

## **AQUINAS, THE RH BILL, AND CONSCIENCE: TOWARDS A CLEARER UNDERSTANDING\***

Redentor A. de la Rosa  
Central Mindanao University  
Musuan, Maramag, Bukidnon

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### **Abstract**

This paper argues that the claim that contraceptives are immoral is a specific moral norm--hence, it cannot be imposed on others--and that Filipinos who do not share the Catholic Church's belief on contraceptives are legitimately entitled from the government to, at least, affordable access of these materials and/or services. As a consequence, the government, on the ground of the principle of religious freedom or primacy of conscience, is duty bound, to pass the RH Bill or its equivalent. There may be other legitimate grounds on which a Catholic legislator may oppose the RH Bill, but that he considers the use of contraceptives immoral is not a valid one. The arguments rest on Thomas Aquinas' phenomenology of conscience, which is shown to be on par with the Catholic Church's teachings.

The paper, thus, proceeds in the following manner: first, it explains Aquinas' notion of conscience as the natural law and its two levels. The two levels of conscience – the natural and deliberative – correspond to the general norms of the natural law and the specific norms respectively. Next, it clarifies correlative ideas like “obeying an erroneous conscience”, “religious freedom” and “impositions on conscience”. It is shown that the general moral norms may be imposed on conscience but not the specific norms except in some cases of consensus where such norms are translated into positive laws. The general norms and those derived specific norms, in as much as they conform to the general norms, made into positive laws, constitute the foundations of jurisprudence and the regulation of the exercise of freedom of citizens and the safeguarding of their rights. The paper then concludes by deriving implications to arrive at the positions mentioned above.

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## WHAT IS CONSCIENCE?

According to Thomas Aquinas, human reason possesses natural knowledge of some moral norms, which are the first principles of the natural law.<sup>1</sup> These moral principles, which *pre-exist* in reason, are the moral virtues.<sup>2, 3</sup> Aquinas called this natural knowledge of the moral law, *synderesis* or conscience.<sup>4</sup> Conscience, therefore, for Thomas Aquinas, is an intellectual judgment about a moral truth. It is a judgment of reason concerning what action is right or wrong; hence, it includes recognition of personal responsibility. An individual, in so far as he is in normal reason, cannot fail to know these natural law precepts because they are inscribed in reason as natural or spontaneous judgments, or in the metaphorical words of Vatican II, they are written in our hearts.<sup>5</sup>

From the first principles of the natural law are derived the secondary principles. The secondary principles are simply articulations of, or immediate conclusions from, the primary or first principles into normative formulas. Example, “fairness” or “be fair” is a primary precept – a moral virtue; while the norm, “one ought to return entrusted goods,” is secondary. All of the secondary principles are precepts of virtues, that is, they are reducible to the moral virtues (primary principles). They have normative force in so far as they express one or more virtues. The moral precepts of the Decalogue are famous examples of secondary norms.

Thus, the secondary norms can also be said to have been intuitively known, but in the sense that they can be accepted as true through simple apprehension, by anyone to whom they are proposed, but not in the sense that every individual person is able to formulate them all. This means that not all people have the same knowledge of the contents of the secondary moral precepts. Some know less, while others know more. However, if a secondary norm is presented to an individual, who have, hitherto, not known it, the individual, by means of the first principles which are in him as an intellectual habit, can assent to its truth easily/intuitively.<sup>6</sup>

## TWO LEVELS OF CONSCIENCE

An analysis of the nature of Thomas’ concept of conscience as judgments of reason will lead us to recognize its two levels, namely,

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(1) the natural and (2) deliberative. The natural judgment about moral truths is aptly called because of the *practical reason's* natural and spontaneous act (pre-motion) to know moral principles. At this level of natural knowledge of the primary and the secondary natural law precepts, the judgments of conscience is always right and are common to men. These are not dependent on culture, training, or environment. The Second Vatican Council puts it this way (which is, I believe, phenomenologically true): “the conscience of mankind firmly and ever more emphatically proclaims these principles;” and to disobey them is to go against the very dignity of man.<sup>7, 8</sup>

