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Religious Law and Secular Law in Democracy: The Evolutions of the Roman Catholic Doctrine After the Second Vatican Council

Louis-Léon Christians *

I. INTRODUCTION

A recurring jurisprudential conflict in modern law is the extent to which religious communities may appropriately seek to have their own religious norms incorporated into secular law. In the Muslim world, that issue takes on life and death significance.¹ Conflict arises when the question goes beyond asking whether Islamic law should be incorporated into secular law and asks whether secular law in general should be required to be consistent with, and subordinate to, Islamic law.² Similar questions arise in Western nations regarding the extent to which secular norms may parallel or incorporate religious norms. Examples include Sunday closing laws,³ laws exempting Jews and Muslims from otherwise applicable animal slaughter regulations,⁴ and, more controversially, laws criminalizing conduct that violates what some would consider religious mandates, such as laws concerning abortion⁵ or homosexual conduct.⁶

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1. See generally Tad Stahnke & Robert C. Blitt, *The Religion-State Relationship and the Right to Freedom of Religion or Belief: A Comparative Textual Analysis of the Constitutions of Predominantly Muslim Countries*, 36 GEO. J. INT'L L. 947 (2005).

2. See, e.g., IRAQ CONST. art. 2; see also Refah Partisi v. Turkey, 35 Eur. H.R. Rep. 3 (2002).

3. See, e.g., Braunfeld v. Brown, 366 U.S. 599 (1961).

4. See, e.g., Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520 (1993).

5. See, e.g., Harris v. McRae, 448 U.S. 297 (1980) (holding that legislation banning the funding of abortions did not violate the Establishment Clause); Roe v. Wade, 410 U.S. 113 (1973); German Constitutional Court Abortion Decision, BVerfGE 39, 1 (1975) (translated by Robert E. Jonas & John D. Gorby), http://swiss.csail.mit.edu/~rauch/nvp/german/german_abortion_decision2.html.

6. Lawrence v. Texas, 539 U.S. 558 (2003); Dudgeon v. United Kingdom, 45 Eur.

This conflict is particularly difficult within the context of a pluralistic democracy, where it is problematic—if not altogether illegitimate—for one religious group to invoke coercive legal sanctions in support of its religious beliefs. On the other hand, it would be paradoxical if religious speakers were the only ones who were denied the right to use democratic processes to advocate adoption of their ideas.⁷

Significantly, these conflicts may arise not only in the context of affirmatively legislating values that coincide with religious beliefs, but they may also arise as a result of affording protections to conscientiously held objections. To the extent that neither the State nor other citizens will be able to require conduct inconsistent with the beliefs protected, the religious beliefs in question would acquire not only legal protection but also status as legal imperatives.

This Article analyzes the struggle for proper balance in the context of the Roman Catholic experience. During the Second Vatican Council, the Roman Catholic Church transformed itself from a vigorous defender of the *ancien regime* “into one of the world’s leading advocates of social and political justice, democratic governance, and human rights.”⁸ The new Catholic understanding of democratic liberalism is a complex story,⁹ and the critical test for discovering the meaning and scope of the Church’s new understanding lies in the extent to which it will allow religious norms to be incorporated into secular law.

The aim of this Article is to discuss key Catholic pronouncements that address this fundamental issue and, from that vantage point, to contribute to the more general discussion regarding the appropriate relation of religion and law within the framework of democracy. More specifically, the aim is to address Catholic thought about democratic constraints in matters of

Ct. H.R. 52 (1981); *see also* P.G. & J.H. v. United Kingdom, 2001-IX Eur. Ct. H.R. 195; *Modinos v. Cyprus*, 259 Eur. Ct. H.R. (1993); *Norris v. Ireland*, 142 Eur. Ct. H.R. (1988).

7. See the last evolution of Jorgen Habermas in his 2004 dialogue with Cardinal J. Ratzinger, “Moral foundation of democratic politics,” in *Zur Debatte* of the Catholic Academy of Bavière [hereinafter Ratzinger & Habermas], <http://www.kath-akademie-bayern.de>.

8. Zachary R. Calo, *Catholic Social Thought, Political Liberalism, and the Idea of Human Rights* 1, 1 (The Fourth Annual Lilly Fellows Program, Samford University, Nov. 11–14, 2004), http://www.samford.edu/lillyhumanrights/papers/Calo_Catholic.pdf.

