

**Address to the Catholic Lawyers' Guild of the
Roman Catholic Archdiocese of Boston
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***Conscience in the Discernment of
the True and the Good in the Practice of Law***

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1. Dear Members of the Catholic Lawyers' Guild of the Roman Catholic Archdiocese of Boston, thank you for your kind invitation to share a few thoughts with you this evening. As Americans involved in the practice of law, yours is the noble task of serving justice for all, according to the laws of these United States of America. At the same time, as Catholics, you cannot miss out or set aside the rich patrimony on the reflections of law that has marked the history of Catholicism through the ages. Listening to the higher law of God, as Catholics, is an exercise of discernment, of seeking, like Solomon of old, to be able to distinguish the true from the false, the good from evil (1 Kings 3:9). Central to this act of discernment lies the voice of conscience, a commonly agreed upon concept, that remains complex till date, in terms of not just its meaning, but above all, its nature, its formation and the place that must be ceded to it in the process of decision making. As Catholic lawyers, the discernment of conscience in the practice of law is indispensable because, as Benedict XVI pointed out in his September 22, 2011 Address to the Bundestag entitled **"The Listening Heart: Reflections on the Foundations of Law,"** "(...) unlike other great religions, Christianity has never proposed a revealed law to the State and to society, that is to say a juridical order derived from revelation. Instead, it has pointed to nature and reason as the true sources of law – and to the harmony of objective and subjective reason, which naturally presupposes that both spheres are rooted in the creative reason of God."¹ In other words, not only has Christianity never proposed a theocracy, it has, by pointing to nature and the harmony of subjective and objective reason, thrust an ongoing burden of the interpretation and application of law on the conscience of law practitioners. Hence, if you will permit me, I wish to speak to you today about **the role of conscience in discerning the true and the good in the practice of law.**

2. In the "Pastoral Constitution of the Church in the Modern World," the Second Vatican Council (1962 – 1965), sought to offer a very descriptive description of conscience: "Deep within their conscience individuals **discover a law** which they do not make for

¹ Benedict XVI, Address to the Bundestag: The Listening Heart: Reflections on the Foundations of Law, September 22, 2011, para 5, accessed October 25 2020.

themselves but which they are bound to obey, whose voice, ever summoning them to love and do what is good and to avoid what is evil, rings in their heart when necessary with the command: Do this, keep away from that. For inscribed in their hearts by God, human beings have a law whose observance is their dignity and in accordance with which they are to be judged. **Conscience is the most important center and sanctuary of a person, in which he or she is alone with God whose voice echoes within them.** In a marvelous manner conscience makes known that law which is fulfilled by love of God and of neighbor.”²

3. By way of unpacking this analysis of conscience by the Second Vatican Council, the first point that stands out in this treatment of conscience is that it is a law *discovered* within humans. It is not a self-created law. In Kantian terms, one would say that conscience is not an autonomous law. It is heteronomous, coming from outside my subjective preferences and calculations. This is the sense thanks to which we can understand the discoverableness of conscience, in that the requirements of conscience precede me and are not simply intended for me to fit in, that is, for my convenience. An understanding of conscience that is profoundly relativistic or subjectivistic easily misses out on that element of antecedence or precedence that should be the mark of a mature and well-formed conscience. And the drama of conscience unveils itself in the tension body and spirit, the tension between what we are and what we ought to be. Conscience, in its discerning role between the *is* and the *ought*, could well be described as the battle between the body and the spirit.
4. A second quality worth highlighting is that conscience is the **secret core or the sanctuary** of the human person who is alone with God, whose voice echoes within each person. In this sense, conscience cannot be severed from the individual, for it is the individual person that is called to live according to his or her conscience. At the same time - and this already reveals the inner tension that comes with the dialectics of conscience - though the individual is, in a sense, the locus of conscience, it is not the case that one could automatically identify conscience with the individual in a relativistic sense, to the extent that the subjective proclivities of the individual becomes the measuring rod of evaluating actions; that is, like an island severed from the great wealth of moral truth. Two basic errors must therefore be guarded against, errors very much accentuated by the understanding of freedom that came with Enlightenment as a philosophical movement: Firstly, as seen in the German philosopher, Friedrich Nietzsche (1844 – 1900), in which the individual is the final arbiter of moral truth, given that for Nietzsche, conscience is the sovereign person.³ Nietzsche views the

