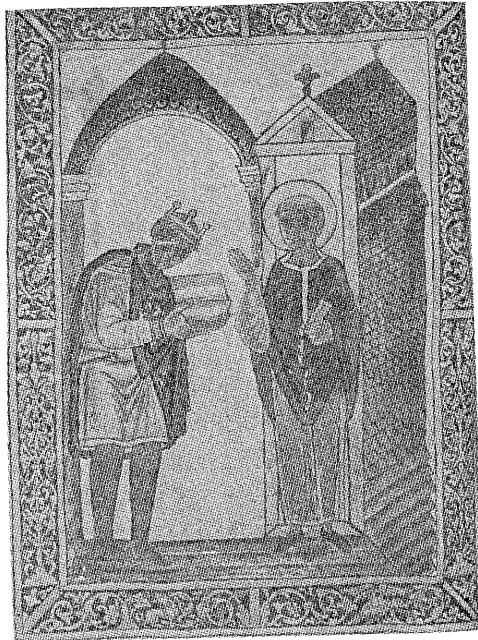


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# Law and Morality

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THE QUESTION of the relationship between law and morality is frequently discussed today. As far as the majority of people are concerned, however, the subject remains ill-defined and confused. Little has been done to clarify the basic issues involved for the benefit of the public at large. This is unfortunate, given the importance of the subject and its bearing on a number of public issues which are currently matters of controversy in our society.

In this booklet I shall attempt, in very brief compass, an explanation of the fundamental concepts involved and of the principles that, in the light of reason and Christian faith, should determine the mu-

tual relations of Church and State in this area and guide the decisions of citizens and legislators.

#### *Law and morality connected*

Let us begin by asking why there should be any connection at all between morality and law. The question is not an idle one, since quite a few people today would seem to think along some such lines as these: the Church has its own work to do, to look after our spiritual well-being; the State has its own work to do, to look after our temporal well-being. Why don't they both go their own ways without interfering with each other?

People may think that way and talk that way. But, as against that, they show in various ways that they are convinced that morality and law are connected.

Take, for example, a tax law or regulation. Some will say that a particular law or regulation is unjust, that it weighs too heavily on the poor to the advantage of the well-off. Others will defend it and argue that it does not really offend against justice.

Again, a law may be passed which alters the regulations governing the sale of alcohol. Some will say that its effect is to provide a reasonable opportunity of relaxing in a way God allows. Others will say that it opens the door to the evil of widespread drunkenness.

An even more obvious example is the situation prevailing in some countries, where fundamental human rights are denied by law—the right to the electoral

franchise, the right to religious liberty, the right of free association, etc. Such laws will be condemned as immoral.

All these examples illustrate the point that when discussing laws people habitually invoke considerations of moral good and evil. They judge a law in terms of right and wrong, especially when it touches them personally.

The same thing will be noticed if we look at the thinking of legislators. They do not expect citizens to observe laws simply because of the danger of being penalized if they break them. They know that very many would evade tax laws, cheat with regard to social services and licence fees, steal when they could and disregard even major traffic regulations if the question of right and wrong did not arise. State legislation would be largely ineffective if not supported by moral considerations.

In practice, then, people commonly regard law and morality as connected. But they may not have worked out the meaning of the connection or the reason behind it. In order to throw light on this it is necessary to turn our attention to the two basic concepts of law and morality and to define the meaning we attach to them.

#### *Meaning of morality*

People usually understand morality in terms of *right* and *wrong*, what ought to be done and what ought not to be done. If they are Catholics they regard an action as being morally good if it is in accordance with what is expected of them as members of the

Church, followers of Christ and children of God who are offered the guidance of the Holy Spirit in all their free actions.

According to Catholic teaching—and Christian teaching in general—an action is morally good if it fits within the framework of God's plan for humanity, if it is consistent with accepting God's offer of eternal life with the Blessed Trinity in and through Christ our Lord. It is morally evil if, in any way, it falls outside these limits.

Of course, God's offer is not made to individuals in isolation: it is not an invitation to live in spiritual self-centeredness. It is an offer to share with others in God's life now and eternally, and is dependent on our willingness to live in a right relationship with God and with our neighbor through Christ.

In Christ, God has given us a rule or way of life. If we live by it we shall have the peace of Christ in this world and eternal happiness with the Blessed Trinity in the world to come.