9. *See generally* Zachary R. Calo, “The Indispensable Basis of Democracy”: *American Catholicism, the Church-State Debate, and the Soul of American Liberalism, 1920–1929*, 91 VA. L. REV. 1037 (2005).

religious importance, which, for purposes of this Article, amounts to determining when religious-grounded norms may be democratically imposed. Thus, this Article will explore the internal conditions under which religious bodies such as the Roman Catholic Church may consider it legitimate to promote religious norms and values in a democratic-legal setting.

To address the point, this Article compares two approaches. Part II discusses the Catholic Church's evaluation of the scope of religious freedom under the European Convention for the Protection of Human Rights and Fundamental Freedoms,¹⁰ as viewed from the vantage point of the famous declaration *Dignitatis Humanae*, which was promulgated in 1965 during the Second Vatican Council.¹¹ Part III provides a comparative exploration of a recent doctrinal statement that the Holy See Congregation for the Doctrine of the Faith—chaired by then-Cardinal Joseph Ratzinger (now Pope Benedict XVI)—issued in November 2002.¹² Part IV ultimately draws the conclusion that the Catholic notions of “religious norms” in these two approaches differ, and it will be necessary to find a way to reconcile them (or to choose between them) in order to provide clear guidance concerning the extent to which Catholic thought allows religious norms to be incorporated into secular legal systems.

II. THE CATHOLIC CONCEPTION OF THE SCOPE OF RELIGIOUS FREEDOM UNDER *DIGNITATIS HUMANAЕ*

A starting point for reflection on these issues is a carefully considered declaration by Pope John Paul II issued as part of a speech on the World Day of Peace in 1991, which condemned certain forms of legal enforcement of religious laws:

Extremely sensitive situations arise when a specifically religious norm becomes, or tends to become, the law of the State, without

10. European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221 (enacted Sept. 3, 1953).

11. Council Vatican II, Declaration on Religious Freedom, *Dignitatis Humanae* § 2, Dec. 7, 1965 [hereinafter *Dignitatis Humanae*], http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html.

12. Congregation for the Doctrine of the Faith, Doctrinal Note on Some Questions Regarding the Participation of Catholics in Political Life § 3, Nov. 24, 2002 [hereinafter Doctrinal Note], http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20021124_politica_en.html.

due consideration for the distinction between the domains proper to religion and to political society. In practice, the identification of religious law with civil law can stifle religious freedom, even going so far as to restrict or deny other inalienable human rights.¹³

The term “specifically religious norms” calls for further exploration. The phrase suggests that only specifically religious norms pose the risk of stifling religious freedom. But does it therefore follow that no “sensitive situations” will arise from the standpoint of religious freedom and other human rights where norms that are not “specifically religious” are involved? Would the Catholic Church find it acceptable if the State enforced various religious norms provided that they were not “specifically religious”? If so, how can such properly enforceable religious norms be identified? More particularly, how does Catholic thought assess what constitutes the appropriate constraints on invoking law in support of matters of religious importance? Stated differently, under what circumstances does the Roman Catholic Church believe it is legitimate to advance a religious norm or value within the context of democratic society?

The possible answers emerge by contrasting the approach of *Dignitatis Humanae* with the approach from the Congregation for the Doctrine of the Faith’s more recent statement in 2002. The scope of religious norms that are “specifically religious” from the vantage point of the former can be seen by contrasting the *Dignitatis Humanae* view with a much narrower conception that has been adopted by the European Court of Human Rights. This narrower conception is evident in the European Court’s interpretation of the notion of “manifestation” of religion and its consequent narrowing both of freedom of religion and the range of norms that can serve as the basis for invoking that freedom. The approach of the European Court of Human Rights legitimates a relatively narrow scope of religiously motivated conscientious objections. In contrast, the Catholic Church has advocated for a much broader view of the permissible scope of such objections.

13. Pope John Paul II, *Message of His Holiness Pope John Paul II for the XXIV World Day of Peace*, http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_08121990_xxiv-world-day-for-peace_en.html.

