

# THE PELL-BRENNAN EXCHANGE ON THE PRIMACY OF CONSCIENCE

## GEORGE PELL AND GERARD BRENNAN

### Introduction

Sir Gerard Brennan retired as Chief Justice of Australia in May 1998. In July 2000, he delivered the annual address for the St Thomas More Society in Sydney at the Society's Patronal Feast Day Meeting. His address was entitled 'The Sky is Red' in reference to the exchange between Jesus and the Pharisees and Sadducees (Matthew 16:1-3): 'When it is evening, you say, "It will be fair weather; for the sky is red."...You know how to interpret the appearance of the sky but you cannot interpret the signs of the times.' In the address, Brennan said, 'How sad it is to hear Archbishop Pell declare here in Sydney that "Catholics should stop talking about the primacy of conscience".'<sup>1</sup>

Upon delivery, Brennan sent a copy of his address to Archbishop Pell who was then Archbishop of Melbourne. In January 2001, Pell wrote to Brennan joining issue with his remarks on conscience. He said, 'In all honesty, even after nearly six months, it still remains strange to me that a judge, after a lifetime properly enforcing the law, should espouse the primacy of conscience, whatever might be said of your objection to "an authoritarian demand for conformity".'

In his retirement, Brennan was a parishioner at St Canice's, Elizabeth Bay. Having been appointed archbishop of Sydney, Pell said mass in the parish in January 2002. This prompted Brennan to recall that he had not responded to Pell's letter. Concluding his response, Brennan wrote: 'I suggest that, properly understood, there can be little difference between the views in your letter and what I said in "The Sky is Red". The difference, I fear, lies in our understanding of the meaning of teaching authority. For me, the Church has authority to teach what is true and, as she proposes truth for my acceptance, I love and trust her. But that is an authority over religious truth, not an authority to compel belief or action. I fear that the distinction is being missed in the ecclesiastical bureaucracy of today.'

With the death of His Eminence on 10 January 2023 following upon the death of Sir Gerard on 1 June 2022, I thought it appropriate that the correspondence be published posthumously as an exemplar of respectful, robust dialogue in the Church on the vexed question of conscience.

Fr Frank Brennan SJ

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<sup>1</sup> The address is available in "The sky is red", *Utopia, the Journal of the St Thomas More Society*, Sydney, Volume 2, Issue 1, May 2001, pp. 3–7, <https://stms.org.au/wp-content/uploads/2020/08/Utopia2001vol2no1.pdf>.

St Patrick's Cathedral  
Melbourne Vic 3002



9th January, 2001.

The Hon. Sir Gerard Brennan, A.C., K.B.E.,  
Suite 2604, Piccadilly Tower,  
133 Castlereagh Street,  
SYDNEY, N.S.W., 2000.

Dear Sir Gerard,

Early in July last year you very kindly made available to me a copy of your lecture "The Sky is Red", delivered to the Society of St Thomas More in Sydney on the occasion of the Patronal Feast Day Dinner. Through my secretary I promised you a response and with apologies for the delay I would now like to offer these few thoughts.

Let me begin by saying how much I enjoyed reading your paper, particularly your account of St Thomas More's life and his response to the crisis that would eventually claim his life, among many others. I too remember those two magnificent portraits in New York, either side of Saint Jerome(?). Rarely has an artist captured so well the cynicism and evil of one and the integrity, goodness and self-sacrificing devotion to truth of the other. At another level, your vigorous defence of appropriate legal protection for marriage and the family was inspiring. I also appreciate the gracious way in which you express your disagreement with me — more in the form of regret than direct criticism. In your covering letter you suggest that the difference in our respective approaches may be a matter of emphasis rather than substance. Certainly your paper encourages me in the hope that the disparity between us may not be quite as insuperable as it sometimes appears, but I am afraid that ultimately our disagreement is much more fundamental than a matter of emphasis and is a matter of considerable moment.

I stand by the words of mine you quote in your paper — "Catholics should stop talking about the primacy of conscience". The alternatives are not the "ipse dixit" of bishops and institutional loyalty on the one hand and conscience on the other. I am well aware that individual bishops are as fallible as judges, perhaps even as fallible as politicians. "What God wants" has the primacy and I fully recognize and defend the role of individual conscience, as well as authority, in the struggle to identify

this correctly. Over a long period, I have consistently argued for *the primacy of truth*, or of the Word of God, to which a conscience must conform if it is to be a reliable instrument; I have said that this is the *ultimate* rule of action and that the Church only speaks of conscience as a *proximate* norm, not some sort of supreme tribunal.