Christ commissioned his Church to teach and explain that rule of life to us. In her teaching the Church takes account of the fact that God created the world and told us a great deal about how he wishes us to live by the way he made us—as bodily beings endowed with intelligent freedom—and by placing us in a particular kind of created environment.

For example, since he gave us minds we know that he wants us to reason things out; since he gave us an environment capable of

supporting human life he wishes us to develop it for the advantage of all. Looked at from that point of view morality is concerned with doing God's will or keeping his law.

However, it should be noted that God's law is in no sense a code of more or less arbitrary regulations. God wills what is to our advantage. He wants our lives to be as fully developed as they can be in this world and to be full to the limit of their capacity in eternity.

God's law does not fetter freedom: on the contrary, it tells us how to use freedom well. Nor does his law inflict pointless suffering here below. When it does involve suffering God helps us to bear it and, eventually, turns it into joy.

All this may be summed up by saying that what is morally right is always to our advantage, even though it may for a time result in pain or difficulty. In the last resort, morality has to do with genuine human happiness, with genuine individual and social well-being. Where God's law is observed life is enriched.

#### *Purpose of secular laws*

A word now about the law of the State or secular law. Legislation is one of the ways by which the State provides for the common good of the citizens. Vatican II describes the common good as "the sum total of social conditions which allow people, either as groups or as individuals, to reach their fulfillment more fully and more easily" (*The Church in the Modern World*, 26

*Vatican Collection I*, p. 927).

In itself the common good is a human reality, belonging to this world. Yet it has a spiritual and religious dimension, for the reason that the human person is a spiritual being, a being capable of knowing God and called to eternal union with him. The "fulfillment" of which the Second Vatican Council speaks cannot be limited to material goods or simply closed in within the horizons of this world.

That is why Pope John XXIII was able to say that "the ethical and religious order has more influence than any material value on the directions and solutions to give to the individual and collective problems within the national communities and in the relationships among them" (*Mater et Magistra*, no. 193).

How different things would be if this fundamental truth were always kept clearly in view in social and political affairs! George Washington showed his clear perception of it when he argued that "reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle."

How does law contribute to the common good? It does so by prescribing an orderly and just way of social life, and by enabling and assisting the citizens to develop their talents and the natural resources of their country.

Since the common good requires that citizens be helped to reach their fulfillment, it precludes the enactment of laws which run counter to the moral good of the per-

son. The reason is that moral development is an integral part, indeed the most important part, of human fulfillment.

Accordingly, the moral law as inscribed by God on the human conscience, as knowable by human reason, is a necessary source of enlightenment for legislators when they are considering what laws ought to be passed.

Laws are, therefore, for the sake of the common good. From where do they derive their binding force? Not simply from their enactment by Parliament. Not even from the fact that the Government has come to power legitimately.

Legislators and governments are for the sake of the people. They cannot simply impose their collective wills (or the will of a majority among them) on their citizens. Their right and duty is to find out ways of contributing to the common good and to embody them in legislation.

Hence, the ultimate reason why laws should be obeyed by citizens is their connection with the common good. To observe them contributes to the common good. To disregard them harms the common good. The common good is what God wills for the community in question, for the persons who compose it, considered both as individuals with personal rights, duties and needs, and also in their association with one another.

Of course, not all laws are equally important. Moreover, there are cases in which the observances of a particular law could result in serious harm to a particular citizen or

group. For example, a doctor called to the scene of a serious accident may disregard traffic laws provided he does not endanger life. Hence, situations may arise in which a State law may be disregarded without any moral fault.

In general, however, there is a moral obligation to comply with laws provided they are in accord with the common good to which all citizens are obliged to contribute according to their ability.

In other words, when State laws express genuine ways of safeguarding or promoting the common good they bind in conscience as a general rule. The reason for this is that, though the legislators may not advert to it, the work of framing laws is an attempt to state God's will for the citizens as citizens.

Admittedly, many laws do not express the only possible way of achieving the common good in a particular area. However, if they express a truly possible way, God wills that they be observed rather than that the citizens should become disunited through adopting differing—and possibly conflicting—courses of action.

In its own way State law is a sacred thing. It is important that citizens should recognize this. It is no less important that legislators should recognize it. It underlines the serious responsibility of their office and the spirit of humble service their office calls for.

Both the moral law and State law, then, contribute to human welfare. We return

now to the question of their mutual relationship.

