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ABOUT CMF

The Christ Medicus Foundation is a 501(c) (3) Catholic nonprofit organization that defends religious freedom and builds Christ-centered Catholic health care. Our mission is to share Jesus Christ's healing love in health care, to build authentically Catholic care, to defend life and religious freedom, and to protect the poor and vulnerable. We work for a person-centered health care system.

For over 20 years CMF has educated religious and lay leaders on the intersection of healthcare, the exercise of faith and religious freedom, and the defense of the right to life. CMF has launched coalitions, campaigns and conferences to educate and form Catholic laity to make Christ-centered healthcare decisions.

Page 1 THE WELL-FORMED CATHOLIC VOTE BY MICHAEL ARTHUR VACCA, JD



Part I: The Meaning of Conscience and the Autonomy of the Temporal Order

To the extent that we are living in Jesus, we are the light of the world (Matthew 5:14). For Catholics to share God's light in the world, they necessarily must participate in the civic and political life of our country. As expressed by the Magisterium of the Church, "By fulfilling their civic duties [including voting], guided by a Christian conscience, in conformity with its values, the lay faithful exercise their proper task of infusing the temporal order with Christian values, all the while respecting the nature and rightful autonomy of that order." Without a properly formed conscience, a member of the lay faithful would be unable to actively help infuse the world with Christian values through voting, and may actually promote a society in contradiction with Christ and the teaching of His Holy Catholic Church.

It is of the utmost importance to understand what is meant by conscience and how it relates to the autonomy of the temporal order. Conscience is "a judgment of reason whereby the human person recognizes the moral quality of a concrete act that he is going to perform, is in the process of performing, or has already completed. In all that he says and does, man is obliged to follow faithfully what he knows to be just and right."2 Many have reduced conscience to a purely subjective act whereby a person decides what is good and what is evil based upon their own perceptions of reality. However, human beings have no ability to define good and evil. These are objective truths that cannot be changed by humans, because the creation of moral norms is a prerogative belonging only to God. The role of conscience is to discern what is objectively true and false, and thus discover what is truly good and evil in accordance with reality.

Closely connected with misunderstanding the authentic meaning of conscience is an error that imparts an improper autonomy into the temporal order. Because the natural moral law applies to all human persons, regardless of religion, the appropriate autonomy of the temporal order does not include an autonomy from morality. The principles of the natural moral law oblige always and everywhere, regardless of one's religion, and they are necessary to foster the common good and the equal and inalienable dignity of all persons. As St. John Paul the Great said, "the natural moral law has God as its author, and...man, by the use of reason, participates in the eternal law, which it is not for him to establish".





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A Catholic conscience should be informed not only by the natural moral law, but also the Gospel, the social teaching of the Church, and in general, the desire to form a society where all can give and receive love and can evangelize and be evangelized. At the core of Catholic Social teaching is the dignity of the human person made in the image and likeness of God (Genesis 1:27). The human person is always to be respected, and cannot be "manipulated for ends that are foreign to his own development"⁴. Basically, a human person cannot be used by others as a means to an end, but can only be an end him/herself. Furthermore, even a good end cannot justify immoral means of achieving that end, such as the use of a person⁵. Thus, no direct attack on an innocent human person is ever morally defensible, even if it is being committed as a means to achieve a supposedly desirable social end.

The objective dignity of the human person and its inviolability is not only part of Catholic teaching, but it is part of the natural moral law which should inform the conscience of all. It is, therefore, morally unacceptable for any person, but particularly a Catholic who has the light of Christ and the social teaching of the Church, to "vote for a candidates who favors a policy promoting an intrinsically evil act, such as abortion, euthanasia, assisted suicide, deliberatly subjecting workers or the poor to subhuman living conditions, redefining marriage in ways that violate its essential meaning, or racist behavior, if the voter's intent is to support that position."