A. A Narrower View: The European Court of Human Rights

The European Court of Human Rights has repeatedly held that the European guarantee of religious freedom “does not protect every act motivated or inspired by a religion or belief.”¹⁴ The idea is that “when actions of individuals do not actually express the belief concerned they cannot be considered to be as such protected by Article 9.1, even when they are motivated or influenced by it.”¹⁵ Thus, for example, the Court held that pacifists at an army base who circulated leaflets explaining optional ways in which members of the armed forces could refuse to perform their duties did not “manifest” religion because the activity was merely motivated by, and did not actually “express,” the pacifists’ beliefs.¹⁶ This interpretation of what counts as a “manifestation” of belief only affords protection to a relatively narrow range of religious norms, and suggests an unduly narrow conception of what might be intended by the phrase “specifically religious norms.”

In contrast to the European Court’s approach, the Catholic Church, in *Dignitatis Humanae*, took an expansive view of the range of norms that are entitled to religious freedom protection and, therefore, may be legitimately protected and enforced.

B. Dignitatis Humanae: A Broader Understanding of Religious Norms

In a 1965 statement known as *Dignitatis Humanae*,¹⁷ the Second Vatican Council provided the Catholic position regarding the role of a State in imposing religious norms:

[A] wrong is done when government imposes upon its people, by force or fear or other means, the profession or repudiation of any religion, or when it hinders men from joining or leaving a religious community. All the more is it a violation of the *will of God* and of the sacred rights of the person and the family of nations when force is brought to bear in any way in order to destroy or repress

14. *Metro. Church of Bessarabia v. Moldova*, 12 Eur. Ct. H.R. 39, ¶ 114 (2002); *see also Kalaç v. Turkey*, 41 Eur. Ct. H.R. 1199, ¶ 27 (1997); *Arrowsmith v. United Kingdom*, 19 Eur. Comm’n H.R. Dec. & Rep. 5, ¶ 71 (1978).

15. *Arrowsmith*, 19 Eur. Comm’n H.R. Dec. & Rep. 5, ¶ 71.

16. *Id.*

17. *Dignitatis Humanae*, *supra* note 11.

religion, either in the whole of mankind or in a particular country or in a definite community.¹⁸

At first glance, the Pope may appear to be offering a classic, narrow definition of religious norms, but further reading reveals his decision to broaden the understanding of “religious matters.” The Pope affirmed that “the Christian faithful, in common with all other men, possess the civil right not to be hindered in *leading their lives in accordance with their consciences*.”¹⁹ He also explained:

[T]he leaven of the Gospel has long been about its quiet work in the minds of men, and to it is due in great measure the fact that in the course of time men have come more widely to recognize their dignity as persons, and the conviction has grown stronger that the person in society is to be kept free from all manner of coercion in matters religious.²⁰

C. One Exception: The Public Order Understood as a Common Good in Conformity with the “Objective Moral Order”

While *Dignitatis Humanae* appears to grant a broad understanding of “religious matters,” it maintains at least one limit to this very broad interpretation of religious freedom and freedom of conscience. Namely, the State has a positive obligation to defend itself against abuses in the name of religious freedom. In *Dignitatis Humanae*, the Second Vatican Council stated:

[S]ociety has the right to defend itself against possible abuses committed on the pretext of freedom of religion. It is the special duty of government to provide this protection. However, government is not to act in an arbitrary fashion or in an unfair spirit of partisanship. Its action is to be controlled by juridical norms which are in conformity with the *objective moral order*. These norms arise out of the need for the effective safeguard of the rights of all citizens and for the peaceful settlement of conflicts of rights, also out of the need for an adequate care of public peace, which comes about when men live together in good order and in true

18. *Id.* § 6 (emphasis added).

19. *Id.* § 13 (emphasis added).

20. *Id.* § 12.

justice, and finally out of the need for a proper guardianship of public morality.²¹

Though several concepts in this statement may not be precisely defined, the right and duty of the Catholic Church regarding the political process remains clear.²² For instance, the notion of an “objective moral order” remains undefined beyond the clear statement that it must be compatible with the principle of equality. Furthermore, the potential role of religion in contributing to such a non-discriminatory definition of this “order,” which would be applicable to the whole legal system, remains unclear. However, as discussed throughout this paper, the Catholic Church and its members have the right and duty to shape through the political process the definition of “public morality” as used in the above section of *Dignitatis Humanae*.²³ In doing so, the government must also “see to it that equality of citizens before the law, which is itself an element of the *common good*, is never violated, whether openly or covertly, for religious reasons.”²⁴

D. Dignitatis Humanae and Conscientious Objection

Under this broader conception of religious norms as applied to the political process, *Dignitatis Humanae* seems to suggest that when the State’s policies come in direct contradiction with fundamental Christian principles, Catholics have an obligation to conscientiously object to participation in the application of such laws. *Dignitatis Humanae* teaches the following regarding situations when the laws of God and the laws of man come in conflict:

As the Master, so too the Apostles recognized legitimate civil authority. “For there is no power except from God,” the Apostle

21. *Id.* § 7 (emphasis added).