### *Christianity and the State*

The connection between law and morality is founded in Christ himself. As a consequence of this, the Church which is Christ's Body, has a role to play with regard to both of them.

The letter of St. Paul to the Colossians—and in less detail, the letter to the Ephesians—tells us how the human race as a whole and the whole of human life are given unity in Christ: "In him all things were created. . . all things were created through him and for him. . . he is the beginning, the first-born from the dead, that in everything he might be preeminent. For in him all the fullness of God was pleased to dwell, and through him to reconcile all things to himself, whether on earth or in heaven, making peace by the blood of his Cross" (Col 1:15-20). These inspired words are rich in meaning.

The Father planned and brought into being the whole of creation—including each one of us—in view of Christ. Every individual who comes into the world is called to a life of union with the Blessed Trinity through Christ. Christ died and rose from the dead as the First-born who would lead us to share in his fullness of life.

The material universe also was created with a view to Christ. It was intended to be the place in which he would live his mortal life, suffer and die for us: it was made to be

an appropriate setting for him and his work. It was made also for the sake of those called to eternal life through him. In it they find the possibility of supplying their natural creaturely needs while on their pilgrim way with Christ to the Blessed Trinity.

Now it is those creaturely needs—those particularly which are best provided for by life in an organized political society—which are catered for by State law. Even though secular, or pertaining to this world, they belong to the overall picture of humankind's pilgrimage with Christ. It is the same individuals who are legislated for by the State and who journey with Christ (even if some are not fully incorporated into his Church).

From the beginning the Father planned the State's legislation as a necessary contribution to the success of our journey. In Christ the moral law and State law become, in an important sense, parts of one whole. In trying to promote the common good, those who hold public office are at the same time helping to provide a sound natural social infrastructure upon which grace can build.

"The legitimate autonomy of earthly realities (cf. *Gaudium et Spes*, no. 31)," Pope John Paul II reminds us, "finds its meaning and place only within the unique economy of salvation, focused on Christ, which embraces the whole order of creation and redemption" (Address at Loreto, 11 April 1985).

It is for this reason that the Church has

the right and the duty to declare in certain circumstances whether or not particular State laws perform their divinely appointed function. In the words of the Second Vatican Council: "At all times and in all places the Church should have true freedom to preach the faith, to proclaim its teaching about society, to carry out its task among men without hindrance, and to pass moral judgments even in matters relating to politics, whenever the fundamental rights of man or the salvation of souls requires it" (*The Church in the Modern World*, 76, *Vatican Collection I* p. 985). We shall return to this point presently.

In the meantime it is well to note that even for those who are not Christians, but nevertheless are at one with Christians in looking to a future life of union with God as their final goal, the same general relationship of political society to the human person and his destiny holds good.

In any world-view that recognizes God as source and ultimate purpose of human life, civil society, the State and the laws of the State, while having their own distinctive goal and meaning here on earth, must be seen in the last resort as subordinate to the eternal well-being of the individual persons of whom society is composed.

Furthermore, even those who do not believe in God are often able to recognize the spiritual dimension of human existence. Arguments based on the fact that the needs of the human person go beyond the merely material can appeal to them. Consequently

they will often find common ground with Christians in regarding as unacceptable legal provisions which run counter to or jeopardize authentic needs of the person (e.g. the need for employment, for freedom of expression, for lifelong indissoluble marriage).

To guard against possible misunderstanding let me add the following. Nothing I have said above is meant to convey the notion that Christian legislators should decide on what is good or bad legislation simply on the basis of what Christian revelation teaches. The Catholic Church, for example, does not require that its teachings on moral matters, *precisely because they are Catholic teachings, that is to say, for that reason alone, should be part of State law.*

However, the Christian beliefs of legislators, being in harmony with God's truth, will make it easier for them to understand what conforms to the genuine good of the human person. *This good can be known by reason, and it will be by reasoned arguments that Christian legislators will seek to promote it, commending laws that are in accord with it and opposing those that harm it.* In finding and developing such arguments, however, the Christian message can point them in the right direction.

*It is only in the light of that message that what reason and experience teach about human personhood can be adequately understood.* If Christ and his Gospel are considered irrelevant to the common good of society, tragic consequences follow. "Unless believers shed the

light of Christ upon the experiences and projects of the human person, we will end up by destroying ourselves, destroying creation. I need not dwell here on the ruins we see everywhere in married and family life, on the pain suffered by so many in the depths of their being by the break-ups that take place in this area" (Cardinal Bernard Law, Archbishop of Boston).

