

The Formation and Exercise of Conscience in Private and Public Matters

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Introduction

THE IMPORTANCE OF CONSCIENCE in human life, at the levels of both personal and public morality, is obvious from the fact that the right to act according to one's conscience is often invoked as the justifying reason for many private and public acts. The role of conscience is apparent in private matters, in the intimacy of one's own moral life. Conscience is at work in the hidden recesses of the human heart: it speaks in intimate conversation with God;¹ it is consulted in a choice of vocation; it is the stimulus to repentance from a hidden sin. Conscience is the one who watches when no one else is watching, the one who speaks with the voice that only you can hear. Yet it would be a mistake to think that conscience is exercised only in private matters. Acts that have public consequences must also be weighed in the human heart and judged according to one's conscience: conscience is invoked as the reason that someone must go to war or cannot go to war, as the reason for the right to freedom of religion, as the reason for freedom from public compulsion to act, and so on. Conscience speaks in the recesses of each heart, but it often speaks about how to act in very public matters. In short, the role of conscience in morality is universal and necessary.

¹ "[Conscience] is the most secret core and sanctuary of a person. There each one is alone with God, whose voice echoes in the depths of the heart" (Second Vatican Council, *Gaudium et Spes*, §16).

But there are times when, due to circumstances, conscience is forced to weigh acts that have both a private and a public aspect. And sometimes it happens that there appears to be an opposition between what conscience dictates about the private and public aspects of an act. For example, can a secret told in confidence be made public if revealing it will help someone? Can a lawyer who knows his client is guilty still argue for his innocence before a court?² Can a priest who knows from confession that a certain person is guilty of a serious sin still administer communion to him? Can a judge or jury member who knows from confidential information or legally inadmissible evidence that someone is innocent pass a guilty sentence, since his sentence must be based upon the evidence before the court? Each of these acts has both private and public aspects, and what conscience dictates in the private realm seems to contradict what conscience dictates in the public realm. For example, due to his private knowledge, the conscience of the lawyer seems to dictate that he not make the guilty appear innocent, yet his conscience also seems to dictate that his public duty before the law is to make as compelling a case as he can for his client's innocence based upon the publicly available evidence.

This article aims to expose and apply the moral principles by which one can rightly judge how to inform and exercise conscience in such matters. The thesis that I intend to demonstrate is the following: If the judgment of conscience based upon public knowledge is opposed to the judgment of conscience based upon private knowledge in a public act, then the judgment of conscience based upon public knowledge must be followed instead of the judgment of conscience based upon private knowledge. To show this, I will (1) first examine the nature of conscience and certain of its properties following therefrom, (2) then examine the distinction between a common and a private good, (3) then show that the consideration of conscience about public acts pertains to the common good while

² Peter J. Henning has commented: "Lawyers must deal with a conundrum because they are required to act as officers of the court—presumably working to advance the truth—while providing loyal representation to clients who may have little to gain from its ascertainment, particularly in criminal cases. Neither goal can be fully achieved in every representation, and it is from the competition between these two principles that much of the criticism of the legal profession arises" ("Lawyers, Truth, and Honesty in Representing Clients," *Notre Dame Journal of Law, Ethics & Public Policy* 20, no. 1 [*Symposium on Law & Politics as Vocation*], Article 8 [February 2014]: 211).

its consideration about private acts pertains to the private good, (4) then argue that conscience binds one who acts as a representative of the community to act for the common good in a public act, and (5) then argue that one who acts as a member of the community should prefer the good of the community to his private good in a public act. Finally (6), I shall apply this conclusion to some contemporary difficulties in ethics and moral theology, specifically to the question about whether and under what circumstances communion should be administered to those who are in manifest, objective grave sin but who are subjectively certain of their innocence (for example, the divorced and remarried who are unable to outwardly manifest their own innocence).

I: The Nature of Conscience and the Properties Following from its Nature

Conscience, in the proper sense, is the act of applying universal knowledge to some particular thing to be done through some act.³ Conscience is an act of the habit of first practical principles (*synderesis*), principles about what is to be done or avoided. For example, one first principle is “do not harm others.” When someone comes upon a neighbor and feels like striking him, conscience applies knowledge of this principle “do not harm others” to the desired act of striking the neighbor and judges that the neighbor is not to be struck.⁴

What does it mean to “apply” knowledge to something to be done? The word “application” is taken first from physical things. For example, one applies a ruler to a board in order to measure the board. Application therefore means bringing two things together that were apart so that they can be known or considered together. Similarly, application of knowledge of a first principle means considering the thing to be done together with the principle so that the knowledge can serve as a kind of measure of the thing to be done. So conscience is essentially an act of uniting knowledge to a thing to be done. After

³ Thomas Aquinas, *In II sent.*, d. 24, q. 2, a. 4, corp.: “Conscience is spoken of as if ‘with another knowledge’ [*cum alio scientia*] since it applies universal knowledge of some particular act.” Cf. Aquinas, *Summa Theologiae* [ST] I, q. 79, corp. All citations from Aquinas are my own translations taken from the Latin of the Busa edition of the *Opera Omnia* (Stuttgart: Frommann-Holzboog, 1980).

⁴ Sometimes, less properly, the habit of *synderesis* is called by the name “conscience,” since acts are better known than habits and a habit often receives the name of its proper or most known act. In this article, we will consider conscience insofar as it names an act.

this union has taken place a judgment can be made about what is to be done, much as when two premises are brought together in the mind, a conclusion can be drawn from them. This practical conclusion is the term of deliberation and immediately leads to a choice.⁵

Conscience Binds One to Do Some Good or Avoid Some Evil

When our universal knowledge of what ought to be done or avoided is applied to some particular act, then our will is presented with an evaluation of the goodness or evil of that particular act. In some cases, we understand from the evaluation of conscience that either to do or not to do this act would be sinful. For example, our conscience may inform us that to fornicate in this case would be sinful or that to not assist a person in dire need in this case would be sinful. This is what it means for conscience to “bind” us to do or not do an act. In contrast, if our conscience merely informs us that some act is good, but not obligatory, then we are not said to be bound by our conscience, since we are always bound to do good but we are not always bound to do the better good: “Conscience is said to bind insofar as one sins if he does not follow his conscience, but not in the sense that he acts correctly if he does follow it. . . . Therefore, conscience is not said to bind in the sense that what one does according to such a conscience will be good, but in the sense that in not following it he will sin.”⁶

Even When Conscience Binds, It Is Not Infallible

Although conscience binds in certain cases, it does not follow that it is infallible in those cases. Moral certitude is not the same as the certitude reached in a science such as mathematics. The possibility of error in human knowledge exists even in cases where moral certitude has been reached.⁷ For example, someone might be morally certain that taking an oath is forbidden by God. In such a case, he would be bound in conscience not to take an oath even if his conscience has been informed by a false principle.

⁵ *In II sent.*, d. 39, q. 3, a. 3, corp.: “Since the act of the will is specified by its object, it is necessary that according to the judgment of reason and conscience, the will proceed to act.”

⁶ Aquinas, *De veritate*, q. 17, a. 4, corp.

⁷ Joseph Ratzinger commented: “Subjective conviction and the lack of doubts and scruples which follow therefrom do not justify man” (*Conscience and Truth*, §1, presented at the Tenth Workshop for Bishops, Dallas, TX, February 1991, accessed October 27, 2017, <http://www.ewtn.com/library/curia/ratzcons.htm>).

Therefore, due to some error, the conclusion reached through conscience may sometimes be a judgment to act in a morally bad way. How does this happen? Conscience is the application of universal knowledge to some particular thing to be done. And just as a carpenter might make a faulty measurement of something to which he applies a ruler, so too conscience may falsely evaluate the goodness or badness of a particular act. For example, if a carpenter were to apply a ruler to a board crookedly instead of straightly or were to hold the ruler at some distance, such that the exact length of the board could not be discerned, we would say that he has not applied the ruler well to the board. Universal knowledge is badly applied when the knowledge of first practical principles is not united to a thing to be done. This happens, for example, when the universal principle is not considered at the same time as the particular act to be done. Therefore, to the extent that this union is made badly, the act of conscience has not been done well:

Just as in the demonstrative sciences conclusions are not demonstrated from common principles except through the mediation of proper principles determined to that genus containing the power of the first principles, so also, in doable things in which reason, deliberating by means of a kind of syllogism, is used to finding what is good, . . . reason comes from common principles to a conclusion of this determinate act by the mediation of certain proper and determinate principles. *But these proper principles are not naturally known through themselves* as are the common principles, but they are known either through the inquisition of reason or through the assent of faith. And since not all have faith, as is said in 2 Thessalonians 3, and also since reason is sometimes deceived in its deliberations, it follows that, about these principles, someone can err (as when a heretic errs by thinking that all oath-taking is forbidden). And this determinate principle pertains to superior or inferior reason, yet the truth of the conclusion depends from either of the principles. And, therefore, since conscience is a certain conclusion judging what good is to be done or omitted, . . . it happens that there can be error in conscience on account of the fact that reason can be deceived in the proper principles.⁸

⁸ *In II sent.*, d. 39, q. 3, a. 2, corp. (emphasis added).