16. ² Second Vatican Council, Pastoral Constitution of the Church in the Modern World *Gaudium et Spes*,

³ Friedrich Nietzsche, *On the Genealogy of Morals*, trans. Walter Kaufmann and RJ Hollingdale (New York: Vintage Books, 1989), Second Essay, 2.

human conscience as a form of self-maltreatment, an escape from what Nietzsche considers to be the natural condition of human animality.⁴ Conscience inhibits the freedom of the human spirit, enslaving the human spirit in the postulates of religion. A second position to be avoided is that of the individual as vested with infallibility with respect to the truth, so much so that the conscience of the individual sets the standards for every moral question. These two positions, firstly, of seeing conscience as a torture and suffocating chamber; and secondly, of perceiving the individual as the measuring rod of conscience, capture the general trend of the Enlightenment vis-à-vis the understanding of conscience, positions that are very much still prevalent in the post-modern world.

5. With Thomas Aquinas (1225-1274), the moral order is not built on the subjective, infallible conscience of the individual but on the nature of the human person as a creature of God, who lives for God as the final end (purpose) of the person's existence. Nature has a grammar that communicates to humans, both speculative and practical principles of life.⁵ In this Thomistic context, the purpose of conscience is not to create the moral law, but to put the individual in contact with the objective moral order, already given by God in creation. Aquinas follows the reasoning of St. Paul, who, in writing to the Romans, makes the case that common to all creatures is the basic awareness of the moral law placed in the human heart by God, what **moral theology calls *synderesis***. "For what can be known about God is plain to them, because God has shown it to them. Ever since the creation of the world his invisible nature, namely, his eternal power and deity, has been clearly perceived in the things that have been made. So, they are without excuse; for although they knew God they did not honor him as God or give thanks to him, but they became futile in their thinking and their senseless minds were darkened" (**Romans 1:19-21**). In the very next chapter, St. Paul further builds on this theme of the pervasive consciousness of the sense of right and wrong that is the framework of law when he writes: "When Gentiles who never heard of the law but are led by reason to do what the Law commands, they are a law to themselves, even though they do not have the law. They show that what the law requires is written on their hearts, while their conscience also bears witness" (**Romans 2:14 – 15**).
6. Conscience therefore, depends on *synderesis*. *Synderesis* is therefore the elemental moral awareness of each human being, as Aquinas would have it, bestowed on humans by nature.⁶ It is the basic consciousness persons have of the first principles of the moral law, inciting to good and murmuring at evil.⁷ And *synderesis* helps in discerning these

⁴ Nietzsche, *On the Genealogy of Morals*, Second Essay, 16.

⁵ Thomas Aquinas, *Summa Theologiae*, I, q. 79, a. 12.

⁶ Aquinas, *Summa Theologiae*, I, q. 79, a. 12.

⁷ Aquinas, *Summa Theologiae*, I, q. 79, a. 12.

moral principles: Good must be done, evil avoided (practical reasoning); The principle of non-contradiction (speculative reasoning); The principle of excluded middle (speculative reasoning); and The principle of identity (speculative reasoning). Based on these principles, therefore, one could say that *synderesis* is our general awareness of the natural law. *Synderesis* is what initiates our elemental attraction toward the good and repulsion for evil.