This brings us to a question that is often discussed. Are Catholic legislators obliged to pay heed to the moral teaching of the Church on political questions?

The answer becomes clear once we recall that lawmaking is one of many forms of responsible human activity. It does, of course, demand certain specialized knowledge, but in this it is no different from areas such as medicine, trade, industry, etc.

In common with these other areas of life, the business of lawmaking throws up important moral issues from time to time and on these the Church—as noted above—is competent to speak. When it does, Catholics naturally have an obligation to take account of what it says—whether this be in the form of counsel, exhortation or decisive declarations, with the different degrees of authority these entail.

If applied to other areas, the view that Catholic legislators may simply decide for themselves, independent of pertinent moral teaching by the Church, what the common good of the body politic requires would mean that a Catholic doctor, for example, would be entitled to disregard the

Church's teaching on the morality of certain medical or surgical procedures; or that Catholics involved in business or industry could turn a deaf ear to the Church's teaching on justice, fair dealing and respect for human rights in these areas.

It is true that the final responsibility for legislation rests on the conscience of the legislator (as it rests on the conscience of the doctor in regard to medical treatment and procedures), but this does not take away from the obligation of the Catholic legislator to pay heed to moral teaching on legislative measures which the Church considers its duty to impart.

The legislator is responsible to his or her conscience; and therefore to God, for the consequences of his or her actions, consequences which can be enormous for good or evil. The Church has a duty to alert legislators to this. If it were to fail to do so when circumstances required, it would itself be held accountable by God for whatever human misery and above all for whatever harm to immortal souls would thereby result.

*Church and State:  
In what sense separate*

In the light of the foregoing account of the connection between morality and law the question may be asked, in what sense we can continue to speak of the separation of Church and State. The question may be answered in the following way.

When in a particular country Church and State both provide for the well-being of the

same group of citizens, they do so under different respects: "The political community and the Church are autonomous and independent of each other in their own fields" (*The Church in the Modern World*, 76, *Vatican Collection I* p. 984).

The field of the Church is that determined by humankind's vocation to membership of God's family through Christ. That of the State is secular and temporal—it is the sphere of the common good in temporal matters. While Church and State are autonomous within their own fields, the fact that these fields may occasionally overlap can result in the exercise of authority by both Church and State in regard to the same matters. Here is an example to illustrate this point.

The Church has the right to conduct schools, since education affects not only human development but also spiritual destiny. The State, for its part, has the right to see that young citizens are educated in a way which fits them for life in the political community. Hence it may lay down standards to which education given in Church schools to young citizens—precisely as citizens—must conform.

At the same time, if the State's regulations should be unjust, or if they are in any way an obstacle to the spiritual development of the pupils, the Church, because of its concern with human rights and the eternal destiny of each individual, has the right and duty to point this out and to use its influence to have the regulations altered.

This example illustrates the interplay between the functioning of Church and State even when both keep strictly within their own fields. Such interplay is normal when the membership and activities of Church and State overlap, as they frequently do. Where they are essentially separate and independent is with regard to their goal or objective: the Church aims ultimately at eternal salvation for its members, and for humankind in general; the State seeks the well-being of the totality of its citizens in this world.

For the rest, both Church and State must respect one another's rights while passing judgment on and controlling one another's activities when that is necessary. When the Church's action impinges on some aspect of the public interest—for example, in regard to the siting of Church buildings—the State may intervene. Similarly, the Church may and ought to intervene when the State's action threatens our spiritual well-being.

Ideally there should never be conflict between Church and State. God's plan for humankind is fully integrated. When conflict arises, its solution lies in dialogue rather than in confrontation. Conflict is best avoided if neither side presents the other with a provocative *fait accompli*.

A lower level of separation of Church and State is that at which those holding authority in the one do not automatically hold authority in the other. It is probably desirable that separation at this level should be complete, as it is in most countries.

It is necessary to keep in mind that Church authorities have no role in Government as such and, on the other hand, that being a politician does not confer a higher status in the Church or entitle one to speak with authority on matters of faith and morals.

#### *Pluralism*

In this whole area a topic that regularly comes up for consideration is that of pluralism. How, one may ask, does pluralism affect the Church-State relationship?