Consequently, it happens that conscience can be exercised well or badly. And even a binding conscience may be in error: “Whether reason or conscience judges rightly or not, the will is obliged in this way: for if an act of the will does not follow the judgment or dictate of reason (that is, conscience), it is disordered. And this is to oblige, to constrain the will so that it is not able to tend into something else without the harm of deformity, just as someone bound is not able to move.”⁹ It further follows from this that, in following an erring conscience, one may still be blameworthy, unless his ignorance is entirely through no prior fault of his own.¹⁰

It Is Not Possible for the First Practical Principles to Be Wrong

Just as a measurement of a board by a carpenter may be false for two reasons—either because his ruler is faulty or because he misapplies the ruler such that it is not possible to see the true measurement—so also it seems that a moral judgment can be faulty, in principle, because of a faulty ruler (a faulty knowledge of first practical principles) or because of the misapplication of those principles to the thing to be done.

However, while it is possible to misapply the universal principles of moral action to some particular act, it is not possible to have a faulty knowledge of these first, universal principles.¹¹ The general reason

⁹ *In II sent.*, d. 39, q. 3, a. 3, corp.

¹⁰ Cf. Ps 19:13: “Who can detect heedless failings? Cleanse me from my unknown faults” (NAB). The *Catechism of the Catholic Church* explains more clearly: “A human being must always obey the certain judgment of his conscience. If he were to deliberately act against it, he would condemn himself. Yet it can happen that moral conscience remains in ignorance and makes erroneous judgments about acts to be performed or already committed. This ignorance can often be imputed to personal responsibility. This is the case when a man ‘takes little trouble to find out what is true and good, or when conscience is by degrees almost blinded through the habit of committing sin.’ In such cases, the person is culpable for the evil he commits” (CCC, §§1790–91, quoting *Gaudium et Spes* §16). See also Ratzinger, *Conscience and Truth*, §3: “The fact that the conviction a person has come to certainly binds in the moment of acting, does not signify a canonization of subjectivity. It is never wrong to follow the convictions one has arrived at—in fact, one must do so. But it can very well be wrong to have come to such askew convictions in the first place, by having stifled the protest of the anamnesis of being. The guilt lies then in a different place, much deeper—not in the present act, not in the present judgment of conscience, but in the neglect of my being which made me deaf to the internal promptings of truth.”

¹¹ The knowledge of these most universal principles is called *synderesis*, and such knowledge remains always free from error: “In the soul there is something that

for this is that moral precepts are more or less certain, and since the certitude of the more particular precepts is derived from the certitude of the more universal precepts, then the most certain precepts must be the most universal principles of moral action.

Nature intends the good in all its works and the conservation of those things which nature accomplishes through its activity. And therefore, in all the works of nature, there are always permanent and immutable principles and things conserving rectitude. For, it is necessary that the principles remain, as is said in the first book of the *Physics*. For, there cannot be some firmness or certitude in those things that are from the principles unless the principles themselves were firmly established. And thence it is that all changeable things are led back to some first immobile thing. Thence it is also that all speculative knowledge is derived from some most certain knowledge about which there cannot be error, which is knowledge of the first, universal principles, in respect to which all that knowledge is examined and from which every word is approved and everything false is rejected. If some error was able to occur in these [universal principles], it would follow that no certitude would be found in any subsequent knowledge.

Hence, also in human works, in order that it is possible that there be some rectitude in them, it is necessary that there be some permanent principle that has immutable rectitude in respect to which all human works are examined, so that that permanent principle resists all evil and assents to all good. And this is *synderesis*, whose office is to repel from evil and incline toward the good. And therefore, we concede that, in it, there is not able to be sin.¹²

is of perpetual rectitude, namely *synderesis*, which is not higher reason, but is related to higher reason just as the understanding of principles is to reasoning about conclusions" (*In II sent.*, d. 24, q. 3, a. 3, ad 5).

¹² *De veritate*, q. 16, a. 2, corp. Nevertheless, *synderesis* can be "extinguished" in some respect, insofar as it is unable to proceed to actual consideration of universal knowledge due to some impediment such as a damaged brain or excessively strong emotion: "That *synderesis* be extinguished can be understood in two ways: In one way with regard to the habitual light itself, and in this way it is impossible that *synderesis* be extinguished. . . . In another way with regard to the act, and this can be done in two ways. In one way so that it is said that the act of *synderesis* is extinguished inasmuch as the act of *synderesis* is altogether interrupted. And thus it happens that the act of *synderesis* is

In other words, the rule by which we measure moral acts is infallible so that, for one capable of deliberation, the only source of error in matters where conscience binds is in the application of this rule to the particular act: “*Synderesis* is never overthrown in the universal. However, in the very application of the universal principles to some particular, error can happen on account of a false deduction or of some false assumption. And therefore, it is not said that *synderesis* simply is overthrown, but that conscience is overthrown, which applies the universal judgment of *synderesis* to particular deeds.”¹³

Therefore, it is essential that a conscience be well formed in order to make morally good judgments. This formation especially involves coming to know more perfectly the more proper and specific principles of human action, as well as the circumstances of any given act. The formation of conscience also benefits from taking into account divinely revealed truth, which more powerfully and clearly presents certain moral principles and conclusions: “In the formation of conscience, the Word of God is the light for our path.”¹⁴

The Role of Prudence in Conscience

The cardinal virtue of prudence plays an essential role in the act of conscience. Universal truth is not a sufficient principle for determining right action in the particular. A further principle that bridges the gap between the universal and the particular is necessary, and this principle is the virtue of prudence.¹⁵ Prudence is right reason about things to be done. Therefore, prudence is in the practical intellect as a subject but has the particular doable thing as the term of its action.

extinguished in those not having the use of free will, nor some use of reason, because of an impediment due to an injury to the bodily organs from which our reason needs assistance. In the second way on account of the fact that the act of *synderesis* is deflected to its contrary. And in this way it is impossible that *synderesis* be extinguished in its universal judgment. However, it is extinguished in particular doable things whenever there is sin in choosing. For the force of concupiscence or of another passion so absorbs the reason that, in choosing, the universal judgment of *synderesis* is not applied to the particular act. But this is not to extinguish *synderesis* simply speaking, but only in some respect” (*De veritate*, q. 16, a. 3, corp.).

¹³ *De veritate*, q. 16, a. 2, ad 1.

¹⁴ CCC, §1785.

¹⁵ *In VI eth.*, lec. 2, no. 9: “The practical intellect has its beginning in the consideration of the universal, and according to this it is the same in subject with the speculative intellect. But its consideration is terminated in the particular doable thing.”

As such, the virtue of prudence perfects the particular reason¹⁶ so that it rightly judges singular practicable intentions.¹⁷ This means that not only the intellect is engaged in a prudent act, but also sense knowledge and sense appetite, which help determine what is to be done in the particular circumstances of an act. And so, two things are necessary for a prudent act: practical truth and rectified appetite.¹⁸ If either one is missing, prudence is lacking. For example, in giving a thirsty man a glass of water, it is not enough that you do the deed in conformity with the truth about his condition, for if you do it motivated from hatred, hoping he will choke, the act is not virtuous. But neither is right appetite enough. If a parent instructs his children that sex before marriage is good so long as it is safe, even though he undoubtedly cares about his children and desires their good, he has failed in virtue, since the advice he gave to his children was not conformed to the truth about what will make them truly happy. Prudence presupposes the truth of right reason¹⁹ and specifies the action according to right appetite so that both are preserved.

Although they are intimately bound together, the act of prudence is not the same as the act of conscience.²⁰ The act of conscience respects more the cognitive aspect of a moral choice: a bad man can have a correct act of conscience (indeed, this is what accuses him when he sins), but he cannot perform a prudent act. Yet a correct act of conscience is presupposed to a prudent act, as the true is presupposed to the good.

Therefore, prudence should not be understood as a kind of intuition in the particular that may, in the here and now, judge that virtue is contrary to truth, as if sometimes a rectified appetite could

¹⁶ The “particular reason” is another name for the interior sense power known as the cogitative power (see *ST* I, q. 78, a. 4).

¹⁷ *In VI eth.*, lec. 7, no. 21: “Prudence more pertains to this interior sense, through which particular reason is perfected for the sake of rightly estimating about singular intentions of things that can be done.”