Today, many candidates not only support these abhorrent practices, but promote a phony "right" to kill, harm, and destroy innocent human life, a supposed "right" to destroy the imago dei itself, the image of God. It is morally unacceptable to treat abortion, for instance, as a matter of personal choice. In fact, abortion is the pre-eminent issue for any Catholic to consider. Any politician who claims that they are personally pro-life but believes that other people should be able to choose death for the unborn is not respecting the equal dignity of all people. The freedom to choose can never be opposed to the objective truth of the human person whose basic human rights, chief among which is the right to life, must always be respected. As St. John Paul II masterfully said in Christifideles Laici:

"The inviolability of the person which is a reflection of the absolute inviolability of God, finds its primary and fundamental expression in the inviolability of human life. Above all, the common outcry, which is justly made on behalf of human rightsfor example, the right to health, to home, to work, to family, to culture-is false and illusory if the right to life, the most basic and fundamental right and the condition for all other personal rights, is not defended with maximum determination" (38).



Unfortunately, various conceptions of the Church's social teaching have proven inadequate in facilitating a truly Catholic conscience. One such conception is the "seamless garment" of Catholic teaching whereby all of the Church's positions on moral issues are accorded equal weight. While it is true that Catholic social teaching is an integrated reality, it is manifestly not true that all its teachings are of the same weight. Catholic social teaching is more akin to a house which has a foundation, and also crossbeams and walls that build on that foundation. For Catholics, the "exercise of conscience begins with outright opposition to laws and other policies that violate human life or weaken its protection. Those who knowingly, willingly, and directly support public policies or legislation that undermine fundamental moral principles cooperate with evil". 10

Since 1973, when Roe v Wade became the law of the land and the grave evil of procured abortion was legalized throughout the United States, roughly 50 million unborn babies of all races and ethnicities have been murdered in their mother's womb. There is no evil in the United States that can compare with this carnage of human life and loss of human potential. According to Pope Francis, protecting human life is the preeminent social and political issue. Closely connected with the foundation of the inherent dignity of each human person is the duty of society, and especially of the state, to recognize the family founded upon the marriage of one man and one

woman as a subject of social life. Society cannot only regard individuals as subjects of social life, but must respect and promote the rights of the family12. "Making 'de facto unions' legally equivalent to the family would discredit the model of the family," which can only come about through "the mutual and free choice that entails full conjugal communion oriented toward procreation". It is the family that protects the human person, fosters the development of children in justice, charity, kindness, goodness, and patience, and is truly the sanctuary of human life 14. Candidates and political platforms that support the legal discrimination against marriage evident in the legalization of same-sex marriage and civil unions, which is falsely referred to as "marriage equality," are undermining the dignity of the human person and the family, according to both Catholic teaching and the natural moral law. Furthermore, laws which penalize Catholic institutions for refusing to place children with same-sex couples¹⁵, are morally reprehensible because they attack natural marriage and are a violation of religious freedom. Catholics should take pains to avoid being complicit in this moral evil by not voting for candidates who support such laws.

In issues such as the economy, foreign policy, and health care, the Church recognizes that the solidarity characteristic of family life should be extended to the whole of society, and that a number of diverse approaches are possible and can be consistent with the moral law. Here, Catholics should look to three other principles of Catholic social teaching that complement the dignity of the human person: solidarity, subsidiarity, and the common good.



Solidarity recognizes others as our brothers and sisters and works perseveringly for their good. We should strive to help the poor and ensure just living conditions. Justice demands that we ensure the full humanity of every single person: the handicapped, the sick, the unborn, the materially poor, and those at the margins of society. When we work to create a society and a culture where the least is loved, cherished, and provided for, then we make possible the attainment of true peace.