7. Based on this moral awareness as articulated by Aquinas, one can therefore define **conscience as an act of the intellect, a judgment relating to moral good and evil.** *Ratio vel Conscientia*: In Thomas, there is an intrinsic link between reason and conscience, reason being the larger picture, and conscience, the peculiar act of judgment. It is not possible to sever the link between conscience and reason. An act of conscience therefore, is an act made with knowledge: that is, ***Con (i.e.) + Scientia: with knowledge.***⁸ Conscience therefore, offers a practical knowledge to what we do.
8. What does conscience do with this knowledge? It makes judgments with respect to the moral good or evil; More specifically, there are **three functions of conscience**: firstly, **conscience establishes the context as a peculiarly moral context**; i.e., we regard certain things as a matter of conscience, that is, to be judged as morally good or morally bad; secondly, **conscience advises before the fact**, that is, conscience urges us towards or away from an action; and thirdly, **conscience assesses after the fact**; the act has already been done and what we are doing now is to place it on a moral evaluation. This is the examination of conscience, in that conscience either excuses or accuses. Conscience does this evaluation based on two factors, namely, the quality of the agent's knowledge of the act when the act was done: ***Knowledge***; and the extent of the agent's willing involvement in the act: ***Freedom***. Thus, conscience recognizes – ***recognoscere***; conscience bears witness – ***testificari***; and conscience judges – ***iudicare***.
9. If conscience is rooted in *synderesis*, knowledge and freedom, then the relationship between conscience and the true and the good becomes both self-evident and acute, for what is knowledge without truth, and what is freedom without the good? And herein lies a tension that cannot be resolved once and for all, a tension that every lawyer, Catholic or not, and in fact, every human being, must deal with: **the relationship between Conscience, Truth, and the Good**. As Joseph Ratzinger/ Benedict XVI points out: "(...) It will not do to identify man's conscience with the self-consciousness of the "I," with its subjective certainty about itself and its moral behavior. On the one hand, this consciousness may be a mere reflection of the social surroundings and the opinions in circulation. On the other hand, it might also derive from a lack of self-

⁸ Aquinas, *Summa Theologiae*, I, q. 79, a. 13.

criticism, a deficiency in listening to the depths of one's own soul.”⁹ The question of conscience and the adherence to conscience, necessarily, therefore, includes the questions of the true and the good – two transcendental properties of being that cannot be severed, for ultimately, only the true is good and the good, true. But how does conscience arrive at the certainty of the true and the good?

10. The life of the great English lawyer and patron saint of lawyers, St. Thomas More, as dramatized in Robert Bolt's *A Man for all Seasons*, offers us a helpful insight into resolving this question about the intrinsicness of the relationship between conscience, the true and the good, and why setting aside the question of the relationship between conscience, the true and the good, spells doom for all engaged in the practice of law. The central issue of the play is, of course, Henry VIII's desire to divorce Catherine of Aragon and remarry Anne Boleyn, in a bid to get a male heir to the English throne. In cautioning More about the potential dangers involved by More not siding with Henry VIII's desire to divorce Catherine, Cardinal Wolsey retorts to More's conscience objection: **“Your conscience is your own affair; but you're a statesman (...) Now explain how you as Councilor of England can obstruct those measures for the sake of your own, private, conscience.”** More makes a very telling rejoinder to the Cardinal which I believe is worth remembering, especially by those involved in the practice of the interpretation of law: **“I believe,”** says More, that **“when statesmen forsake their own private conscience for the sake of their public duties (...) they lead their country by a short route to chaos.”**¹⁰ Clearly, Thomas More does not believe that in the exercise of their public duties, be it in the legislature, the executive, or the judiciary branches, those involved should quarantine their consciences, to the extent that one's conscience is simply one's own affair. And we see Cardinal Wolsey's line of reasoning repeated again to More by Henry VIII himself, when, in persuading More to side with him in order to give public legitimacy to his divorce of Catherine, Henry says to More: **“Your conscience is your own affair; but you are my Chancellor!”**¹¹
11. Discerning and listening to one's conscience in the exercise of one's public role is necessary because the voice of conscience can and should act as **a safeguard against the tyranny of the majority**, which, as tends to be commonplace today given the secular atmosphere especially in Western societies, tends to be more often governed by a **subjectivism dressed in democratic robes**. The majority principle is helpful in discerning the will of people, in gauging and arriving at some form of a consensus around issues of concern to the state. As Benedict XVI points out, **“(...) it is evident that for the fundamental issues of law, in which the dignity of the human being and of humanity is at stake, the majority principle is not enough; everyone in a position of responsibility must personally seek out the criteria to be followed when framing laws.”**¹² In other words, the majority principle alone, useful as it is, is insufficient to

⁹ Joseph Cardinal Ratzinger, *On Conscience* (San Francisco: Ignatius Press, 2007), 20.

¹⁰ Robert Bolt, *A Man for All Seasons* (New York: Vintage Books, 1990), 22.

¹¹ Bolt, *A Man for All Seasons*, 56.