The second judgment of reason or conscience is a deliberative judgment. Men apply the general principles to concrete situations.<sup>9</sup> These applications, which result to specific moral norms, are deliberative or discursive rational judgments. On this level, men may differ in their opinions, and their judgments are largely influenced by environment so that some may fall into error about what is right or wrong. If the application of a general norm is wrong, one's conscience is in error; if the application is correct, conscience is right. Thus, pertaining to specific moral norms, conscience cannot be the criterion of moral truth.<sup>10</sup>

Others may not have the chance to reflect on and apply the primary principles correctly because of a predominant custom which have already shaped their minds and habituated their attitude since childhood. Unless people inquire and reflect, they will not see the distortion of values in their culture, or they may have seen but have ignored it since it is accepted as something conventional in their society. Insufficient facts, inaccurate information, mistaken philosophical presuppositions, erroneous religious beliefs and world views will lead an inquiring person to incorrect conclusions. Moreover, bad habit or evil disposition can be a hindrance to making correct moral judgments.<sup>11</sup> Sometimes people make-up their minds even without making sufficient inquiry; while others do so out of laziness, prejudices, attachments to evil inclinations, etc.

### **OBEYING AN ERRONEOUS CONSCIENCE**

Conscience can have erroneous judgments when it comes to specific moral norms; however, according to Aquinas, one is still

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bound to obey an erroneous conscience.<sup>12</sup> Conscience is one's last and best judgment as to the choice one ought to make.<sup>13</sup> This is because conscience, correct or not, is the person's personal judgment of what is right or wrong.<sup>14</sup> Thus, a person who chose to follow the dictate of his conscience is aiming at the good.<sup>15</sup> If a person thinks that an action is morally correct (albeit the action is objectively evil), he must do the action; if he refuses and does the opposite, then he had chosen something which he personally thinks is wrong. In that case, he had aimed at evil rather than the good, and therefore, is personally guilty. Hence, disobedience to conscience is to choose what one personally believes to be morally wrong and therefore to which action one is aware of personal accountability.

Thus, the eminent moral theologian, Germain Grisez, following Thomas Aquinas, explained:

According to common Christian teaching, one must follow one's conscience even when it is mistaken....

...It is good to abstain from fornication. But if one's conscience is that one should choose to fornicate, one does evil if one does not fornicate. Indeed, to believe in Jesus is in itself good and essential for salvation; but one can only believe in him rightly if one judges that one ought to. Therefore, one whose conscience is that it is wrong to believe in Jesus would be morally guilty if he or she chose against this judgment.<sup>16</sup>

The example, fornication, is originally from Aquinas, which means that the duty to obey an erroneous conscience includes moral precepts and not only religious practices/customs and doctrines. In a response to Fr. Joaquin Bernas' stance regarding respecting the beliefs of non-Catholic Filipinos about the RH bill, Fr. Julio Penacoba argued that respect for conscience or religious freedom, in particular, applies only to religious customs.<sup>17</sup> However, it is clear from Aquinas that religious freedom includes moral beliefs.

An erroneous conscience or incorrect moral judgment originates from an incorrect application of the general norms. This means that the person is responsible for such mistake. However, in some cases, the factors why some people fail to have correct opinion concerning the morality of a specific action are too complex so that it is possible

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that there is less guilt on their part or none at all. In other words, a person may possess erroneous moral judgment (conscience), not out of his own fault, but because it has been the custom of his society or religion or because of some other complicating reasons. Even if it is the fault of the person that his conscience errs, still, in following it, he does not commit any sin. His guilt lies only in the failure to inform and form his conscience well but not in following his misinformed conscience.

### **RELIGIOUS FREEDOM AND IMPOSITION OF CONSCIENCE**

When it comes to the general norms, anyone or any authority or government may impose them “against” the conscience of another. So for instance, the secondary norm, “thou shall not steal,” is always imposed on anybody. A person stealing cannot appeal to his conscience and claim that he should not be condemned because it is what his conscience tells him as right. For the same reason, a person must disobey the teaching of his religion if it is against any of the general norms. Thus, even if a Pope claims infallibility in teaching something against one of the general precepts of the natural law, one should rather obey one’s conscience. This applies to all religious authority, may it be Islam or whatever. If a religion teaches that in order for one to go to heaven one should kill an “infidel” (but innocent of any crime), one should instead obey his conscience.