Subsidiarity requires social entities of a higher level (for example, the federal government,) to refrain from usurping the proper roles and functions of entities of a lower level (for example, state governments, local communities, and the family)16. Proposals for a wholesale federal government takeover of health care, such as Medicare for All, are morally unacceptable because they would not only violate the dignity of the human person through mandated abortion coverage, but also the principle of subsidiarity and conscience rights 17. Making abortion and contraception mandates part of the U.S. healthcare system or a condition of aid to foreign countries is morally unacceptable and Catholics should be careful not to support candidates and platforms that impinge on the authentic freedom of the human person. The common good requires us to support policies that make life more human for everyone, that allow for the authentic development of the human person in charity and truth. There is a right to healthcare and a family wage, but society can ensure this right in a variety of ways, and it is morally impermissible to conflate society and the state.

While no political platform is fully in line with Catholic social teaching, Catholics have an opportunity to influence the life of our society in a positive way on Tuesday, November 3rd, 2020. As we go through the process of deciding how to vote, we must remember that we are all responsible for our vote, and since our Lord warned us that we will have to give account for every idle word we utter on the day of judgment (Matthew 12:36), how much more will we be accountable for the policies that we support with our sacred right to vote? Remember that the same hands that vote are the same hands that receive the Eucharistic Lord. ◊

THE INEVITABILITY OF SUFFERING AND THE NEED FOR PRO-LIFE HEALTH CARE

BY MARIAH BUZZA



The COVID-19 Pandemic has brought about great suffering worldwide. From the death of many loved ones to widespread economic depression, humanity has suffered greatly this past year. While the SARS-CoV-2 virus should be taken seriously as a threat to life, has our societal response to it been appropriate? In our quest to minimize suffering brought about by the virus, has suffering only been compounded? This is a question that needs to be asked.

Since March, the United States has eliminated or suspended the use of various services and practices to minimize the spread of the virus. In doing so it has declared that which remains open to be "essential." For a culture that has increasingly become morally relativistic¹, this is not only contradictory but unjustly discriminatory.

An example of this discrimination can be seen in the state of California's treatment of churches. In California (and other places), there have been capricious caps on persons permitted to attend worship services, but other entities, like manufacturing facilities, have faced no such restrictions.² This inconsistency is a direct result of moral relativism permeating the heart of our society. While food and other goods necessary for bodily survival are indeed necessary, so is communion and worship for the nourishment of our souls.³ Therefore, fair and reasonable restrictions must be applied that protect public health while recognizing the right to freely exercise one's faith.

Tied to discrimination is the bleak fact that many have been forced to spend their last moments on this Earth in confused isolation. Since the United States began lockdowns, many hospitals have restricted a patient's ability to receive visitors. However, these restrictions have gone so far as to bar the sick from receiving the sacraments, and in some cases causing

them to die alone with no recourse to the graces they provide. Dying patients have also been denied the ability to see their families simply to say goodbye.⁴ While many hospitals have loosened their restrictions for the dying, it is problematic that the most vulnerable are at the mercy of hospital restrictions, particularly in the last moments of their lives. The treatment of the dying as mere transmitters of a disease shows that quality of life for many is valued far more than life itself.

As stated in the Catechism, "As a result of original sin, human nature is weakened in its powers, subject to ignorance, suffering and the domination of death and inclined to sin (this inclination is called 'concupiscence')."5 From the wisdom of the Church, it is known that suffering is an inevitable part of the human experience. All descendants of Adam are deprived of the original justice and holiness.6 Suffering and death is inevitable for all. Our legislative bodies and health care authorities have spent a great deal of resources attempting to shield society from these two inevitable factors of life at the expense of human compassion. We are called as Christians to bear witness to the dignity that everyone possesses as every person is made in the image and likeness of God.7 In fact, this image shines most vividly when man is in communion with each other. The COVID-19 pandemic has shown that humanity has forgotten this need for communion.