¹⁸ Thus Aristotle points out that the good of the practical intellect is truth conformable to a right appetitive faculty (*Nicomachean ethics* 1139a31). See Aquinas, *In VI eth.*, lec. 2, no. 6: “It is necessary that reason be true and the appetite be upright so that the same thing that reason says (i.e., affirms) the appetite will pursue. For it is necessary if there is to be perfection in an act that none of its principles be imperfect.”

¹⁹ *In II eth.*, lec. 7, no. 8: “The entire goodness of moral virtue depends upon the uprightness of the reason.”

²⁰ See Ralph McInerny, “Prudence and Conscience,” *The Thomist* 38, no. 2 (1974): 291–305.

desire something contrary to what reason knows is truly good.²¹ Nor is prudence merely a practical calculation about what will best ensure conformity to a given social group.²² Prudence and reason in accord with the truth are not parallel paths to virtue, each acting independently. Rather, each contributes to the whole truth about the good in coordination. St. Thomas accounts for this by distinguishing the complementary roles that right appetite and right reason play in a prudent act: “The rectitude of the appetite with respect to the end is the measure of truth in practical reason. And according to this, the truth of practical reason is determined according to its agreement with right appetite. But the very truth of practical reason is the rule of the rectitude of the appetite about the means. And, therefore, according to this the appetite is called upright inasmuch as it pursues those things that reason says are true.”²³

In other words, the uprightness of appetite presupposed to a prudent act is a correct estimation and love for the good that truly perfects a man (the end).²⁴ But, when it comes to the means of acquiring happiness, the reason must guide the appetite each step of the way.²⁵ Hence, any account of conscience that purports to permit

²¹ Joseph Pieper comments: “The pre-eminence of prudence means that the realization of the good presupposes knowledge of reality. He alone can do good who knows what things are like and what their situation is” (*Prudence: The First Cardinal Virtue*, trans. Richard and Clara Winston [New York: Pantheon Books, 1969], 25).

²² Joseph Ratzinger describes this erroneous view of conscience as “the faculty which dispenses from truth”: “It thereby becomes the justification for subjectivity, which should not like to have itself called into question. Similarly, it becomes the justification for social conformity. As mediating value between the different subjectivities, social conformity is intended to make living together possible” (*Conscience and Truth*, §1). Later on, he adds: “Conscience cannot be reduced to social advantage, to group consensus or the demands of political and social power” (*ibid.*, §2).

²³ *In VI eth.*, lec. 2, no. 8.

²⁴ See McInerney, “Prudence and Conscience,” 302: “The moral ideal, if it is only known, cannot function as a moral ideal. I need those acquired dispositions of appetite which are called temperance, courage, and justice in order to be related to the moral ideal, the human good, as good, as moral.”

²⁵ See Pieper, *Prudence*, 39–40: “The meaning of the virtue of prudence, however, is primarily this: that not only the end of human action, but also the means for its realization shall be in keeping with the truth of real things. This in turn necessitates that the egocentric ‘interests’ of man are silenced in order that he may perceive the truth of real things, and so that reality itself may guide him to the proper means of realizing his goal.”

action contrary to the truth about what is good is a false understanding of conscience: conscience means “with knowledge,” and so it is not compatible with ignorance or error.²⁶

The Difficulty We Are Trying to Resolve

Now that we have examined the nature of conscience and certain properties flowing from that nature, we can formulate the question we are addressing more distinctly. We are not considering whether there can be error about the first principles of practical reason. Nor are we considering whether the very act of prudence in the particular determines what is to be done independently from truth. Neither of these are possibilities. Instead, we are considering what is the truth about one of the more particular precepts of practical reason that must come into play in the act of conscience. That is, we are considering the truth of one of the “proper and determinate principles” that St. Thomas teaches are necessary middles between the common principles held by *synderesis* and the particular act to be done. The questions about this proper and determinate principle can be formulated as follows. In cases where a public act is to be made and some of the specific truths that bear upon the moral evaluation of an act are not publicly known, should the conscience be informed only by the public knowledge, or also by the private knowledge? Moreover, in such a case, does conscience bind according to the public knowledge or according to the private knowledge? For example, if inadmissible evidence (e.g., evidence obtained through torture or entrapment) is presented to a jury that manifests the guilt of the defendant, should the jury member take that legally inadmissible evidence into account when making a public judgment about the guilt or innocence of the defendant?

²⁶ This is not to say that any speculative error whatsoever is incompatible with an upright conscience. Error about a universal in moral matters does result in an erroneous conscience, but error about a singular thing, so long as it is not due to negligence, may well be compatible with an upright conscience. Charles De Koninck makes this point: “Practical truth is quite compatible not only with a great deal of speculative ignorance, but even with a speculative error. If you gave a man dying of thirst a glass of water and it turned out to be poison, you would be speculatively in error, since you thought it was plain water and it was not. Yet under the circumstances you may have performed an act of mercy. This does not mean that knowledge is irrelevant—that it may be safely neglected; it means merely that knowledge *alone* is not the reason why an action is good” (“The Moral Responsibilities of the Scientist,” *Laval Theologique et Philosophique* 6, no. 2 [1950]: 354 [emphasis original]).

There seem to be reasons to answer these questions both affirmatively and negatively. For example, it seems that the judgment of conscience about public acts should take into account privately known truths as well. For, not to take into account a known truth (whether it is privately known or not) seems to violate our conscience, since one should not pretend not to know what he does know. Moreover, the purpose of conscience is to conform human actions to the truth, and the more truth that is taken into account, the better will the judgment be.²⁷ Error and ignorance are never causes of good actions, as such. Again, it seems that the judgment of conscience about public acts should take into account privately known truths for another reason: namely, it is purely incidental to the moral evaluation of someone's act that others happen to be ignorant of those truths by which he informs his conscience. Why should one person's ignorance prevent another person from acting in conformity with the truth he knows?

On the other hand, it seems that great harm can come to the community if public actions are based upon merely private knowledge. For example, if all the publicly available evidence makes it reasonable to conclude that someone is innocent but that person is condemned anyway, the effect on the public will be a sense that injustice has been committed. This destroys the community's confidence in those who ought to guarantee public justice and harms the common good. Moreover, the position that all private knowledge relevant to a case must be revealed in a public proceeding implies that those under judgment ought to incriminate themselves or be

²⁷ This view has often been argued in matters of jurisprudence, especially as relating to the doctrine of privileged information or when relevant evidence can be judged inadmissible. For example, Jeremy Bentham, an early philosopher of jurisprudence wrote: "Let the law adviser say every thing he has heard, every thing he can have heard from his client, the client cannot have anything to fear from it" (*Rationale of Judicial Evidence*, ed. John Stuart Mill [London: Hunt and Clarke, 1827], no. 301). An echo of this is found in an article by Judge Marvin Frankel: "Counsel should be under a duty in civil litigation to disclose all material evidence favorable to the other side. This requirement should not be obstructed or limited by either the professional rule protecting client confidences or the attorney-client privilege. I make this proposal in an effort to support and implement the broader thesis that we lawyers should be pursuing the truth more than we do—and concealing it less than we do" ("The Search for Truth Continued: More Disclosure, Less Privilege," *University of Colorado Law Review* 51 [1982]: 51–52). The U.S. Supreme Court expressed this principle succinctly: "The public . . . has a right to every man's evidence" (*United States v. Bryan*, 339 U.S. 323, 331 [1950], cited in *Trammel v. United States*, 445 U.S. 40, 50 [1980]).

incriminated by family members, and so on, which seems to violate other moral principles.²⁸ Therefore, there seems to be a knot that must be untied in order to determine whether or not the judgment of conscience based upon public knowledge must be followed instead of the judgment of conscience based upon private knowledge.

II: Distinguishing and Ordering the Common Good and the Private Good

Since an important reason for not basing public actions upon private knowledge is the possible harm that might come to the community, we must first understand the relationship between the common good and the private good in order to determine whether or not private knowledge must be taken into account in judgments of conscience about public acts.

Common Good versus Private Good

Since the word “common” and the word “good” are both analogously used terms, the verbal expression “common good” is susceptible to a plurality of meanings.²⁹ The common good as it is taken here is called common because it is able to be shared by many persons at the same time without being diminished.³⁰ For example, peace in the social

²⁸ For example, the Supreme Court of the United States justified the right not to self-incriminate on account of the “respect for the inviolability of the human personality” (*Murphy vs. Waterfront Commission*, 378 U.S. 52, 55 [1964]). David W. Louisell argues for maintaining relevant information confidential based upon the need to preserve greater goods: “There are things even more important to human liberty than accurate adjudication. One of them is the right to be left by the state unmolested in certain human relations” (“Confidentiality, Conformity and Confusion: Privileges in Federal Court Today,” *Tulane Law Review* 31 [1956]: 110). Daniel Northrup also enunciates a similar position: “A fundamental principle of our legal system—that in the pursuit of truth and justice, all evidence should be discoverable—is forsaken for other important social goals” (“The Attorney-Client Privilege,” *Fordham Law Review* 78, no. 3 [2009]: 1484). This position is also assumed in the United States Federal Rules of Evidence, Rule 403.