The most thorough and authoritative treatment of these matters to date is Pope John Paul's encyclical *Veritatis Splendor* (1993). No doctrine of "the primacy of conscience" is to be found in that document. On the contrary, the Holy Father criticizes the view that "in the sphere of morality a pluralism of opinions and of kinds of behaviour could be tolerated, these being left to the judgement of the individual subjective conscience" (§4). The Pope is surely right when he complains that certain currents of modern thought — both outside and even inside the Church — absolutize "freedom of conscience" to the extent that:

the individual conscience is accorded the status of a supreme tribunal of moral judgement which hands down categorical and infallible decisions about good and evil. To the affirmation that one has a duty to follow one's conscience is unduly added the affirmation that one's moral judgement is true merely by the fact that it has its origin in the conscience.

But in this way the inescapable claims of truth disappear, yielding their place to a criterion of sincerity, authenticity and "being at peace with oneself", so much so that some have come to adopt a radically subjectivistic conception of moral judgement. (§32)

John Paul goes on to criticize the "tendency to grant to the individual conscience the prerogative of independently determining the criteria of good and evil" and the quasi-idolatry of freedom and sincerity in much contemporary talk of conscience. In accordance with the Catholic tradition, he proposes that it is only because it can mediate and apply the universal and permanent moral law that we take conscience so seriously; it is *truth* which has primacy. (Cf. §§32, 35, 52, 54–64).

Before quoting me, you quote from the Second Vatican Council's Declaration on Religious Liberty (*Dignitatis Humanae*) to support the argument for the primacy of conscience. It is doubtful whether the Declaration can be used in this way. The *peritus* who had most influence in its drafting, John Courtney Murray S.J., observed: "The Declaration nowhere lends its authority to the theory for which the phrase ['freedom of conscience'] frequently stands, namely, that I have the right to do what my conscience tells me to do, simply because my conscience tells me to do it. This is a perilous theory. Its particular peril is subjectivism — the notion that, in the end, it is my conscience, and not the objective truth, which determines what is right or wrong, true or false." If you do not wish to take Fr. Murray's word for this, consider the passage in §14

of the Declaration on the relationship between conscience and the magisterium.

It is of course true (by definition) that one ought to follow one's best judgement of what is right and wrong; but what constitutes one's "best judgement" and what kind of formation and application of conscience this requires, is little appreciated by those who use "the primacy of conscience" slogan to excuse ill informed preferences and arbitrary choices. Hence Vatican II's important distinction between a true or correct and a false or erroneous or blind conscience (*Gaudium et Spes* §16; see also *Veritatis Splendor* §62), and its insistence on the duty to inform conscience well, in accord with Church teaching. In this the Council followed John Henry Newman, too often misunderstood as an advocate of conscience free of truth or authority, who in fact pronounced "counterfeit" the arbitrary and subjectivist "conscience" of modernity.

You rightly pay close attention to the care that Thomas More took in forming his conscience. I think you will agree that few of us, either then or now, work as assiduously at this task as More did. But even with a formation as rigorous as that which More imposed upon himself, conscience can still be mistaken. Following one's conscience alone does not ensure that one's acts are morally good. At best, a person whose mistake of conscience leads to an objectively wrong act may be guiltless — depending on how seriously the person sought first to inform their conscience and then to apply it. But where conscience is in error due to our own fault — and in this, we must not underestimate the power of rationalization and self-deception, or, as you point out, of a lazy or self-serving failure to criticize the prejudices of an unreliable culture — then we may very well be guilty even when following our conscience. If there is one thing that the twentieth century has taught us, it is that a clear conscience is no guarantee that good will follow (cf. *Veritatis Splendor* §63). Sincerity cannot make an intrinsically evil act good.

It is in this context that the role of the Church and the magisterium must be understood, that is, to teach the truth. "Regimentation" or "an authoritarian demand for conformity" have only a limited ancillary function on rare occasions, usually to protect other believers. You are quite mistaken if you think this is the primary object of the Pope or Cardinal Ratzinger or myself. In a profound passage in *Veritatis Splendor*, John Paul II reminds us that when the Church "pronounces on moral questions, [she] in no way undermines the freedom of conscience of Christians."