At a time such as this, health care providers and legislative bodies must remember the dignity that every life possesses and the communion that this dignity calls for. It is only through this that the culture of life will prevail in this time of great suffering. ◊



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SCOTUS ROUNDUP OCT 2020

BY JORDAN BUZZA, JD

The 2020 Supreme Court term included a number of landmark cases, many of which affect both religious liberty and health care. The most important cases were:

- Little Sisters of the Poor v. Pennsylvania
- June Medical Services v. Russo
- Espinoza v. Montana Dep't of Revenue
- Our Lady of Guadalupe School v. Morrissey-Berru
- Bostock v. Clayton County

Some of these cases directly concern both religious liberty and health care, while others are only tangentially related, but each will have an impact on at least one of those issues. We think it is important for you, as a supporter of the Christ Medicus Foundation, to understand the impact of these decisions and what is at stake.

Before addressing these cases, we should first recognize the passing of Justice Ruth Bader Ginsburgh. Our first priority should be to pray for the repose of her soul. Obviously, Justice Ginsburgh advocated for positions that undermined protection for life in the womb, but she was still a beloved daughter of the God the Father. We must pray for her soul. Secondly, her passing does open a seat on the Supreme Court. At the time of this writing, President Trump has nominated Judge Amy Coney Barrett for the vacancy, and she appears to be a wonderful nominee who would help to lead the court into a more restrained, originalist orientation that is more respectful of life, religious freedom, and the rule of law. That being said, this article will focus on the cases from the last term and what they mean, not Judge Barrett or the related political issues.

Little Sisters of the Poor v. Pennsylvania

Let us begin with the latest case in the Little Sisters' ongoing defense of their faith. As a refresher, in 2013 the Little Sisters challenged the contraceptive mandate created under the Obama Administration, and eventually won an exemption to not have to include contraceptive coverage in their health plans.

More recently, the Trump Administration passed a rule that expanded that exemption, allowing other entities to opt-in to not having to provide contraception through their insurance. The state of Pennsylvania and other groups challenged that rule, and the Little Sisters intervened to protect their exemption.

The Court ruled in the favor of the Little Sisters in a 7-2 decision, with Justice Thomas writing the majority opinion. His opinion was focused on whether the Trump Administration had the authority to enact such a rule, which he found it did. The opinion was somewhat limited in that it did not determine how the Religious Freedom Restoration Act (RFRA) interacts with the contraceptive mandate. If RFRA had been considered, it might have provided clear protection to religious institutions seeking an exemption from the contraceptive mandate.

This is still a win for the Little Sisters, but some have questioned why Justice Thomas did not write a more expansive opinion that would have explicitly stated that RFRA provides protection from the contraceptive mandate. Certainly, that would have been a positive outcome, and would have effectively ended the Little Sisters' legal odyssey.

In his opinion, Justice Thomas embraced judicial restraint by not writing a more expansive opinion than necessary. He simply ruled on the issue before him. This type of restrained decision ensures that rights enumerated in the Constitution are protected, like the



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free exercise of religion. The opposite of judicial restraint—judicial activism—is when justices expand their decision beyond the direct issue before them, allowing them to legislate from the bench and invent rights from whole cloth, like the right to abortion in Roe v. Wade. Justice Thomas' decision may not have produced the immediate outcome we would all want to see, but it produced the outcome that provides the most future protection. By not being overly-expansive, he furthered the cause that is most protective of religious liberty in health care—judicial restraint.



June Medical Services v. Russo

In this case, Louisiana had passed a law requiring doctors in abortion centers to have admitting privileges in a nearby hospital. The law was passed to ensure the safety of women should they need to be admitted to a hospital following an abortion. This law, and others similar to it, were passed in the wake of the horrific crimes of Kermitt Gosnell in Philadelphia, which included the death of at least one woman obtaining an abortion and three infants born alive.

Here though, the Court struck down the law on a 5-4 vote. Chief Justice Roberts sided with the majority and wrote a concurring opinion that followed the decision established in Whole Woman's Health v. Hellerstedt, a similar case which struck a Texas law down regarding safety measures related to abortion. Even though he thought Hellerstedt was wrong and that this law should be upheld on its own merits, he felt bound to follow the prior precedent which had been established by Hellerstedt, and struck this law down. The other four justices who ruled with Chief Justice Roberts thought that the law should have been struck down on its own merits as an undue burden on a woman trying to obtain an abortion.