²⁹ See Gregory Froelich, “The Equivocal Status of *Bonum Commune*,” *The New Scholasticism* 63 (Winter 1989): 38–57, especially footnotes 14 and 15. For a survey of a number of the most significant usages of the expression “common good,” see Sebastian Walshe, *The Primacy of the Common Good as the Root of Personal Dignity in the Doctrine of St. Thomas Aquinas* (Rome: Pontifical University of St. Thomas, 2006), 214–48.

³⁰ In a secondary or imperfect sense, the common good can be defined as a good that is able to be shared by many but either (1) not at the same time or (2)

order is a common good for each of the persons in that society and truth is a good common to those who acquire it but neither peace nor truth is diminished when more persons partake of it. God is also a common good in this sense: he can be known and loved by many at the same time without being diminished.³¹

In contrast to a common good is a private good: a good that can belong to only one individual at a time. Bodily goods are of this sort: if I am wearing my socks, you cannot wear them. If I am eating this piece of pizza, you cannot eat it. Private goods, as opposed to common goods, have a limited goodness that is exhausted by a single individual or entity.

While private goods are wholly exhausted by an individual, common goods are not, since their goodness is more diffusive and abundant. A common good penetrates more profoundly into the being of the single person than does his private good: "The common good differs from the singular good by this very universality. It has the notion of superabundance and it is eminently diffusive of itself insofar as it is more communicable: it extends itself to the singular more than the singular good; it is the greater good of the singular."³²

The common good as we have defined it here is not merely an aggregate or sum of private goods (as the common wealth of a household is the sum of the wealth of the individual members). If it were, it would still be essentially a private good, since it could not be shared without being diminished. Nor is it a good belonging only to the

at the same time but not without diminishing. A common reservoir of water can be shared by many at the same time, but not without being diminished. The part of the highway I am using right now can be shared by many cars, but not at the same time. However, the sense of common good I am primarily investigating here is a common good in the perfect sense.

³¹ It should be appreciated that the good of a person can be understood either as a perfection inhering in the person itself or as an object that stands to the person as an end extrinsic to the person. Examples of the former are health, joy, the act of understanding some truth, and so on. Examples of the latter are civic peace, the order of the universe, truth, God, and so forth. When we speak of the common good in this article, we are referring to a good of the latter sort, namely, a good that, though extrinsic to the person, is able to be shared by the person as an object: it is said to be a good as something perfective of another in the manner of an end (*per modum finis*). Thus, a common good is able to perfect the person as an end, or to use traditional vocabulary, as a final cause.

³² Charles De Koninck, *De la Primauté du Bien Commun*, trans. *The Aquinas Review* 4, no. 1 (1997): 16.

whole, not to any of the individual persons within that whole. The common good is not merely the good of an impersonal group of individuals without being the good of the members of that group. Such a good would be an alien good, not properly one's own good. This would be akin to the communist notion of common good, the good of a whole machine in which each part is merely a cog or tool for the good of the impersonal whole but does not truly enjoy this good as their proper good. A common good is truly your good. When a number of students together learn some truth, the truth is not possessed by "the class" as if it did not belong to any of the individual students, only to the whole class. In fact, in such a case, it belongs to the class only in virtue of belonging to each of the students.³³ So, a truly common good is not opposed to one's proper good. Rather, it is opposed to one's private good.³⁴

Finally, common goods are goods that, in some sense, causally preexist the persons for whom they are goods. A common good draws the persons whose good it is into its own perfection. Consequently, while a common good is a good *for* each individual person, it is not correct to say that it is a good *for the sake of* each individual person, as if the common good were ordained to and subordinated to each person as to an end. On the contrary, when a good is common in the sense we have outlined above, it is the individual persons who are ordained to the common good as to their end and perfection.

³³ Sometimes it is true that the common good more properly belongs to the whole than to any individual member. For example, victory belongs more properly to the team than to any one member of the team. But each and every member of the team is truly victorious: victory belongs to each of them as their good too.

³⁴ The "proper good" and the "private good" are similar in many ways, and since similarity is often a cause of confusion, people often confuse a "proper good" with a "private good." Both are goods that can belong to an individual person. Yet a "private good" belongs *only* to one person and is incapable of belonging to anyone else at the same time. In contrast, a "proper good" can belong fully to multiple persons at the same time. Some examples may be helpful to manifest the difference between "proper good" and "private good." A child is the proper good of its parents but is not the private good of either one: for the child belongs to both parents, not only to one. Peace in a society is a good belonging to each person in that society, so it is a proper good of each person in that society. But it is not a private good of any of them, since it does not belong exclusively to one of them. Truth is the proper good of someone who knows that truth. Yet it is not their private good, since it can easily belong to others too.

The Order between an Individual's Common Good and Private Good

In virtue of its very superabundance and communicability, a truly common good is a greater good for each person who partakes of it than are the singular goods that belong to the individuals as such:

The common good is not better insofar as it comprehends the singular good of all the singulars; [if that were so,] it would not have the unity of the common good that is from the fact that the common good is universal according to a certain manner; but it would be merely a collection; it would be only materially better [than the singular good]. . . . When we distinguish the common good from the particular good, we do not intend to say by this that it is not the good of the particulars: if it were not the good of the particulars, then it would not be truly common.³⁵

When a common good and a private good of an individual come into conflict, the common good should be chosen instead of the private good. This is an obvious fact of our moral experience, as several examples will illustrate. A man or woman knows that it is better for them to sacrifice their private good of being free to do what they want on their own in order to live together in a loving family in which everyone lives and does things together. Again, it is better for people to sometimes make public promises that they are expected to keep so that the members of that society can share in common the good of a sense of security, a sense that they will be able to count on one another. For example, it is good for people to promise to remain in a marriage and that society expects this of them even if it means great personal sacrifice at times so that the greater good of stable families can exist. This societal expectation that couples remain married acts as an external assistance for struggling marriages and their children, much as a splint or cast externally assists healing of a broken bone. A musician knows that it is better to conform himself to the notes of a given piece and to the playing style of the conductor and orchestra than to play his own notes in his own style, and otherwise, there could be no beautiful orchestral music. A citizen knows that it is better to live under laws that sometimes restrict individual freedoms for the sake of living in a community where common action leads to

³⁵ De Koninck, *De la Primauté du Bien Commun*, 16.

the possibility of human perfection. Again, if someone has a serious, communicable disease, he should choose to quarantine himself and give up his freedom rather than expose others to the disease. Even nature teaches the preferability of the common good over the private good: the hand instinctively sacrifices itself to defend the head from a blow, and animals sacrifice their own lives to protect their young. This principle even extends to the good of one's own life. If you must choose between risking your life to defend your country and saving your own life, you should prefer the common good of your country to even your own life. This is a common theme in the writings of St. Thomas: "The common good of many is more divine than the good of one. Therefore, for the sake of the common good of the republic, whether spiritual or temporal, it is virtuous that someone even expose his own life to danger."³⁶

And, just as a common good is to be preferred to a private good, similarly, a more universal common good is to be preferred to a less universal common good. For example, the common good of one's country ought to be preferred to the common good of one's family. And the common good of the whole human race is to be preferred to the common good of one nation.

However, it is important to notice that the principle that the common good is preferable to the private good is applicable only when the goods are of the same order:

St. Thomas argues for the primacy of the speculative order based upon the excelling dignity of the object attained by the act of speculation. This latter case is not a denial of the primacy of the common good but rather a denial that the primacy of the common good extends outside a given order of goods. This is because the good of the whole exceeds the good of the parts precisely insofar as a part is considered as a part of that whole and not some other. That is to say, so long as the goods in question belong to the same order and depend from the same principle, the dictum holds true, but when goods from independent orders are compared, there is no reason why a private good from a higher order could not exceed a common good from a lower order.³⁷

³⁶ ST II-II, q. 31, a. 3, ad 2.

³⁷ Sebastian Walshe, *Primacy of the Common Good*, 94–95.