22. See discussion *infra* Part III.D. The “common good” is understood in the Constitution *Gaudium et Spes* section 26 as “the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfillment.” Pope Paul VI, Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes*, Dec. 7, 1965 [hereinafter *Gaudium et Spes*], available at http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en.html; see also Dana L. Dillon, *Public Order, the Common Good, and Our Supernatural Destiny* (The Fourth Annual Lilly Fellows Program, Samford University, Nov. 11–14, 2004), http://www.samford.edu/lillyhumanrights/papers/Dillon_Public.pdf.

23. See *supra* notes 21 and 22 and accompanying text.

24. *Dignitatis Humanae*, *supra* note 11, § 6 (emphasis added).

teaches, and thereafter commands: "Let everyone be subject to higher authorities. . . . He who resists authority resists God's ordinance" (Romans 13:1-5). At the same time, however, they did not hesitate to speak out against governing powers which set themselves in opposition to the holy will of God: "It is necessary to obey God rather than men" (Acts 5:29). This is the way along which the martyrs and other faithful have walked through all ages and over all the earth.²⁵

Thus, when the laws of man directly contradict the laws of God, the Catholic understanding recognizes a Christian's obligation to choose God's law.

The implications of this obligation are unclear from the standpoint of an individual's professional, civic, and political duties, but the Catholic Church has offered some guidance. First, a broad interpretation of an individual's right to conscientiously object might concede that individuals who are obliged, at times, to materially participate in evil are not morally guilty. Pope John Paul II recognized this possibility when he spoke of the proper role judges and attorneys play in fulfilling their legal duties during a divorce proceeding:

[P]rofessionals in the field of civil law should avoid being personally involved in anything that might imply a *cooperation with divorce*. For *judges* this may prove difficult, since the legal order does not recognize a conscientious objection to exempt them from giving sentence.

For grave and proportionate motives they may therefore act *in accord with the traditional principles of material cooperation*. But they too must seek effective means to encourage marital unions, especially through *a wisely handled work of reconciliation*.

Lawyers, as independent professionals, should always decline the use of their profession for an end that is contrary to justice, as is divorce. They can only cooperate in this kind of activity when, in the intention of the client, it is not directed *to the break-up of the marriage*, but *to the securing of other legitimate effects* that can only be obtained through such a judicial process in the established legal order (cf. *Catechism of the Catholic Church*, n. 2383). In this way, with their work of assisting and reconciling persons who are going

25. *Id.* § 7 (footnotes omitted).

through a marital crisis, lawyers truly serve the rights of the person and avoid becoming mere technicians at the service of any interest whatever.²⁶

Another question involving individual conscientious objection arises when such objection interferes with the freedom and autonomy of others. To what extent may religious actors take or refuse to take legally mandatory actions when such decisions involve the interests and rights of others? Although conscientious objectors should enjoy autonomy in their individual choices, the law should not permit such objectors to use their individual function in a monopolistic way to impose their position on others. It is one thing to object for oneself; it is quite another thing to object in a manner that paralyzes the rights of others.

The European Court of Human Rights faced this conflict in the recent decision of *Pichon v. France*.²⁷ The Court faced the demand of “the owners of a pharmacy, who submitted that their religious beliefs justified their refusal to sell contraceptive pills in their dispensary.”²⁸ The Court held that the pharmacists could not “give precedence to their religious beliefs and impose them on others as justification for their refusal to sell such products.”²⁹ This is clearly an area in which the Catholic Church recognizes a broader right to conscientious objection than the European Court. For the Church, the right of individual objection is to be broadly construed, and relates not only to “specifically religious matters” but to all legal norms that prevent believers from leading their personal lives in accordance with conscience.