This decision makes it clear that actually overturning Roe, or even putting some limits on abortion, will be very difficult, and that it is imperative to have another originalist on the Court. Chief Justice Roberts has shown he is inclined to follow precedent, even if he thinks the initial decision was wrong. He may disagree with Roe, but he strongly believes in following prior decisions made by the court. He was not willing to violate that principle here, so why would he in a case that challenges Roe? With the Chief Justice's telegraphing his position on abortion jurisprudence, it is not wise to count on his vote to overturn Roe, meaning at least one other vote would likely be necessary.

Espinoza v. Montana Department of Revenue

In Espinoza, a Montana law incentivized donors to help parents who send their children to private schools by giving those donors a tax credit for such donations. The donors would make appropriate donations, and the parents could use those donations to help with the cost of sending their children to private school, and the donors themselves could claim those donations as a tax credit. The tax credit made it easier for those donors to actually donate, giving even greater benefit to the parents paying the tuition.

However, the Montana Constitution prohibited any aid to flow to religious institutions from the government, whether directly or indirectly. (The Montana Constitution embraced the thought of James G. Blaine, a late 19th Century politician whose policies reinforced anti-Catholic sentiment.) This effectively prohibited parents who send their children to parochial schools from benefiting from the tax credit, while parents sending their children to secular private schools could benefit.

Chief Justice Roberts wrote the opinion of the court here as well in a 5-4 decision, which held that the Montana courts should have considered the Free Exercise clause instead of only following the Montana Constitution. If they had done so, the parents sending their children to parochial schools could have benefitted from the tax credit as well. Most clearly, he wrote that, "A state need not subsidize private education. But once a State decides to do so, it cannot disqualify some private schools solely because they are religious."

This case is important for reinforcing religious liberty in education, but could theoretically have broader implications as well. If the Chief Justice's underlying principle of treating religious institutions no worse than secular ones is applied more broadly, it could provide a great deal of protection to religious institutions that they do not currently have. For instance, currently taxpayers cannot challenge how the federal government spends our tax dollars. That is, with one exception—if the taxpayer alleges that the government is violating the establishment clause. This creates a double-standard against religious institutions.

It seems very unlikely that this principle will be expanded, though. Just recently, we have seen churches burdened with more COVID-19 related restrictions than other gathering places. This is explicitly treating religious institutions differently than secular ones. Unfortunately, the Supreme Court (and Chief Justice Roberts) have permitted states to do this. While the underlying principle the Chief Justice followed in this case would seem to protect religious institutions, it is practically unlikely that that principle will be widely applied, which means that this decision is narrow in scope.

Our Lady of Guadalupe School v. Morrissey-Berru

This case dealt with the nature of the "ministerial exemption." The ministerial exemption gives religious schools wide discretion in making employment decisions, with the purpose of ensuring that religious schools can employ individuals who further their religious mission without government interference. Excessive government entanglement in this area would run afoul of the establishment clause, as the government would be creating criteria that religious schools had to follow in making these decisions. The question in this case centered on how broad the ministerial exemption is, what employees it would apply to, and if specific criteria need to be considered when deciding if it does apply.

The Court, in a 7-2 decision authored by Justice Alito, found that a rigid test with specific criteria was too restrictive for determining how broad the ministerial exemption is and that such a test would violate the establishment clause.

Some of the principles that Justice Alito listed in his opinion were interesting. For instance, he noted that an established principle of jurisprudence allows for "religious institutions to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." In the present case, he noted that "The religious education and formation of students is the very reason for the existence of most private religious schools, and therefore the selection and supervision of the teachers upon whom the schools rely to do this work lie at the core of their mission."

He did qualify these principles by adding, "This does not mean that religious institutions enjoy a general immunity from secular laws, but it does protect their autonomy with respect to internal management decisions that are essential to the institution's central mission."