This is so not only because freedom of conscience is never freedom from the truth but always and only freedom in the truth, but also because the Magisterium does not bring to the Christian conscience truths which are extraneous to it; rather it brings to light the truths which it ought already to possess, developing them from the starting point of the primordial act of faith.

The Church puts herself always and only at the service of conscience, helping it to avoid being tossed to and for by every wind of doctrine proposed by human deceit (cf. Eph 4:14), and helping it not to swerve from the truth about the good of man, but rather, especially in more difficult questions, to attain the truth with certainty and to abide in it (§64; cf. §§85,110,117).

It is this understanding of the relationship between the magisterium and conscience that I seek to follow in my own life both as a Christian on “the great journey of conscience” and as a bishop charged with the pastoral care of others on that journey. It is also, I believe, More’s understanding of the matter. More was not a martyr for the primacy of conscience. He died for the primacy of truth – and not just the truth as he saw it. As the Holy Father observed in his recent Apostolic Letter proclaiming Thomas the Patron of Politicians, More’s “passion for truth ... enlightened his conscience” and taught him the truths for which he died: that man cannot be sundered from God, and that politics cannot be sundered from morality. His conscience was not formed privately by his self and it was not ultimately answerable to his self. On the contrary. More’s life and death demonstrated that “conscience is the witness of God himself, whose voice and judgement penetrate the depths of man’s soul” (cf. *Veritatis Splendor* §58). It is not the witness of human autonomy.

There is one aspect of More’s life in particular which is impossible to square with enlisting him in a twentieth century position supporting the primacy of individual conscience, i.e. his active persecution and punishment of Protestants during his time as Chancellor. His hatred of seditiousa dogmata is well documented as is his putting into practice his determination to be as active against the newe men as lay in his power. The point here is not whether Mare’s conscience was right or wrong on this (although this is of prime importance), but how to square this with the claim he was a lawyer and public officer who upheld the primacy of conscience. As More said to William Roper, “were it my father stood on the one side and the devil on the other, his cause being good, the devil should have right”. Cf: Peter Ackroyd’s *The Life of Thomas More* (1998) pp 289 sq.

A couple of other details merit comment, primarily because they might not be simply details. In all honesty, even after nearly six months, it still remains strange to me that a judge, after a lifetime properly enforcing the law, should espouse the primacy of conscience, whatever might be said of your objection to “an authoritarian demand for conformity”. While the world of religion is different (certainly our church penalties are different now), your apparent endorsement of an antinomian position religiously still seems strange. Any church leader has to have sanctions available to deal with those who break or deny boundaries, even, or especially, for

those who honestly disagree. Some years ago I had to point out the error, and limit the activity, of a good priest who felt entitled to teach regularly that Christ was not the eternal Son of God. As a church leader vowed to teach and defend the apostolic tradition, it was my duty not to respect the primacy of his conscience, but to oppose him publicly.

Equally disturbing is your assertion of “the right to dissent from religious or political orthodoxy”. Certainly the state has no right to impose religious views or hinder them, except when they are dangerous to the common good. However, no Catholic has a right to dissent from the teachings of Christ or the solemn and central teachings of the magisterium; rather all Catholics have a responsibility and obligation to accept them in faith. This is part of what it means to become or remain Catholic.

I am sure you are aware that Hans Küng is one of our better known dissidents, who lost the capacity to teach officially as a Catholic theologian, as long ago as 1979. Few priests over the years have been so publicly opposed to the Papacy and so abusive towards the Holy Father. More would have put him in the stocks if he had spoken like this in England.

The primacy of conscience is a virus introduced into the church at the time of the *Humanae Vitae* debate, not simply that conscience might be exercised in times of dispute among authorities, but as a general principle to be exercised everywhere, untrammelled too much even by Scripture (unlike the Protestant endorsement of private judgement). This virus has severely weakened our resistance to the hostile currents in Western life and has destroyed and is destroying religious orders. I feel bound to oppose its baleful influence.

I enclose with this letter for your interest the text of an article on More written by the Pope’s American biographer, George Weigel, and a copy of the Apostolic Letter referred to above. Thank you for continuing the discussion of this matter with me.

With prayerful good wishes to you and your family for the New Year,

Yours in the Lord,

A handwritten signature in black ink that reads "George Pell". The signature is written in a cursive, flowing style with a cross at the beginning.

ARCHBISHOP OF MELBOURNE

Encs.

9<sup>th</sup> January, 2001.