In this context the term pluralism is taken to refer to the fact that in most countries the citizens are divided among a number of different religious bodies, in addition to those who have no religion. It is not God's intention that multiplicity of religious beliefs should be positively promoted. "There is one body and one Spirit. . . one Lord, one faith, one baptism, one God and Father of us all" (Eph 4:4-6). God wants unity. But it is to be achieved by persuasion, not by coercion of any kind; there must always be full respect for those who differ from us and for the religious liberty to which all are entitled.

With regard to law and morality, one question that arises is this: to what extent should State legislation be accommodated to the religious beliefs of minorities?

First of all, what religious rights have minorities? The main ones—and they are extremely precious—are the following: freedom of faith, freedom of religious practice, freedom of speech on religious matters, and freedom to enroll new members. The

last three freedoms—and this holds in regard to both minority and majority religions—are subject to State control in so far as they can affect public order and the common good.

Apart from their rights in religious matters, minority religious groups have precisely the same rights—no more, no less—as other citizens. If their moral code allows divorce or polygamy, for example (which are matters of public concern) they cannot demand that these be incorporated as of right into State legislation for all citizens: divorce and polygamy are social and not simply religious practices.

What is to be done if religious or other minorities demand as a right, and in the name of pluralism, legislation which the Catholic Church judges to be immoral, i.e. contrary to the common good?

One would be justified in expecting that the problem should rarely arise. Fundamental moral principles, on which the common good closely depends (e.g. that it is wrong to take innocent life, that marriage is by nature indissoluble), are the same for all and are very widely accepted: they follow from the one common human nature with which God has endowed us all.

When the problem does arise it becomes the duty of the State to examine how any legislative proposals affect the common good (the personal development of the citizens, the peace, prosperity and good order of the community). At the same time the Church has the duty to judge whether the

proposed legislation infringes basic human rights or places serious obstacles in the way of citizens in their efforts to lead morally good lives. The Church has the right and duty to seek to influence legislators to act in a way that respects fundamental human rights and has regard to the moral well-being of the citizens.

*Must civil legislation conform to God's law?*

In our discussion so far we have examined the mutual relationship of law and morality from a number of points of view and we have noted some of the consequences to which this relationship gives rise. A question we have not yet considered, however, is whether or to what extent civil legislation must conform to God's law.

First, three preliminary points.

One is that the moral principles involved in legislation are almost always those on which there should be agreement among all Christians, as well as with others who accept God's plan in relation to the dignity of the human person and to human development in society.

A second preliminary observation is that legislators may never legislate otherwise than as their consciences dictate. They must always act in accordance with their special moral duty to promote the common good. Clearly, they will fail in this if they knowingly impose legal obligations which are contrary to the wise design of God.

Thirdly, civil law is concerned with morality as it affects society, not in so far as it is a

purely private affair. It is true that the boundary is not always easy to draw, since forms of behavior that at first sight appear to affect only the individual do in fact have social repercussions. Nevertheless, the distinction is valid in principle and is a determining factor in the relationship of law to morality.

To come now to the main question. It may be answered by saying that, in principle, State legislation must always conform to what God sees to be called for by the needs of the common good in the circumstances of the time. Hence, it may never, for example, embody a provision for murder (e.g. abortion) or injustice (e.g. unjust taxation or discrimination against certain groups in regard to housing, employment, etc.). Neither may it deny God-given rights (the right to a basic education, to a living wage, etc.) or undermine what is of divine institution (such as the family).

However, circumstances arise in which State legislation may *tolerate* breaches of the moral law, within clear limits, if it would be seriously damaging to the common good to prohibit them, i.e. if the prohibition would not be enforceable and the law would be brought into contempt, or if a total prohibition would cause disproportionate social unrest. It is clearly better to tolerate a small evil, or a larger evil up to a point, than to cause serious damage to an otherwise well-functioning State.

A simple example of State toleration of moral evil is provided by the laws which

govern the sale and consumption of alcohol. People may act immorally, but within the law, by drinking to excess provided they do not do so on licensed premises after closing hours, are not disorderly in public, and do not drive a car.

Legislative toleration of this kind cannot be so extended as to allow breaches of basic human rights or seriously to undermine the morals of the community. There are, of course, cases which do not admit of an easy solution. For example, may the possession of certain harmful drugs for personal use be tolerated, but not drug-pushing? May citizens be permitted to transfer large funds outside the country?

#### *Catholic citizens and immoral laws*

Before bringing these considerations on law and morality to a close, it may be well to add a few words on what the attitude of Catholic citizens should be if what they perceive as a clearly immoral law is passed by the State.