For example, the grace that is a perfection in the soul, and hence a private good, is greater than the natural common good of a family or country. This is because grace belongs to the supernatural order while the common good of a country or family belong to the natural order. But, if the grace that is a private good in the soul be compared to the common good in the supernatural order, the common good still holds precedence. The famous passage of St. Paul bears witness to this: “I speak the truth in Christ, I do not lie; my conscience joins with the Holy Spirit in bearing me witness that I have great sorrow and constant anguish in my heart. For I could wish that I myself were accursed and separated from Christ for the sake of my brothers, my kin according to the flesh.”³⁸

St. Paul, speaking in the Holy Spirit, asserts that he would prefer, if possible, the loss of the private good of grace in his soul so that the common, supernatural good of his brethren might be attained. Therefore, a common good is better and is to be preferred to a private good of the same order, but not necessarily of different orders. Many of the objections to the primacy of the common good are due to a confusion between different orders of goods.

III: Exercising Conscience about Public Acts Pertains to the Common Good

A Public Agent Looks to the Common Good

Some actions bear only upon the good of the individual agent (e.g., a private act of temperance in eating), but some actions bear *per se* upon the good of the community. Actions of the latter sort happen when: (1) the agent acts on behalf of the community, as a public representative (e.g., a judge, a police officer, etc.), or (2) when an agent acts formally as a member of the community (e.g., as a citizen observing the laws of the community).

Whenever a person acts as a representative of the community or as a member of the community, his act is formally a public act³⁹ directed to the common good of the community.⁴⁰ For example,

³⁸ Rom 9:1–3 (NAB).

³⁹ By a “public act” I mean one that is, in itself, ordered to being known by the community, regardless of whether every member of the community actually knows of the act. Thus, a marriage vow made before a single witness representing the community would be considered a public act.

⁴⁰ See Aquinas, *Super I Tim* 5, lec. 3.: “Because the judge bears the public person, therefore, he ought to intend the common good.”

when an elected representative enforces a law, he does so not for his private advantage (e.g., to get revenge on an enemy or increase his personal wealth), but for the common good, even if this turns out to his private disadvantage. Similarly, when one obeys the laws as a member of the community (e.g., by paying taxes), he does so looking not to his private interests, but to the common welfare. The reason for this is that every agent acts for an end. But the end of each agent is determined by the nature of the agent.⁴¹ For example, rational agents act for ends known by reason while irrational agents act for an end unknown to them. Animals act for ends known by sensation, while other living beings act for ends not known by sensation. For, the good of each thing is that which is perfective of its nature. But, when one acts as a public agent, the end he acts for is a public end (i.e., a common good), since a common good is perfective of the whole community. And, whether an agent acts on behalf of the whole community as a representative of the community or as a member of the community, in either case, the good perfective of that agent is the good perfective of the community. For, the good of the whole is the good of the part as well, just as the life that is a good for the whole body is also a good for every part of the body.

*An Agent Acting on Behalf of a Community
Acts from Public Knowledge*

Not only does one who acts as a representative of a community aim for a good common to the community; he also acts from knowledge common to the community. For, free and rational agents act in virtue of knowledge that they possess. Otherwise, their actions would not be free. But if an agent acts as representative of some whole, its principle of action must be a principle common to the whole. Similarly, since a free agent must act from knowledge, in order for a free agent to act on behalf of a community, the principle of his motion must be some knowledge common to the community. For example, in enforcing a law, the law enforced must be promulgated and known by the public.⁴²

⁴¹ See Aquinas, *In II phys.*, lec.10, no. 15: "The action of an agent tends to something determinate, just as it proceeds from a determinate beginning. For every agent does what is befitting to itself."

⁴² See *ST I*, q. 90, a. 4, corp.: "Law is imposed upon others as a rule and measure. But a rule and measure is imposed by the fact that it is applied to those who are ruled and measured. Hence, in order that the law acquire the power of obliging, which is a property of law, it is necessary that it be applied to men who ought to be ruled according to it. Moreover, such an application is made

Private knowledge is not shared by the community, and therefore, it cannot be a principle of an act formally done on behalf of the community. Insofar as one acts from private knowledge, he does not act as a representative of the community, but rather as a private agent. Thus, it belongs to the very definition of a public agent that such an agent act in virtue of public knowledge.⁴³ In such a case, it is not enough to choose the common good as it is knowable by someone's private knowledge.

Even when a member of the community is not acting as a representative of the whole community, but simply as a part of that community, he must in some way act from public knowledge. For, in order to act in unison with the other members, there must be some common ordering principle known to all, such as public laws. Certainly, an action for the sake of the common good based upon one's private knowledge is possible. For example, if a man is the sole witness to a theft and, for the sake of the common good, he stops the thief and returns the stolen goods, then he can be said to act as a member of the community for the sake of the common good. Nevertheless, he acts precisely as member of the community due to the fact that he follows a law that is common to the community (i.e., "do not steal"). And therefore, at least some principle from which he acts must be common to the community in order for him to act formally as a member of the community.

Exercising Conscience in Public Matters

From the above, it follows that, when conscience is exercised in the context of a public act, this implies that the knowledge one uses in making a judgment of conscience is public knowledge. This means that, when a person acting as a public agent makes a judgment of conscience, the knowledge that is applied to the thing to be done or avoided is public knowledge. If a person were to use private knowledge in making a judgment of conscience, he would, by that very fact, be no longer acting as a public agent. Thus, he would no longer be acting as a

through the fact that it is brought into the knowledge of [those to be ruled] from the very promulgation. Hence, promulgation is necessary in order that the law have its power."

⁴³ Even in the case where information is not shared with the general public (such as information relating to security), the information must still be communicated to a body representing the general public (such as a security council). Such measures are taken primarily so that persons outside the community cannot use the information to harm the community.

representative or member of a community, but only as a private person.

However, there is a difference between one who acts as a representative of the community and one who acts as a member of the community. The one who acts as a representative of the community is making a judgment about how the whole community is to act. Therefore, his power to act is determined by the conditions under which he represents the community. For example, the executive powers of a president are determined by the laws that define his authority. On the other hand, the one who acts as a member of a community is not determining how the community as a whole is to act, but only how he is to act in unison with the community. Therefore, such a one acts on his own authority, but in doing so, he must seek the common good as it is manifested by public knowledge.

IV: One Who Acts as a Representative of the Community in Public Acts Should Choose to Prefer the Common Good of the Community

Whenever a person acts as a representative of the community, he should exercise his conscience so that it seeks first the good of the community. The reason for this is that conscience is the application of the rule of right moral action to the particular act to be done. And, in the case of an act that bears *per se* upon the good of the community, it is a universal rule of right moral action that one's common good is to be chosen in preference to one's private good (see **II** above). As a consequence, when an individual acts as a representative of a community, if a choice is between a common good and a private good of the same order to which it is opposed, then conscience binds one to the common good, not the private good. If one who has care of the community were to order his public actions toward his private good to the exclusion of the common good of the community, he would make the community an instrument of his private good.

Take the following example: a governor is bound by his office to defend a law in the event that it is challenged in court, yet he personally disagrees with the law because he or a member of his family would be harmed by it. If he refuses to defend the law before the court, he would make the law and the common good subject to his personal appetite or the private good of his family. But consider a more difficult case, for example, when a public representative is not faced with choosing between his own private good and the common good of the community he represents, but rather between meeting the demands of the common good and an objective injustice

to a member or members of the community. St. Thomas considers just such a case: “The name ‘conscience’ implies the application of knowledge to something doable, as was held in the first part. But to act against conscience is a sin. Therefore, a judge sins if he issues a sentence, according to the allegations, against the truth of conscience which he possesses.”⁴⁴

To resolve this difficulty, it is not enough to simply refer to the primacy of the common good. One must also distinguish between public and private knowledge as principles of authority: “A man in those things that pertain to his private person ought to inform his conscience from his private knowledge. But in those things that pertain to public power, he ought to inform his conscience according to those things that are able to be known in public judgment.”⁴⁵ If a public representative were to enforce laws or render judgments based upon how his conscience applies his private knowledge to a case, this implies that he would be acting from his own authority when judging, rather than as a representative of the people. But it is precisely this kind of authority that he does not possess. To claim such authority for himself would be a usurpation, a form of tyranny.

Yet how is this conclusion to be reconciled with the fact that the purpose of conscience is to conform human actions to the truth? It seems that error or ignorance is never the cause of good actions as such. Therefore, the more truth that is taken into account, the better will the judgment be. Besides, it seems purely incidental to the moral evaluation of someone’s act that others happen to be ignorant of those truths by which he informs his conscience. Why should someone else’s ignorance prevent someone from acting in conformity with the truth he knows?

St. Thomas considers questions similar to these:

⁴⁴ *ST* II-II, q. 67, a. 2, obj. 4.