**The Hon Sir Gerard Brennan AC KBE**

*Suite 2604, Piccadilly Tower  
133 Castlereagh Street  
Sydney NSW 2000 Australia*

29 January 2002

Most Rev Dr George Pell  
Archbishop of Sydney  
Polding House  
276 Pitt Street  
SYDNEY, N.S.W. 2000

Your Grace,

Our recent meeting reminded me that I had not written to acknowledge and reply to your letter of 9 January 2001. And I have been prompted by the recent readings from the letter of St John. However, the year that has passed, your translation from Melbourne to Sydney and the many responsibilities of your See may have dimmed your recall of the letter which I greatly appreciated. So I enclose a copy of your letter for ease of reference.

The letter is most helpful in defining the points of difference between us. I hope that the points of difference are not "fundamental" but perhaps arise from attributing a different connotation to the word "conscience". We are in complete agreement about the source of moral truth. "What God wants" defines what is good; "what God does not want" defines what is bad. Being creatures of God, made in His image and responding to His love, men and women must seek to discover the truth of what He wants and what He does not want. Then, having discovered the truth, each is obliged to act or to refrain from acting in accordance with the truth. *Personal* belief in what is morally good or evil does not – axiomatically cannot – define objectively what is morally true. It is false to hold (as *Veritatis Splendor* points out) that "one's moral judgment is true merely by the fact that it has its origin in the conscience" or to suggest that conscience alone can "ensure that one's acts are morally good" (as you clearly state). The objective validity of a moral judgment or the objective character of an act or omission can be determined only by reference to an objective standard – and that standard is "what God wants". But that argument is pushing at a door that is already open. All of this is both obvious and cannot rationally be doubted.

If you were concerned that I was commending More for following his conscience because conscience is always the sure guide to moral truth, be assured that that was not my intention. Nor, with respect, do I think a fair reading

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of what I said would lead to that conclusion. To quote the key sentence: "It was a conscience *that sought to understand the Divine will* and, having understood it, to be obedient to the truth he saw." Your concern that I endorse "an antinomian position religiously" is, I suggest, misplaced.

The problem is not whether conscience can determine authoritatively the objective moral quality of particular acts or omissions; rather, the problem is about the way in which the individual man or woman forms his or her conscience in order to make a moral judgment about an act or omission and the obligation of that man or woman to act or refrain from acting in accordance with that judgment.

If we focus first on the obligation to act or to refrain from acting in accordance with one's moral judgment, we can more clearly understand the problem of forming the conscience which makes the judgment.

The "primacy of conscience" is a term which I would use to acknowledge the role of conscience which you describe as the "proximate norm". The passage you quote from *Veritatis Splendor* makes it clear that there is a duty – that is, a valid moral duty – "to follow one's conscience". In "*The Primacy of Conscience in the Roman Catholic Tradition*" (Pacifica 13, October 2000 p 299 at p307) Brian Lewis says that "the Primacy of Conscience" is the "traditional expression [that] has formed part of Roman Catholic teaching for many centuries. It cannot be lightly put aside or considered to be mistaken." He explains that conscience has never been regarded as "a law unto itself", but he does quote (at p 304) "startling" illustrations from St Thomas Aquinas, followed by St Alphonsus Liguori, showing the moral obligation to follow conscience, even though the conscience be erroneous. The term "primacy of conscience", properly understood, is far from being "a virus introduced into the Church" but is at the heart of Catholic moral teaching. It is clearly stated in *Dignitatis Humanae* (Chapter 1):

"On his part, man perceives and acknowledges the imperatives of the divine law through the mediation of conscience. In all his activity a man is bound to follow his conscience faithfully, in order that he may come to God, for whom he was created. It follows that he is not to be forced to act in a manner contrary to his conscience. Nor, on the other hand, is he to be restrained from acting in accordance with his conscience, especially in matters religious.

"For, of its very nature, the exercise of religion consists before all else in those internal, voluntary, and free acts whereby man sets the course of his life directly toward God. No merely human power can either command or prohibit acts of this kind."

In reference to the limitation on the power of the State, the term "primacy of conscience" is used by the Holy Father himself in the *motu proprio* proclaiming More to be the patron of statesmen and politicians:

"The defence of the Church's freedom from unwarranted interference by the State is at the same time a defence in the name of the *primacy of conscience*, of the individual's freedom vis-à-vis political power."