¹² Benedict XVI, Address to the Bundestag: The Listening Heart: Reflections on the Foundations of Law, September 22, 2011, para. 3, accessed October 25 2020.

determine what is right. World history is littered with examples of the majority principle bringing about laws that have trampled upon human dignity and human rights, depriving other humans of essential freedoms, such as the freedom to be considered truly human (slavery and slave trade); the freedom to exercise the right to vote; freedom of association; freedom of movement; freedom of habitation and education (racial segregation), et cetera. There is, therefore, the necessity of being conscious of the limitations that come with the exercise of the majority principle, as useful as it might be.

12. In the practice of law, therefore, conscientious objections are not only necessary but are even demanded, if the true and the good are to be safeguarded, as demonstrated by Thomas More. It would have been easy for More to simply follow the convenience of the majority principle and do the bidding of Henry VIII. But the voice of conscience, that voice not placed in him by himself, was urging More to a higher loyalty. With the eyes of his conscience, Thomas More was able to see the wider picture of the good of the marriage bond and the relationship between the Church in England and the See of Rome, that was being eroded by the parliamentary Acts of Supremacy and Succession. This discernment was no easy choice for Thomas More: on the one hand, there was the King who considered him a friend and thanks to whose good graces he was Chancellor of England. On the other hand, there was good of the sacrament of marriage, central to which was the gospel of indissolubility. What do you do when two goods collide? For Thomas More, the locus of resolution happened in the domain of his conscience, and this is the great example More has left behind for every lawyer from the sixteenth century onwards: political and even legal expediency should not replace the onerous but precious task of discerning the true and the good in the light of conscience, and the courage to adhere to one's conscience, especially when doing so places one on the "wrong" side of history. The question More poses to Norfolk who was persuading him to fall in line with Henry VIII's request, remains a relevant food for thought today. It shows More resisting the subjective error that Norfolk had succumbed to. More remained steadfast in the service of the objective truth that he had discerned in his conscience: "And when we stand before God, and you are sent to Paradise for doing according to your conscience, and I am damned for not doing according to mine, will you come with me, for fellowship?"¹³ I believe that's a question worth the ponder.
13. Four centuries later, another English luminary, **John Henry Newman**, would articulate this primacy of conscience and the necessity of adhering to one's conscience, with his famous toast, **to the pope, but to conscience first, for conscience to Newman is the aboriginal Vicar of Christ**.¹⁴ Conscience is central for Newman because truth stands in the middle of conscience. In other words, the centrality of the concept of *conscience* for Newman is linked to the prior centrality of the concept of *truth*, and can only be understood from this vintage point. It is insufficient to simply follow a clear conscience or at best, not to act against one. In this sense, one could not simply justify one's decision on the grounds of following one's conscience, for conscience alone, at least

¹³ Bolt, *A Man for All Seasons*, 132.

¹⁴ John Henry Newman, *A Letter Addressed to His Grace the Duke of Norfolk: Certain Difficulties Felt by Anglicans in Catholic Teaching* (London: Longman, Greens, 1885), 248.

for Newman, cannot account for the whole reality of human moral action, if conscience is severed from objective truth, which finds itself in the searching and listening heart. A person of conscience is one who is never resigned to the prevailing opinion in the process of decision-making. In this sense, the protection that conscience must enjoy is not just a luxury. The freedom of conscience presupposes the formation of conscience in the school of truth, the pursuit of truth, the burden of seeking the truly good at every instant of decision making. As Newman compellingly stated in his Letter to the Duke of Norfolk, “conscience has rights because it has duties.”¹⁵ If one were to give up on the pursuit of truth, especially when such a pursuit is costly, what will remain will be a convenient utilitarianism in which we will start living a lie, calling what is false, true, and what is evil, good. A civilization built on such premises will possess within itself, the recipe for its own demise. Conscience is therefore, a personal task entrusted to each person by God, to continuously discern the true and the good.