⁴⁵ *ST* II-II, q. 67, a. 2, ad 4. St. Thomas is so insistent that this is necessary for the common good that he says that, even if a judge has to pronounce a death sentence on a man he privately knows is innocent, he should do so if the public evidence for his guilt is sufficient and there is no way to publicly manifest his innocence or send the judgment to a higher authority (See *ST* II-II, q. 64, a. 6, ad 3). Legal scholars in modern times have recognized and expressed the same timeless insight of Aquinas, though perhaps with less precision. For example, substantially the same reality is expressed in the pithy and paradoxical statement that “trials search for truth by excluding certain truths” (Andrew J. Wistrich, Chris Guthrie, and Jeffrey J. Rachlinski, “Can Judges Ignore Inadmissible Information? The Difficulty of Deliberately Disregarding,” *University of Pennsylvania Law Review* 153 [2005]: 1252).

In judging, a man ought to be conformed to the divine judgment, since judgment is God's according to Deuteronomy (1:17). But the judgment of God is according to the truth, as is said in Romans (2:2); and in Isaiah (11:3–4), it is said of Christ that: "He will not judge according to the vision of the eyes, nor according to the hearing of the ears will he argue, but he will judge the poor in justice, and will argue in equity on behalf of the meek of the earth." Therefore, a judge ought not to pronounce a sentence according to those things that are proved before him contrary to the truth that he himself knows.⁴⁶

In response, he points out that the public representative does not exercise his own authority:

"It befits God to judge according to his own authority. And, therefore, in judging, he is informed according to the truth that he himself knows, not according to that which is accepted by others. And the same reason holds for Christ, who is true God and true man. But other judges do not judge according to their own authority. And therefore, they are not similar cases."⁴⁷

The authority to enforce a law or render a judgment does not belong to the representative of the community as his own authority or as a private individual with private knowledge, but rather insofar as he bears the authority of the community. So, he must be conformed to the truth accepted by the community based upon evidence known to the community. Obviously, if it is possible to make his private knowledge available as public evidence, he should do so. If this is done, then he can make a public decision based upon this publicly available evidence. But sometimes such publication of private knowledge is not possible (e.g., if doing so would result in a greater injustice or harm the common good). Of course, in certain cases, a representative of a community may have recourse to resigning his office to meet the demands of his conscience, for in this way, he ceases to act as a public agent.

However, another objection remains: it seems that pronouncing a sentence that is contrary to the truth is not acting for the common good, but rather violates a common good of a higher order. For example, following a civil law in this case seems to conflict with the demands of conscience to follow the divine law that the innocent

⁴⁶ ST II-II, q. 67, a. 2, obj. 2.

⁴⁷ ST II-II, q. 67, a. 2, ad 2.

should not be punished. Recall that the principle about the common good states that, if a choice is between a common good and a private good *of the same order* to which it is opposed, then conscience binds one to the common good.

It is clear that such a conflict can take place. For example, if a head of state is instructed by law to initiate a nuclear war that would destroy the human race, it is clear that he cannot do so because he would act contrary to a higher common good than the good of the state—namely, the good of the whole human race. But the case of an innocent person being punished is not a conflict between the civil law and the divine law, nor between the political common good and the divine common good. For, both natural and divine law teach that just civil law ought to be followed, that judgments ought to be made based upon the most certain evidence available, and that one should not attempt to exercise authority he does not possess. In fact, there are two distinct conflicts: one for the public representative and another for the innocent person.

The conflict with which the public representative is faced is this: should I usurp an authority I do not have, or should I condemn one I know to be innocent? It seems as though he can only choose evil. But this is only an apparent conflict: it is a case of the fallacy of the accident,⁴⁸ since one of the evils is only accidentally connected to the choice.⁴⁹ If he chooses to usurp authority, then he himself is the cause

⁴⁸ This fallacy was identified by ancient Greeks as one of the sources of error in reasoning. Aristotle mentions it in his book on *Sophistic Refutations* (166b28–36). A clear example will help to illustrate this fallacy. If someone promises to feed my starving children on the condition that I kidnap someone else's child, then I should choose not to kidnap the child. For, kidnapping the child would not be the true cause of my children being saved: it would be accidental to their salvation. Rather, the will of the person who has the means to feed my children is the cause, and he may or may not choose to feed my children if I kidnap someone else's child. So, ultimately, choosing what is accidentally connected to a good means choosing something that, in itself, has no reason to be connected to that good, which is another way of saying that there is not a reason for choosing it, but only what seems to be a reason. Therefore, someone who chooses what is only accidentally connected to some good is not following reason. In any case, it is good to be aware of this distinction to avoid faulty moral reasoning. But sometimes it can be very difficult. Plato once said that this distinction is so difficult to see that it sometimes deceives even the wise.

⁴⁹ Therefore, not only is it not incidental to the moral evaluation of someone's public act that others happen to be ignorant of those truths by which he

of the evil he has done. Therefore, by doing this, he has committed a moral fault. But, if he passes a sentence punishing the innocent, he is not the true cause of the unjust punishment, but rather some other cause (such as a false witness) is the *per se* cause of the injustice, and therefore he has not committed a moral fault. He is simply passing judgment in the name of the community based upon the evidence before the community. Therefore, it is clear that the public representative ought not to usurp authority he does not possess.

Another conflict different from that faced by the public representative faces the innocent person who is, nevertheless, condemned to punishment. Resolving this conflict is the task of the next part.

V: One Who Acts as a Member of a Community in a Public Act Should Choose to Prefer the Common Good of the Community

For an innocent person subject to a just law erroneously applied, the conflict is between his private good and his common good insofar as he is a member of the society. Arguing against his friend who is trying to persuade him to escape an unjust death sentence, Socrates says:

If the laws and the community of the city came to us when we were about to run away from here, or whatever it should be called, and standing over us were to ask: “Tell me, Socrates, what are you intending to do? By attempting this deed aren’t you planning to do nothing other than to destroy us, the laws, and the civic community, as much as you can? Or does it seem possible to you that any city where the verdicts reached have no force but are made powerless and corrupted by private citizens could continue to exist and not be in ruins?”⁵⁰

If someone decides that his own judgment about his guilt (rather than a public verdict) is to be the determining factor about how he should act or be disciplined, then he must hold this is true for all in

informs his conscience (since the public evidence is essentially connected with a public judgment), but to the contrary, it is incidental to his choice not to usurp authority that he has private knowledge about one upon whom he is passing sentence.

⁵⁰ *Crito* 50a–b, trans. Hugh Tredennick, *The Collected Dialogues of Plato*, ed. Edith Hamilton and Huntington Cairns, Bollinger Series 71 (Princeton, NJ: Princeton University Press, 2009), 35.

the society. Thus, whoever disagrees with a public verdict can do as he wants, and laws will bind only those who agree with them. But very few, if any, will agree with being punished. Such a disposition toward law, that each man is the judge of their application, would certainly destroy the society. And the good of membership in a well-ordered society would be lost not only for Socrates, but for all. Therefore, it is better for Socrates to love the common good of his society and lose his life than to save his own life and lose his love for the common good of his society.

The fact that obeying a just law (even one that is erroneously applied) is choosing one's common good over one's private good indicates not only that public representatives should rely upon public evidence in making decisions in a public act but also that persons who perform a public act as members of a community ought to choose to obey a sentence based upon public evidence.

This same truth is found in divine revelation. The Scriptures give many examples in which someone who is guilty of no fault still chooses to submit himself to a penalty or prescript of law for the sake of the common good. The Lord Jesus submitted himself to both the divine and human law though he was exempt. He submitted himself to the divine law upon coming into the world, as St. Paul teaches (Gal 4:4), and in his death (Phil 2:8). He submitted himself to human law when he accepted the sentence of Pontius Pilate (John 19:11) and chose to pay the temple tax though he was exempt (Matt 17:24–27) to avoid scandal. The Blessed Virgin Mary also submitted herself to the common divine law, though she was exempt (Luke 2:22). St. Paul enjoined the Romans to abstain from eating meat sacrificed to idols to avoid scandal (Rom 14:13–15:1) and had Timothy undergo circumcision for the sake of avoiding scandal (Acts 16:3).

In summary, public action must consider not only the subjective condition of the agent but also the outward and objective conditions of the action. Conscience, therefore, must take both into consideration whenever a public act is performed. And, if the judgment of conscience based upon public knowledge is opposed to the judgment of conscience based upon private knowledge in a public act, then the judgment of conscience based upon public knowledge must be followed instead of the judgment of conscience based upon private knowledge.

**VI: Application to Contemporary Moral Dilemmas,
Especially Questions of Administering and Receiving
Communion When There Is Objective (Manifest) Grave Sin
but Subjective Innocence**

At the beginning of this article, a number of hypothetical cases were raised concerning the potential for conflict in judgments of conscience. At this point, we are in a better position to resolve the difficulties raised by these cases.

