while acknowledging that “[d]isciplinary actions are permitted,”<sup>140</sup> has been reluctant to deny access of politicians to the Eucharist. As a priest and bishop, Cardinal McCarrick said, “I do not favor a confrontation at the altar rail with the sacred body of the Lord Jesus in my hand.”<sup>141</sup> Moreover, he raises practical concerns, such as “a negative impact on faithful legislators, the Catholic community, and the role of the Church in public life.”<sup>142</sup>

At the end of the day, however, pragmatic considerations must be measured by their practical effectiveness. If many more years should pass without any movement by pro-choice Catholic politicians, without even the slightest crack in the edifice of the abortion license, then prudential reasons for refraining from discipline may prove to be impractical means

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<sup>140</sup> THEODORE CARDINAL MCCARRICK, INTERIM REFLECTIONS: *TASK FORCE ON CATHOLIC BISHOPS AND CATHOLIC POLITICIANS* 5 (2004) [hereinafter INTERIM REFLECTIONS], available at <http://www.usccb.org/bishops/intreflections.htm>.

<sup>141</sup> Laurie Goodstein, *Bishop Would Deny Rite for Defiant Catholic Voters*, N.Y. TIMES, May 14, 2004, at 141.

<sup>142</sup> INTERIM REFLECTIONS, *supra* note 140.

of sustaining the faithful while bringing wayward politicians to a better understanding of the common good.

#### CONCLUSION

As our work on this article was being completed, the United States Conference of Catholic Bishops emphatically affirmed the witness of the Church on the sanctity of human life and the special commission of those in the Apostolic Succession to speak clearly and forcefully to those exercising political power to protect the unborn as the most vulnerable among us.<sup>143</sup> The conference properly declared that the decision on whether to admit to or deny communion to particular public officials “rest[s] with the individual bishop in accordance with established canonical and pastoral principles,” and further acknowledged that “[b]ishops can legitimately make different judgments on the most prudent course of pastoral action.”<sup>144</sup>

The occasion of this statement, which was issued in anticipation of the final report of the Task Force on Catholic Bishops and Catholic Politicians to be delivered late this year or early next (that is, late 2004 or early 2005), as well as the effervescence on this issue percolating from the events of the past several months, provide the Church and its faithful with opportunities that are personal, pastoral, and public in nature.

First, as Cardinal McCarrick emphasized in his interim report for the task force, “not just politicians, but all of us . . . should ask are we worthy to receive the Eucharist.”<sup>145</sup> As he poignantly inquired, when last have the bishops “preach[ed] on the proper disposition to receive Communion?”<sup>146</sup> The Church and its faithful in America need to be reminded about the sacred meaning, personally and communally, of approaching the altar. Each of us need once again to undertake, as we did at the time of our Confirmation, that rigorous examination of our own consciences toward the end of being drawn ever more deeply into full communion with the Church through Reconciliation as appropriate and then our due reception of the Body and Blood of Christ at the Lord’s Supper.

Second, the Church and its leaders in the United States must candidly acknowledge the painful truth that too many of those sitting in the pews, including those congregants who hold public office, have not been adequately catechized and have not developed a fully formed conscience on fundamental matters of human life. As the bishops undertake to renew

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<sup>143</sup> CATHOLICS IN PUBLIC LIFE, *supra* note 13.

<sup>144</sup> *Id.*

<sup>145</sup> INTERIM REFLECTIONS, *supra* note 140.

<sup>146</sup> *Id.*

and reinvigorate their teaching and counseling role, they simultaneously must appreciate that the Church appears to have failed for nearly a generation in advancing that evangelical and pastoral message. Continuing along the same path cannot be expected to move the Church closer to the thus-far elusive goal. The message and witness of the Church must be more insistent, consistent, and persistent.

Third, and flowing out of the second point, the Church must seek more creative and effective means of witnessing to the sanctity of innocent human life within what Pope John Paul II has accurately described as “the culture of death” in the United States. Whether by preaching from the pulpit, by counseling in the pastoral office, by building stronger relationships with public officials, by provocation through prophetic messages in the public arena, or, yes, by appropriate exercise of ecclesial discipline, the bishops need to more productively engage with those who exercise political power and influence in our society, lest another generation, of the born and the unborn, be lost.