A detailed answer to this question would take us very far afield. However I would like to make a few points.

If State legislation is proposed which is in direct conflict with the moral development of the human person, or which does not impose adequate limitations on immoral practices, it becomes the duty of Catholic citizens—while fully respecting those who differ from them—to make their opposition to it known by every legitimate, peaceful and reasonable means. And those who are

qualified to do so effectively should point out the socially damaging consequences which it would have. Bishops and priests have the right to explain its *moral* aspect from the pulpit and otherwise and, in so far as they are informed citizens, are fully entitled to speak also on its *social* aspect— aspects which, though distinct are closely interrelated.

“Christians would fail to fulfill their duties,” Pope John Paul II reminds us, “if they did not commit themselves to ensuring that the social structures were, or return to be, ever more respectful of those ethical values in which the full truth about man is reflected” (Address at Loreto, April 11, 1985).

The “full truth about man” depends of course on our relation to God and is made known by God in Jesus Christ. Fundamental human rights flow from human nature as created by God, as the authors of the American Declaration of Independence, for example, clearly recognized: “We hold these truths to be self-evident, that all men are created equal, that they *are endowed by their Creator with certain unalienable rights*. . . .” Those who, following the secularist philosophy, attempt to base human rights on some other foundation are in reality undermining them.

Christians have no need to apologize, therefore, for pointing out the close connection between religion and society, for seeking to ensure that our social and legal structures reflect Christian values. In the end the structures and institutions of our

society must draw their inspiration either from Christianity or from the “religion” of secularism; there is no middle way, no neutral path that can be followed.

If immoral laws are proposed, there is a duty to do more than to oppose them or protest against them. Suggestions should be made and steps taken to remove or to mitigate the evil which the proposed law purports to control. For example, unjust taxation intended to raise necessary revenue should be countered by a campaign to awaken the consciences of tax defaulters.

It may happen even in a predominantly Catholic country that a legislative assembly will pass an immoral law. The duty of Catholics with regard to such laws is clear. They should make their disapproval known and try to ensure that, sooner or later, the laws in question be rescinded. They should, moreover, take care not to avail of any immoral law to do wrong, to commit sin. They should insist on the introduction of social reforms which will remove the grounds on which the law was demanded. It cannot be stressed too much that it is not enough to campaign against immoral laws. Action must be taken with a view to changing society for the better so that no reasonable excuse will remain for advocating such a measure.

In some cases—such as unjust tax laws—the attitude to be taken by individual Catholics with regard to them is determined by a number of considerations which cannot be examined in detail here. For example, it

may be better for individuals to suffer bearable tax injustices than to evade payment and run the risk of incurring serious penalties. Account must be taken also of the possibility of disrupting the nation's economy if evasion becomes widespread. In practice, individuals who are in doubt about what to do should seek competent moral advice.

#### *The ultimate good*

God wills nothing except what is for the ultimate good of individuals and society. Hence, the duty of legislators is clear; to find out what is in accordance with God's will for the State within the area for which they propose to legislate.

The Church can and should guide them in their search. Its purpose in doing so is not, as is often thought and said, to maintain its own prerogatives, but to serve the good of the human person and the human community; when its teaching is disregarded, humanity suffers—men, women and children pay the price, especially those who are weakest. "The Church," says John Paul II, "is travelling along with mankind, and feels really and intimately united with the human race and its history. . . Christ is 'the principal way of the Church,' and is also the way that leads to each man. 'On this way leading from Christ to man,' I wrote in the Encyclical *Redemptor Hominis*, 'nobody can halt the Church'" (Address at Loreto, April 11, 1985, no. 13).

The final decision on legislation, however, is made by legislators, and it is on their con-

science that the ultimate responsibility rests.

In no case may a legislator vote in favor of a law unless he or she believes before God that God, in his wisdom, sees it to be in the true and lasting interest of the body politic which it is his or her responsibility to serve.

This genuine interest of the body politic, or authentic common good of the community, does not necessarily coincide with what is immediately useful. If a particular piece of legislation infringes the rights or dignity of the human person, it cannot be justified on the grounds that it may bring certain advantages in the short term or from a particular point of view.

What conflicts with the basic good of the person or the conditions that favor true human development cannot be in the genuine, permanent interest of the community, i.e. meet the real requirements of the common good.