Accordingly, a debate arises as to the extent to which a religious organization such as the Catholic Church may appropriately advocate conscientious objection to State law. While the Catholic Church holds that people should be able to follow the dictates of

26. Pope John Paul II, Address of John Paul II to the Prelate Auditors, Officials and Advocates of the Tribunal of the Roman Rota (Jan. 28, 2002), http://www.vatican.va/holy_father/john_paul_ii/speeches/2002/january/documents/hf_jp-ii_spe_20020128_roman-rot_a_en.html.

27. 2001-X Eur. Ct. H.R.

28. *Id.*

29. *Id.* It is unfortunate that after enunciating that conscientious objection is not acceptable when it facilitates an abuse of a generally held societal position, the Court abstained from verifying *in concreto* whether the objections of these Catholic pharmacists actually hindered the local population in its access to contraceptives.

conscience,³⁰ some Catholics remain concerned that church members may take this to the extreme extent of effectively supplanting the legislature with their own convictions while attempting to impose those beliefs on other people.

III. DOCTRINAL NOTE ON SOME QUESTIONS REGARDING THE PARTICIPATION OF CATHOLICS IN POLITICAL LIFE

In 2002, the Catholic Church's Congregation for the Doctrine of the Faith issued another statement which describes a broader notion of religious norms that Catholics should apply in the political realm: The Doctrinal Note on Some Questions Regarding the Participation of Catholics in Political Life ("Doctrinal Note").³¹ It was "directed to the Bishops of the Catholic Church and, in a particular way, to Catholic politicians and all lay members of the faithful called to participate in the political life of democratic societies."³² This Part describes the Doctrinal Note's conception of the Church's role in the political realm and specifically addresses the participation of individual Catholics in the political shaping of an "objective moral order." The focus of the Doctrinal Note is somewhat more limited than the broad pronouncements of *Dignitatis Humanae* because it concentrates on the specific issues of political engagement and not the broader question of conscientious objection. But both inquiries raise questions about the extent to which the Church may appropriately seek support for religiously grounded norms in the secular legal orders of democratic societies.

A. It Is Not the Church's Task To Set Forth Specific Political Solutions

Because modern politics has become dominated by the theory of moral relativism, the Catholic Church defended the limited but proper role of religious institutions in the democratic process. After recalling the classic teachings of the Council Constitution *Gaudium et Spes* regarding the political freedoms of States,³³ the Doctrinal Note pointed out the following:

30. *Dignitatis Humanae*, *supra* note 11, § 13.

31. Doctrinal Note, *supra* note 12.

32. *Id.*

33. *Gaudium et Spes*, *supra* note 22; *see also* Dillon, *supra* note 22.

Political freedom is not—and cannot be—based upon the relativistic idea that all conceptions of the human person’s good have the same value and truth, but rather, on the fact that politics are concerned with very concrete realizations of the true human and social good in given historical, geographic, economic, technological and cultural contexts. From the specificity of the task at hand and the variety of circumstances, a plurality of morally acceptable policies and solutions arises. It is not the Church’s task to set forth specific political solutions—and even less to propose a single solution as the acceptable one—to temporal questions that God has left to the free and responsible judgment of each person.³⁴

This statement concedes that when the development of public policy involves “a plurality of morally acceptable policies and solutions,” specific solutions to temporal questions are generally not within the scope of the Church’s legitimate authority.³⁵ Thus, in situations where moral principles and religious doctrines do not delineate a single correct standard, the Church defers to the deliberative democratic process for the development of public policy.

B. The Catholic Church Has the Right and the Duty To Propose a Moral Judgment on Temporal Matters When Required by Faith or by Moral Law

The Doctrinal Note points out, however, that a much different rule should apply when religious tenets and their moral application do not allow for multiple solutions to a political problem, or exclude at least some of the possible options: “It is, however, the Church’s right and duty to provide a moral judgment on temporal matters when this is required by faith or the moral law.”³⁶ Thus, when religious and moral principles necessarily inform the development of temporal law, the Church has both the right and the duty to fight moral relativism by imparting its religious values in critical public policy debates:

If Christians must “recognize the legitimacy of differing points of view about the organization of worldly affairs,” they are also called to reject, as injurious to democratic life, a conception of pluralism that reflects moral relativism. Democracy must be based on the true

34. Doctrinal Note, *supra* note 12, § 3.

35. *Id.*

36. *Id.*

and solid foundation of *non-negotiable* ethical principles, which are the underpinning of life in society.³⁷

This duty applies not only to the Church as an institution but also to individual Catholics. For example, speaking directly of legislators, the Church provided a concrete example of applying a fundamental religious norm—the sanctity of life—to the political process: “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.”³⁸ Thus, according to the Doctrinal Note, fundamental religious and moral norms impose a duty on both the Church and individual Catholic citizens not only to promote these “non-negotiable ethical principles,” but also to fight against those proposals that contradict them.