An argument to support the contentions above is the following: to impose the general precepts of the natural law is not to impose against the conscience of those who violate them since it is what their conscience is really telling them. We ought to respect the conscience of others, but in imposing the general precepts of the natural law, we are not actually imposing anything against the conscience of anyone because the general precepts of the natural law are in all of us as conscience.

Nonetheless, when it comes to the specific norms, like the norm prohibiting the use of contraceptives, no one can impose this belief on others, because not many can easily see it as a true norm. It is a special moral norm which a person can assent only after careful study of some ethical and anthropological principles. The difficulty of specific moral norms, however, comes in different degrees so that in



some it is easy to arrive at consensus, while in others, there is great disagreement. Those specific norms which were translated into positive laws are of course imposed on every citizen with penal sanction; otherwise, there is individual freedom.

Therefore, the *objective moral order*, that is, the general norms and those derived specific norms, in as much as they conform to the general norms, made into positive laws, serve as the basis for the promotion of common welfare and protection of public order. Together, they constitute the foundations of jurisprudence, regulating the exercise of freedom of citizens and the safeguarding of their rights.<sup>18</sup> “For the rest,” that is, those specific norms not covered by consensus and not made into law, the words of Vatican Council apply, “the usages of society are to be the usages of freedom in their full range: that is, the freedom of man is to be respected as far as possible and is not to be curtailed...”<sup>19</sup>

The right to the free exercise of religion which is founded on the freedom of conscience applies, therefore, to the specific moral norms only.<sup>20</sup> Hence, contrary to the apprehensions of many, it will not yield to *moral relativism* and or *religious indifferentism* since it is restricted by the general norms. On this view, the Catholic Church’s teaching on, and the Philippine Constitution’s protection of, religious liberty ought to be understood.<sup>21</sup> Hence, in a democratic system, every person, without discrimination and regardless of religious affiliation and *moral beliefs*, should equally enjoy this freedom. The words of the Vatican Council are unmistakable:

The right to religious freedom has its foundation, not in the subjective disposition of the person, but in his very nature. In consequence, **the right to this immunity continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it** [emphasis added] and the exercise of this right is not to be impeded, provided that just public order be observed.<sup>22</sup>

What are the parameters of “religious freedom” which an individual has a right to exercise with immunity? The answer is the specific moral norms. And what are the parameters of “just public

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order” with which religious freedom is regulated? The answer is the general moral norms.

*Dignitatis Humanae* states some duties of the state to religious freedom:

The protection and promotion of the inviolable rights of man ranks among the essential duties of government. Therefore government is to assume the safeguard of the religious freedom of all its citizens, in an effective manner, by just laws and by other appropriate means.

...it is at the same time imperative that the right of all citizens and religious communities to religious freedom should be recognized and made effective in practice.

Finally, government is to see to it that the 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. Nor is there to be discrimination among citizens.<sup>23</sup>

Also, number 169 of the “Compendium of the Social Doctrine of the Church” states:

Those responsible for government are required to interpret the common good of their country not only according to the guidelines of the majority but also according to the effective good of all the members of the community, including the minority.

What is meant by *Dignitates Humanae* with “common good” and by the Compendium with “effective good” includes the good of respect for religious freedom. Note that in the line, “*equality of citizens before the law, which is itself an element of the common good, is never violated,*” equality here also means equality in terms of their right to religious freedom. This means that religious freedom, being a fundamental human right, is one of those Vatican 2 is referring to as “elements of common good”.

Moreover, *Dignitates Humanae* emphasized that it is not enough to only recognize this freedom but that it is also “*made effective in practice*”. Thus, although contraceptives are available for sale in

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pharmacies nationwide, for many poor couples, access to them is almost impossible. Hence, without a law securing that they can access them freely, still the law cannot be said to be equal. Nonetheless, it may also be objected that making the law equal does not only mean giving them contraceptives, it could also mean giving them better jobs so that they can afford contraceptives whenever they need them. This objection is of course correct, but is not without opposition. It should be noted that contraceptives for some married couples are an immediate need. While they need jobs most, their immediate need for contraceptives, while they don't have the job yet, needs to be addressed.