It will be very difficult to expand these principles beyond the present case. But we have to wonder, could they be expanded? Can we as Catholics make an argument that the very reason for the existence of Catholic hospitals is to fulfill the obligation of the faith to care for the sick? After all, this is something Jesus himself calls every Catholic to do¹. Furthermore, many Catholic hospitals are run by religious orders as part of their mission, and historically, the modern hospital movement was established by the Church. Therefore, the care for the sick is a matter of faith and doctrine for Catholics. The question then is this: how does the state not violate the establishment clause if it inserts itself into how Catholic hospitals are run, particularly if it forces them to violate their beliefs by compelling the performance of immoral procedures? A government that does this is not merely prohibiting Catholic hospitals from acting in a certain way, but is actually requiring Catholic hospitals to positively act in a way that violates a core matter of faith and doctrine.

Such a connection seems to be common sense, but it is unlikely to be recognized. Again, this case is a victory for religious freedom, and contains wonderful principles, but until those principles are recognized more broadly, this case has a narrow application.

Bostock v. Clayton County

We will conclude this review with perhaps the most consequential case the Court decided this term, Bostock. The issue in this case was whether or not sexual orientation and gender identity were included under the term 'sex' as protective classes in Title VII of the Civil Rights Act of 1964.

This case was decided 6-3, with Justice Gorsuch authoring the majority opinion, and he found that the protections based upon sex included sexual orientation and gender identity. Justice Gorsuch's opinion was based on the idea that "if changing the employee's sex would [yield] a different choice by the employer—a statutory violation has occurred." Therefore, if an employer fires a man who is attracted to men, but doesn't fire a woman who is attracted to men, the employer has discriminated on the basis of sex by treating men and women differently.

Justices Alito and Kavanaugh authored compelling dissents, but going forward sexual orientation and gender identity are protected by Title VII and are considered to be an aspect of sex. It is unclear, however, how far the court's reasoning will extend, and in what other contexts sexual orientation and gender identity will be treated as biological sex. For instance, section 1557 of the Affordable Care Act prohibits discrimination in health care on the basis of sex. Will sexual orientation and gender identity be included there as well? If it is included, what would that inclusion



mean for Catholic hospitals who faithfully adhere to Catholic teaching? Will they be forced to perform procedures that violate the core beliefs of the faith? Justice Gorsuch did mention that RFRA might protect religious institutions, but as Justice Alito mentioned in Our Lady of Guadalupe, religious institutions do not "enjoy general exemptions from secular law." The Bostock decision could very well be the beginning of a health care regime in the United States that completely excludes faithful Catholic health care.²

This was a monumental term for the court. There were certainly some victories for religious liberty, with powerful and compelling opinions from Justices Thomas, Alito, and even Chief Justice Roberts. However, these victories were rather narrow, and were the types of victories one would expect in a pluralistic society that values freedom of conscience.

There were, however, some cases that cause grave concern. June Medical means that it will be more difficult to overturn Roe and Casey. Bostock means that sexual orientation and gender identity are treated the same as biological sex in the employment context, and possibly in health care, too. This does not bode well for the future of religious freedom, faithful Catholic health care, and freedom of conscience.

END NOTES

THE WELL FORMED CATHOLIC VOTE Michael Vacca, JD

 $1\,\mathrm{Congregation}$ for the Doctrine of the Faith, Doctrinal Note on some questions regarding The Participation of Catholics in Political Life

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THE INEVITABILITY OF SUFFERING & THE NEED FOR PRO-LIFE HEALTH CARE *Mariah Buzza*

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- 6 CCC, 404.
- 7 CCC, 1702

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1 Matthew 25:36

2 All that being said, we are all called to treat every person with love and compassion. We should not treat our brothers and sisters who are attracted to the same sex or who have gender dysphoria poorly. We should love them as Christ loves them. But that does not mean that we should be forced to agree with a worldview that goes against the Catholic faith, just as non-Catholics cannot be compelled to agree with ours.

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