Can a lawyer who knows his client is guilty still argue for his innocence before a court? Can a judge or jury member who knows from confidential information or legally inadmissible evidence that someone is innocent pass a guilty sentence because his sentence must be based upon the evidence before the court? Conversely, if they know by inadmissible evidence that someone is guilty can they reach a verdict of innocent? In all these cases, based upon the principles set forth above, it is clear that, in order to respect the judgment of a rightly informed conscience, they ought to act in public according to the publicly available evidence. The lawyer can and should argue for his client's innocence. The judge and jury should reach a verdict on the evidence before the court rather than on private evidence.

Analogous cases take place in the context of internal and external form in ecclesiastical matters. It is well established that the distinction between internal forum (matters known in private) and external forum (matters known in public) is essential for the correct formation of conscience and the application of Church law.⁵¹ St. Thomas applies

⁵¹ This distinction features prominently in the reasoning of St. Thomas. See, for example, *In IV sent.*, d. 18, q. 2, a. 2, corp.: "In the forum of conscience, a cause is treated between man and God; but in the forum of external judgment, a cause is treated between man and man. And therefore, absolution or binding that obligates one man as regards God only pertains to the forum of penance, but that which obligates a man in comparison to other men pertains to the public forum of external judgment." See also *In IV sent.*, d. 28, q. 1, a. 2, corp.: "Concerning matrimony, we are able to speak in two ways: In one way with regard to the forum of conscience, and in this way in the truth of things carnal copulation does not have what is required to complete matrimony (for which a betrothal has preceded with words expressing a future promise to marry) if the interior consent be lacking. For even words expressing present consent do not make a matrimony if the consent of the mind be lacking. In another way, we can speak of matrimony with regard to the judgment of the Church. And since, in external judgment, the judgment is made according to those things that lay in the open forum, since nothing is able to more expressly signify consent than carnal copulation, according to the judgment of the Church,

this distinction when a minister of the Eucharist makes judgments of conscience about giving the Eucharist to a sinner who asks for it:

If a priest knows the sin of someone who is asking for the Eucharist, either through confession or in some other way, a distinction ought to be made. For either the sin is hidden or manifest. If it is hidden, then the one asking either asks in secret or openly (in public). If he asks secretly, then the priest ought to deny him, and admonish him lest he ask [for the Eucharist] in public. But if he asks publicly, then he ought to give it to him. First, because, if he were to punish him publicly for a hidden sin, he would be a revealer of confession or manifestor of crime. Second, because every Christian has the right in receiving the Eucharist unless he lose it by mortal sin. Hence, since, before the Church, he has not lost this right, it is not necessary to deny him before the Church: otherwise, this would give the faculty to evil priests by their own choice to punish with the greatest penalty those whom they will. Third, because of the uncertainty of the state of the one receiving: since the Spirit blows where he will (John 3:8), so that suddenly he is able to be contrite, and to come to the sacrament by divine inspiration. Fourth, because it would be a scandal, if [communion] were to be denied. But if the sin is manifest, [the minister] ought to deny him if he asks either secretly or openly.⁵²

Most pertinent for the purpose of this article is the second reason St. Thomas gives. One who has lost a right to receive the Eucharist before God still retains that right before the Church if his sin is hidden from the public knowledge of the Church. St. Thomas makes this point even more forcefully in an objection and response to the same question: “The lesser of two evils ought to be chosen. But it would be a lesser evil for the sinner if he were to be defamed than if he were to eat the Body of Christ unworthily. Therefore, the priest ought more to deny him [communion] in public, even if his crime should be made known, than to give him [communion].”⁵³ But St. Thomas responds: “According to Innocent III, since no one ought

carnal copulation following a betrothal is judged to make a matrimony, unless some express signs of fraud are apparent.”

⁵² *In IV Sent.*, d. 9, q. 1, a. 5, corp.

⁵³ *In IV Sent.*, d. 9, q. 1, a. 5, obj. 3.

to commit one mortal sin so that his neighbor not commit another [mortal sin], it ought rather be chosen by the priest not to make the sinner known than that he not sin [by unworthy communion]. But the sinner ought rather to choose to be rendered suspect by abstaining than to choose to eat unworthily by communicating.”⁵⁴

The choice that the minister of communion has to make is not a choice for the one who is approaching communion to sin or not sin. It is a choice about *his own actions*, whether he should sin or not sin. And, for him, it is a sin to reveal the hidden sin of another. These same distinctions come into play when the situation is reversed: when someone innocent of sin, but who appears to have sinned gravely in the public knowledge of the Church, approaches a minister for communion. The minister of communion, even if he know through private knowledge that someone who approaches him is innocent, must still take into account the public appearance of grave sin. For, as shown above, in a public act, one who represents the community must act according to public knowledge (**III** above). And in making a judgment of his own conscience in such a matter, he is not making a choice for the one approaching communion, but rather a choice about his own actions (**IV** above).

This is reflected in Canons 915 and 916 of the 1983 Code of Canon Law:

Canon 915: Those who have been excommunicated or interdicted after the imposition or declaration of the penalty and others obstinately persevering in manifest grave sin are not to be admitted to holy communion.

Canon 916: A person who is conscious of grave sin is not to celebrate Mass or receive the Body of the Lord without previous sacramental confession unless there is a grave reason and there is no opportunity to confess; in this case the person is to remember the obligation to make an act of perfect contrition which includes the resolution of confessing as soon as possible.

These canons speak of the separate duties, binding in conscience for each, of the minister of communion and the communicant. The minister of communion cannot accept the responsibility of the conscience of the one who approaches communion, *but neither can*

⁵⁴ *In IV Sent.*, d. 9, q. 1, a. 5, ad 3.

the one who approaches communion accept the responsibility of the conscience of the minister of communion. Each must act in accord with his own conscience. One who believes in good conscience that he has a right to receive communion cannot compel a minister to give him communion contrary to the demands of his conscience, nor can anyone else. These canons are not simply a matter of human laws dispensable by human authority, but rather of divine law:⁵⁵ they instruct the consciences of minister and communicant alike and protect the inviolability of each conscience.

Notice also that the question of the subjective moral culpability of the person is not the determining consideration here. The denial of the sacramental order is made at the objective level, not merely the subjective level. If someone outwardly indicated they intended to persevere in a sinful life, they would not be a candidate for baptism, or even absolution. This is true even if inwardly they intended to repent.⁵⁶ Similarly, a candidate for priestly ordination might inwardly believe in the teachings of the Church but, for whatever reason, insist on using words that outwardly and objectively deny those teachings. This objective denial of the teachings of the Church would be a reason for not admitting such a person to Holy Orders in the Church.⁵⁷

Along the same lines, Gerhard Cardinal Müller also says that the attempt to discern between those who are subjectively guilty

⁵⁵ “The prohibition found in the cited canon, by its nature, is derived from divine law and transcends the domain of positive ecclesiastical laws: the latter cannot introduce legislative changes which would oppose the doctrine of the Church. The scriptural text on which the ecclesial tradition has always relied is that of St. Paul: ‘This means that whoever eats the bread or drinks the cup of the Lord unworthily sins against the body and blood of the Lord. A man should examine himself first only then should he eat of the bread and drink of the cup. He who eats and drinks without recognizing the body eats and drinks a judgment on himself’” (Pontifical Council for Legislative Texts, Declaration Concerning the Admission to Holy Communion of Faithful Who Are Divorced and Remarried, June 24, 2000, in *Communicantes* 32 [2000]: 159–62).

⁵⁶ In a similar context, St. Thomas teaches: “In the sacramental signs there ought not to be some falsity. But a sign is false if it does not correspond to the thing signified. But from the fact that someone presents himself to be washed through Baptism, it is signified that he has disposed himself for interior cleansing, which does not happen to one who has the intention of persisting in sin” (*ST* III, q. 68, a. 4, corp.).

⁵⁷ Indeed, it would be a reason for not admitting someone to visible membership in the Church in the case of a catechumen.

and those who are not for purposes of receiving communion is not possible: “This discernment would ultimately be impossible because only God examines hearts. Moreover, the economy of the Sacraments is an economy of visible signs, not of internal dispositions or subjective culpability. A privatization of the Sacramental economy would certainly not be Catholic. This is not a matter of discerning a mere interior disposition, but rather, as St. Paul says, of ‘discerning the body’ (cf. *Amoris Laetitia* 185–186), the concrete visible relations in which we live.”⁵⁸ The Church is not merely an invisible union of souls known to God alone, but a visible sign: a sacrament. A sacrament is, by its very nature, a visible sign, and it is this visible and public dimension of the Church that demands that the public celebration of the sacraments conform to their outward significance.