There are two versions of the RH bill currently under interpellation, namely, the consolidated bill, HB 4244, and the Senate bill (SB 2865). Some authors have identified arguments which, I think, are legitimate grounds for a Catholic legislator to oppose those two bills; however, that he considers contraceptives immoral is not a valid one. There were proposed amendments to the House version which have rendered some of the arguments irrelevant, but few still retain their force.<sup>24</sup>

A Catholic legislator, therefore, may support a Reproductive health bill that provides for the free or affordable access of contraceptives to poor couples.<sup>25</sup> He may inhibit, but he cannot oppose the bill since that would violate the rights of others. He is not allowed, still, to make indirect actions which may effectively hinder the passing of the bill into law. Finally, this means that the government may spend public money for making contraceptives available, at least, to poor non-catholic married couples.<sup>26</sup>

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## ENDNOTES

\*This paper was submitted before the enactment of the RH Bill, now known as Responsible Parenthood and Reproductive Health Act of 2012 (RA 10354 ) or RH Law.

<sup>1</sup> *Summa Theologica* I, Q79, a12.

<sup>2</sup> Aquinas said: "... in the practical reason, certain things pre-exist, as naturally known principles, and such are the ends of the moral virtues..." [*Summa Theologica* I-II, Q47, a6].

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<sup>3</sup> Martin Ronheimer argues that the natural law precepts, contrary to what many natural law ethicists believed, are actually the moral virtues. It is beyond the scope of this paper to discuss such a complex issue. See *The Natural Law and Practical Reason: A Thomist View of Moral Autonomy*, trans. by Gerald Malsbary (New York: Fordham University Press, 2000). The common position that the natural law is “the natural order of things discoverable by reason” is not the position of Thomas Aquinas.

<sup>4</sup> *Summa Theologica* I, Q79, a13; II-II, Q47, a6.

<sup>5</sup> *Gaudium et Spes*, 16.

<sup>6</sup> *Summa Theologica* I-II, Q100, a1.

<sup>7</sup> *Gaudium et Spes*, Q79 & 16.

<sup>8</sup> *Ibid.*, 16.

<sup>9</sup> The primary and secondary principles constitute what I mean by the general principles/norms here.

<sup>10</sup> *Veritatis Splendor*, 32.

<sup>11</sup> *Summa Theologica* I-II, Q94, a4.

<sup>12</sup> *Ibid.*, Q19, aa5-6.

<sup>13</sup> Germain Grisez, *Christian Moral Principles*, Chicago (Illinois: Franciscan Herald Press, 1983), chap. 3, question C.

<sup>14</sup> *Summa Theologica* I, Q79, a13.

<sup>15</sup> cf. Louis Janssens, *Freedom of Conscience and Religious Freedom*, trans. Brother Lorenzo, C.F.X. (Staten Island, N. Y.: Alba House, 1966), 81.

<sup>16</sup> Grisez, *Christian Moral Principles*, chapter 3, question C.

<sup>17</sup> See Julio Penacoba, “Some Comments to Fr. Bernas' Stand on the RH Bill,” <http://fightrhbill.blogspot.com/2011/05/fr-julio-penacoba-responds-to-fr.html>; 6 December 2011.

<sup>18</sup> *Dignitatis Humanae*, 7.

<sup>19</sup> *Ibid.*

<sup>20</sup> See Janssens, *Freedom of Conscience and Religious Freedom*, 7-16; cf. *Dignitatis Humanae*, 3.

<sup>21</sup> “The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed.” (Article III, Section 5).

<sup>22</sup> *Dignitatis Humanae*, 2.

<sup>23</sup> *Ibid.*, 6.

<sup>24</sup> For instance, contraceptive methods with abortifacient effects were not identified and prohibited.

<sup>25</sup> Janssens, *Freedom of Conscience and Religious Freedom*, 98-99.

<sup>26</sup> *Ibid.*, 100.