14. Given this perspective, our obligation to follow our conscience is not suspended if in a particular case, our conscience happens to be erroneous, i.e., providing us with incorrect information: A subject makes a **sincere** judgment of conscience; the judgment of conscience is **objectively an erroneous** judgment; the subject who makes the **sincere judgment of conscience knows it to be an erroneous judgment**; Conclusion: Not possible because premise one cancels out premise three, and vice versa, for if the judgment is sincere, the subject who makes it knows it as a correct judgment; He cannot simultaneously know it to be SINCERE and ERRONEOUS at the same time. Sincerity alone does not make a morally evil act good! The subject cannot reject an erroneous conscience which he does not know to be erroneous. An erroneous conscience is one that supplies us a false information in reference to the good. Cromwell displays a glaring example of an erroneous conscience in his execution of Henry VIII’s plot against Thomas More, when Cromwell explains to Rich: “The King’s a man of conscience and he wants either Sir Thomas More to bless his marriage or Sir Thomas More destroyed (...) if the King destroys a man, that’s proof to the King that it must have been a bad man, the kind of man a man of conscience ought to destroy – and of course a bad man’s blessing’s not worth having. So, either will do.”¹⁶ The certainty of conscience is no guarantee of the veracity of conscience, and both Cromwell and Henry VIII demonstrate that. Once conscience is severed from the “obedience to the truth” (1 Peter 1:22) and from the good that must be done (Matthew 19:16), then conscience, even when alluded to, becomes a utilitarian tool employed by the strong against the weak. It is necessary to always remember what John Paul II taught in 2003 in the great encyclical *Veritatis Splendor*, namely, that “it is always from the truth that the dignity of conscience derives.”¹⁷ When conscience gives up on objective truth, then conscience becomes a smokescreen that conceals the unchecked impulses of the human ego. The human person easily becomes susceptible to a calculative mode of life enshrined in a self-serving nihilistic Weltanschauung.

¹⁵ Newman, *Letter Duke of Norfolk*, vol. 2, 250.

¹⁶ Bolt, *A Man for All Seasons*, 119.

¹⁷ John Paul II, Encyclical *Veritatis Splendor* (Kerala, India: Carmel International Publishing House, 2005), 63.

Conclusion: Conscience is Someone, not Something

Given all that has been said above regarding the irreplaceability of one's conscience as the locus of discerning the true and the good, I will conclude with the assertion that after all is said and done, it is important to always bear in mind that **conscience is not something, but someone in the personalistic and not the subjectivistic or relativistic sense, for it is the human being who acts.** And we can only know a person from his or her actions. The human being is always an acting person, for, as the French philosopher Maurice Blondel points out in his philosophy of action (*L'Action* 1893), even dilettantism is a form of action. Conscience is therefore, not a speculative principle, but who we are, in our concrete choices, in the options we make. And if conscience is not something but someone – who we are – it implies that conscience cannot be static, settled once and for all. Just as humans work on themselves in a spirit of continuous development, much the same is required for the formation of our consciences. In other words, because conscience is who we are, the formation of conscience in the light of its triple roles of providing context to our actions, advising before the fact of our actions, and assessing after the fact of our actions, is a process that is with us throughout the gift of life on God's good planet. The task of forming our consciences therefore, in the light of the exacting demands of the true and the good, is the vocation that practitioners of law, those who must make judgments on the rightness and wrongness of human actions, must embrace with an unrelenting intensity and conviction, for the common good of society. Everyone must engage in the formation of his or her own conscience. Today, may the example of St. Thomas More continue to inspire us to listen to our consciences, where, as Catholic lawyers, we can hear the voice of God speaking to us, as we strive to serve the true and the good in the practice of the law.

Bibliography

Aquinas, Thomas, *Summa Theologiae*, Prima Pars, 50 – 119. Translated by Fr Laurence Shapcote, O.P. Lander, Wyoming: The Aquinas Institute for the Study of Sacred Doctrine, 2021.

Benedict XVI. Address to the Bundestag: The Listening Heart: Reflections on the Foundations of Law. September 22 2011.

Bolt, Robert. *A Man for All Seasons*. New York: Vintage Books, 1990.

John Paul II, *Veritas Splendor*, Encyclical *Veritatis Splendor*. Kerala, India: Carmel International Publishing House, 2005.

Newman, John Henry. John Henry Newman, *A Letter Addressed to His Grace the Duke of Norfolk: Certain Difficulties Felt by Anglicans in Catholic Teaching*. London: Longman, Greens, 1885.

Ratzinger, Joseph. *On Conscience*. San Francisco: Ignatius Press, 2007.

Second Vatican Council. Pastoral Constitution of the Church in the Modern World *Gaudium et Spes*. 1962 – 1965.