C. A Conception of Political Autonomy that Distinguishes Religion from Morality

In describing the proper application of religious norms in the political process, the Doctrinal Note distinguishes the two spheres of morality and religion. For Catholic moral doctrine, “the rightful autonomy of the political or civil sphere from that of religion and the Church—but not from that of morality—is a value that has been attained and recognized by the Catholic Church and belongs to inheritance of contemporary civilization.”³⁹

Within this framework, the Doctrinal Note affirms the pertinence of a very narrow concept of “specifically” religious norms:

All the faithful are well aware that *specifically* religious activities (such as the profession of faith, worship, administration of sacraments, theological doctrines, interchange between religious authorities and the members of religions) are outside the state’s responsibility. The state must not interfere, nor in any way require or prohibit these activities, except when it is a question of public order.⁴⁰

37. *Id.* (quoting *Gaudium et Spes*, *supra* note 22, § 75) (emphasis added).

38. *Id.* § 4 (quoting Pope John Paul II, *Evangelium Vitae*, § 73 (Mar. 25, 1995) [hereinafter *Evangelium Vitae*], available at http://www.vatican.va/edocs/ENG0141/_PS.HTM).

39. *Id.* § 6.

40. *Id.* (emphasis added).

Thus, building on Pope John Paul II's declaration that specifically religious norms are outside the scope of permissible government authority,⁴¹ but construing that domain narrowly, the Doctrinal Note opens up a broad domain for the application of non-specific religious norms (i.e., moral norms) in the political process.

D. Relationships Between Objective Morality and Political Participation of Catholics

Despite the Doctrinal Note's support for applying moral norms in the political realm, the Church emphasizes that it "does not wish to exercise political power or eliminate the freedom of opinion of Catholics regarding contingent questions."⁴² On the contrary, the Church recognizes that "its proper function" is merely "to instruct and illuminate the consciences of the faithful, particularly those involved in political life, so that their actions may always serve the integral promotion of the human person and the common good."⁴³ Under this model of teaching and inviting,

[t]he social doctrine of the Church is not an intrusion into the government of individual countries. It is a question of the lay Catholic's duty to be morally coherent, found within one's conscience, which is one and indivisible. "There cannot be two parallel lives in their existence: on the one hand, the so-called 'spiritual life,' with its values and demands; and on the other, the so-called 'secular' life, that is, life in a family, at work, in social responsibilities, in the responsibilities of public life and in culture"⁴⁴

The Catholic Church responds to the argument that Christians should not be allowed to make public policy decisions based on their beliefs by reminding citizens of their duty to promote the common good and explains that "[p]romoting the common good of society, according to one's conscience, has nothing to do with 'confessionalism' or religious intolerance."⁴⁵ The Catholic

41. *See supra* note 13 and accompanying text.

42. Doctrinal Note, *supra* note 12, § 6.

43. *Id.*

44. *Id.* (quoting John Paul II, Apostolic Exhortation, *Christifideles laici*, § 59 (Dec. 30, 1988), available at http://www.vatican.va/holy_father/john_paul_ii/apost_exhortations/documents/hf_jp-ii_exh_30121988_christifideles-laici_en.html).

45. *Id.*

Constitution *Gaudium et Spes* defines the “common good” as “the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfillment.”⁴⁶ Further, the Doctrinal Note explicitly criticizes

[t]hose who, on the basis of respect for individual conscience, would view the moral duty of Christians to act according to their conscience as something that disqualifies them from political life, denying the legitimacy of their political involvement following from their convictions about the common good⁴⁷

In the view of the Doctrinal Note, those taking such a view “would be guilty of a form of intolerant *secularism*.”⁴⁸

The distinction made by the Catholic Church between political and religious spheres is reasonably clear. However, the Church’s foundational theory of rights based on an “objective moral order” remains more complex and contrasts with a classic liberal position. With respect to the first point of view—the distinction between politics and religion—the Catholic Church condemns any State intrusion in specifically religious matters, but the Church affirms the right for Christian citizens to act democratically in order to get a majority in favor of a legal system that is consistent with good foundational values (as interpreted by the informed conscience of each individual).