This teaching, valid for all the sacraments, has particular application to the sacrament of holy Matrimony. A 1994 instruction by the Congregation for the Doctrine of the Faith taught:

Marriage, in fact, because it is both the image of the spousal relationship between Christ and His Church as well as the fundamental core and an important factor in the life of civil society, is essentially a public reality. . . . Thus, the judgment of conscience of one’s own marital situation does not regard only the immediate relationship between man and God, as if one could prescind from the Church’s mediation, that also includes the canonical laws binding in conscience. Not to recognize this essential aspect would mean in fact to deny that marriage is a reality of the Church, that is to say, a sacrament.⁵⁹

Thus, the minister of communion cannot reduce the sacramental order to a nonsacramental order: an invisible order of the relationship of souls to God. To attempt to do so would ultimately involve

⁵⁸ “What Can We Expect from the Family? A Culture of Hope for the Family Starting from *Amoris Laetitia*,” speech at the Metropolitan Seminary of Oviedo, Spain, accessed October 27, 2017, <http://chiesa.espresso.repubblica.it/articolo/1351295bdc4.html?eng=y>.

⁵⁹ Congregation for the Doctrine of the Faith, “Letter to the Bishops of the Catholic Church concerning the Reception of Holy Communion by the Divorced and Remarried Members of the Faithful,” September 14, 1994, §§7–8, accessed October 27, 2017, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_14091994_rec-holy-comm-by-divorced_en.html.

the usurpation of the authority of God, who alone probes the mind and tests the heart. The duty of the minister of the sacraments is to act in conformance with the visible sacramental order, making public judgments about objective realities, not states of conscience of others, for to do so would be to violate his own conscience. The minister of communion is not making a judgment about the worthiness of the one approaching communion *to receive*: that evaluation belongs to the conscience of the communicant alone. Rather, the minister of communion is making a judgment, on behalf of the community whose representative he is, about the fittingness *to administer* communion.

The communicant, on the other hand, must attend to his own duties of conscience. Even in the case where one is convinced and certain of his own innocence in the internal forum, assisted by the judgment of a confessor, he must consider first and foremost the will of God and the common good before his private good (V above). It sometimes happens that, without their fault, God permits his faithful servants to be deprived of certain goods for which they might otherwise have a just claim. For example, a man or woman may be abandoned by their spouse without a just reason, and so might be unjustly deprived of the comforts and use of marriage. Their vow and the common good demands that such persons refrain from seeking the goods of marriage from another. And, while this entails a great sacrifice, it would entail the loss of a greater good if they were to seek remarriage. For, the common good is truly *their* personal good, not an alien good, and it is an even greater good than their private good.⁶⁰ For example, if abandonment by a spouse were accepted as a sufficient reason to remarry, this would require that marriage vows are merely conditional: “If you are faithful to me, I will be faithful to you.” Such a conditional love would destroy the true meaning of marital love and reduce every marriage to a kind of contract, rather than a communion established by a covenant. It is true that unconditional love expressed by unconditioned vows involves a risk, but it

⁶⁰ See above on the preferability of the common good over the private good. As stated above in part V, the Scriptures often testify to this truth and give many examples in which someone who is guilty of no fault still chooses to submit himself to a penalty or prescript of law for the sake of the common good. Even reason without the light of faith can see this truth, as Socrates willingly accepted the unjust sentence of death for the sake of respecting the laws of the state (*Crito* 50a–b). All of these sacrificed their own private privileges for the sake of a higher good.

is a greater good for everyone that such a love is what is expected in every sacramental marriage. Similarly, it may happen that a faithful Catholic is deprived of the Eucharist through no fault of their own. In such cases, they should not seek to receive the Eucharist by illicit means.⁶¹ Rather, they should offer this as a pleasing sacrifice to God for the sake of the common good that they still share with the whole Church. Indeed a spiritual communion made in such circumstances can be even more meritorious than a sacramental communion, since God sees not merely the outward reception of a sacrament but also the great desire of the heart both for the Eucharist and to do God's will as manifested by the objective circumstances of one's life. Indeed, at every Mass, immediately before the distribution of communion, we use the words of the centurion to profess our faith in the power of a spiritual communion: "Lord, I am not worthy that you should enter under my roof, but only say the word and my soul shall be healed." Just as the servant of the centurion was healed without Jesus's physical presence, so too the soul can be healed without Jesus coming sacramentally. Pope Emeritus Benedict XVI has spoken beautifully and compassionately of this in his book *Behold the Pierced One*,⁶² written while he was a cardinal.

In a passage of Scripture particularly apt to the question at hand, the second book of Maccabees records that Eleazar was offered the opportunity to eat meat that was according to the law but, to others, appeared contrary to the law:

Those in charge of that unlawful ritual meal took the man aside privately, because of their long acquaintance with him, and urged him to bring meat of his own providing, such as he could legitimately eat, and to pretend to be eating some of the meat of the sacrifice prescribed by the king; in this way he would escape the death penalty, and be treated kindly because of their old friendship with him. But he made up his mind in a noble manner, worthy of his years, the dignity of his advanced

⁶¹ It should be appreciated here that this judgment pertains to the question of public reception of the sacraments. I do not intend to settle the question of whether someone who is certain of their innocence in the internal forum but has an objectively imputable grave fault can receive the sacraments privately. Nor have I addressed the question of whether it is ever truly possible to receive a sacrament privately (since there seems to be a public dimension to every sacrament).

⁶² Joseph Ratzinger, *Behold the Pierced One* (San Francisco: Ignatius Press, 1984).

age, the merited distinction of his gray hair, and of the admirable life he had lived from childhood; and so he declared that above all he would be loyal to the holy laws given by God. He told them to send him at once to the abode of the dead, explaining: "At our age it would be unbecoming to make such a pretense; many young men would think the ninety-year-old Eleazar had gone over to an alien religion. Should I thus dissimulate for the sake of a brief moment of life, they would be led astray by me."⁶³

Subjectively, in his conscience, Eleazar knew that the meat could be eaten without contravening God's law, but because this was not public knowledge, his conscience instructed him that a higher law was to be followed for the sake of the common good.⁶⁴ Likewise, both the one administering communion and the one receiving communion must look first to this higher common good.

Conclusion

The difficulty in resolving moral dilemmas often comes about due to the multitude of principles involved in particular human actions. But this difficulty should not beget despair of coming to moral certitude about what is truly good. Such despair would have the same practical

⁶³ 2 Macc 6:21–25 (NAB).

⁶⁴ Cf. Rom 14:12–15:2: "So (then) each of us shall give an account of himself (to God). Then let us no longer judge one another, but rather resolve never to put a stumbling block or hindrance in the way of a brother. I know and am convinced in the Lord Jesus that nothing is unclean in itself; still, it is unclean for someone who thinks it unclean. If your brother is being hurt by what you eat, your conduct is no longer in accord with love. Do not because of your food destroy him for whom Christ died. So do not let your good be reviled. For the kingdom of God is not a matter of food and drink, but of righteousness, peace, and joy in the holy Spirit; whoever serves Christ in this way is pleasing to God and approved by others. Let us then pursue what leads to peace and to building up one another. For the sake of food, do not destroy the work of God. Everything is indeed clean, but it is wrong for anyone to become a stumbling block by eating; it is good not to eat meat or drink wine or do anything that causes your brother to stumble. Keep the faith (that) you have to yourself in the presence of God; blessed is the one who does not condemn himself for what he approves. But whoever has doubts is condemned if he eats, because this is not from faith; for whatever is not from faith is sin. We who are strong ought to put up with the failings of the weak and not to please ourselves; let each of us please our neighbor for the good, for building up" (NAB).

effect as moral subjectivism and relativism, in which the determining factor of what is done is ultimately not truth, but power.⁶⁵ Rather, what is needed to face such difficult moral questions is docility to the wise and holy persons who have carefully considered the more particular principles of moral action and handed these on to us as an inheritance of immense value. Of special importance are the Sacred Scriptures and the writings of the saints, especially St. Thomas Aquinas. Coming to certitude about the proper principles involved in making a good choice when the public and private aspects of a choice seem to conflict requires that we stand upon the foundations so carefully laid before us rather than abandon them as too abstruse and difficult. Difficult moral questions require careful investigation into truth, not simplistic solutions that amount to despair of finding the truth.

It is my hope that this argument has faithfully brought together the foundations wisely laid beforehand and brought greater clarity to a very difficult moral question about the responsibilities of conscience for members and representatives of a community. For, only by fidelity to truth can the human person attain true peace of soul and a right relationship with God. N&V

⁶⁵ See Ratzinger, *Conscience and Truth*, §2: "Man's capacity for truth is a limit on all power and a guarantee of man's likeness to God." See also *ibid.*, §1: "Conscience's reduction to subjective certitude betokens at the same time a retreat from truth."