On this view, democratically based legal compulsion is prohibited only with respect to a narrowly defined understanding of specifically religious matters. Such compulsion is not prohibited if it involves facially neutral norms, even if these norms are provided or at least supported by foundational moral objectivity as interpreted by the Church. If the “moral objectivity” adopted by the State is not coherent with Catholic doctrine, Catholic citizens have two obligations: the first is to attempt to repeal the law through democratic processes, and the second is to conscientiously object to any participation in the application of the law.⁴⁹

Thus, Christian individuals have an obligation to participate directly in the political process by advocating policies that are “based

46. *Gaudium et Spes*, *supra* note 22, § 26.

47. Doctrinal Note, *supra* note 12, § 6.

48. *Id.*

49. *See supra* text accompanying note 25.

on the true and solid foundation of non-negotiable ethical principles.”⁵⁰ In exercising this right, the Church recognizes “the legitimate plurality of temporal options” and asserts “that lay Catholics must assess their participation in political life so as to be sure that it is marked by a coherent responsibility for temporal reality.”⁵¹ Although the definition of “temporal reality” is complex, it is clear that “[w]hen political activity comes up against moral principles that do not admit of exception, compromise or derogation,” Catholics have a duty to protect and defend these fundamental moral principles that include protection of life, preservation of the family, safeguarding of children, and promotion of religious freedom and peace.⁵²

Yet, how are Christian citizens to perform this function within society when many would question the wisdom of their decision “to base their contribution to society and political life . . . on their particular understanding of the human person and the common good?”⁵³ Often, because moral relativism has resulted in “the decadence and disintegration of reason and the principles of the natural moral law,”⁵⁴ modern governments have developed policies that often contradict “*fundamental and inalienable ethical demands.*”⁵⁵ Although *Dignitatis Humanae* seems to suggest that Catholics have a right and duty to conscientiously object when this occurs, the Doctrinal Note goes further, and by construing the notion of specifically religious norms more narrowly, *Dignitatis Humanae* authorizes more active political engagement with respect to norms that Catholic citizens view as being grounded in an objective moral order.

IV. CONCLUSION

The Catholic approach to incorporating religious norms into secular law has embraced at least two possible interpretations of what constitutes a religious norm. The first is the broad interpretation outlined in *Dignitatis Humanae* that focuses on conscientious

50. Doctrinal Note, *supra* note 12, § 3.

51. *Id.*

52. *Id.* § 4.

53. *Id.* § 6.

54. *Id.* § 2.

55. *Id.* § 4.

objection, suggesting that faithful citizens have a right and duty to engage in conscientious objection when the State's policies contradict personal conscience—including conscientious beliefs shaped by all religious norms, whether “specifically religious” or not. The second, delineated in the Catholic Church's more recent Doctrinal Note and focusing in on the appropriate scope of political engagement, relies on a much narrower interpretation of specifically religious norms that leaves it open to the political responsibility of faithful citizens to use democratic means to collectively impose some norms possessing “foundational moral objectivity,” even if they are religiously grounded.

The discrepancy inherent in these two positions requires significant clarification. On the one hand, the Church suggests that non-specific religious norms can and must be applied in the democratic process, which process must ultimately be respected as long as the state guarantees religious freedom and refrains from interfering in matters of religious choice. On the other hand, the Church also suggests that the faithful have an obligation to conscientiously object when the State's policies—which are the result of the participatory democratic process—contradict personal beliefs.

In the future, the main issue for the Roman Catholic Church should be to better explain⁵⁶ how to reconcile these two interpretations and how to reconcile relations between the notion of “moral objective order,” the prohibition by *Dignitatis Humanae* of any intrusion of the State in religious areas, and a new understanding of the consequences of the principle of non-discrimination within a pluralist legal system—a principle already affirmed by the Second Vatican Council's Constitution, *Gaudium et Spes*.⁵⁷

56. See Ratzinger & Habermas, *supra* note 7.

57. *Gaudium et Spes*, *supra* note 22.