What I was concerned to show was that More's conscience, though contrary to the view then expressed by both the King's court and the ecclesiastical establishment of England, bound him to the course which he followed and that he would not have been either saint or hero had he submitted to those contrary views. The "ipse dixit" of Bishops was no sufficient guarantee of moral truth. Again, I see no difference between what I have said and your observation that "it is of course true (by definition) that one ought to follow one's best judgment of what is right and wrong".

The next, and more difficult, question is the manner in which the conscience is to be formed and the sources of guidance available to ascertain what God wants. It is in this context that we are inspired by John's First Letter (3:21-24):

"My dear people, if we cannot be condemned by our own conscience, we need not be afraid in God's presence, and whatever we ask him, we shall receive because we keep his commandments and live the kind of life that he wants. His commandments are these: that we believe in the name of his Son Jesus Christ and that we love one another as he told us to."

So conscience must be formed in faith and faith is a divine gift. It has not been given to all and sometimes the gift of faith is lost or diminished. What then of a person's obligation to act in accordance with conscience, if the conscience be ill-formed? If I understand correctly what St Thomas and St Alphonsus Liguori were saying, the obligation to act in accordance with conscience is unchanged. If that be right, was I in error in saying that "Conscience is unique to each person and what is done in obedience to conscience by one may differ from what is done in obedience to conscience by another"? In any event, as consciences do differ, the external expression of consciences will – as a matter of fact – be variable. And in a pluralist society, social order demands a degree of tolerance of those variations. That is of the nature of a free society. It does not follow, however, that those whose consciences are formed in accordance with the Divine will must, or even can, approve of actions done contrary to the Divine will. Tolerance of the conduct of others is not to be equated with moral approval. I live in a society in which the law (however strictly interpreted) permits abortion in certain circumstances, though I find abortion a terrible moral evil.

Members of the Church have the guidance of the Church's teaching on moral issues. It is the scope of that authority and the manner of its exercise which concern me and other Catholics in the present day. Again there is no questioning here of the infallibility of Papal or Conciliar teaching when doctrines are defined solemnly as indicated in Ch III par 25 of *Lumen Gentium*. But when officers of the Church – even the Roman dicasteries – or individual Bishops assert the power to prescribe what individuals or groups must do or refrain from doing, submission must surely depend on whether the individual consciences accept the prescription. As you say, "individual bishops are as fallible as judges" – a view which ecclesiastical history and the law reports strongly confirm. And a distinction must be drawn between the teaching of universal truths of faith and

morals and the promulgation of edicts which are really no more than disciplinary demands.

In past years, we were instructed not to attend ceremonies in non-Catholic churches. As "good Catholics", we complied. Thereby we offended unjustly and (understandably) lost our relationship with good friends who had invited us to their weddings. The disciplinary edicts of the ghetto did enormous damage to the Church in Australia. So did the policy of some Bishops to enlist Catholics in the Movement and to isolate clergy who opposed that policy.

The teaching of universal moral truths raises other questions. The awful responsibility of the Magisterium which the Pope describes in Part II of Chapter 2 of *Veritatis Splendor* demands that the utmost caution be observed and the clearest exposition of the relevant principles be manifested in the exercise of this teaching authority.

First, a clear distinction must be drawn between the teaching of doctrine by the Magisterium and an individual Bishop's declaration of what he believes when that belief is not otherwise binding on the faithful. As you say, individual Bishops are fallible and it is not possible that the Magisterium might teach with different tongues. So a proclamation of the truth with the authority of the Magisterium should demonstrably be not the mere belief of individual Bishops but the expression of tradition or of collegial consensus.

Secondly, to bind the conscience of the faithful, the teaching should warrant its acceptance. "The faith must always be presented in a rationally coherent way." (*Ecclesia in Oceania* par 20) Minds which are accustomed to the evaluation of concepts cannot (perhaps, should not) be asked to suspend their critical capacities when the teaching is proclaimed for interior acceptance (see *Gaudium et Spes*, Ch II par 62, Ch V par 92). So the foundation of the teaching must be clearly exposed. This does not mean that truth consists only in what can be deductively proven. Clearly the truths of the faith will oftentimes depend on Divine revelation and its interpretation and the faithful must examine the teaching in love and humility. But there can be no conflict between truth and reason, nor should there be any fear of discussion of the truth. I confess that the Pope's prohibition of discussion on his teaching about women's ordination seems to suggest that discussion is the enemy of truth. Far from leading to acceptance of the teaching, the prohibition casts doubt upon what is taught. It is counter-productive. The teaching authority of the Church is one thing; the power to compel belief is another.

Thirdly, proclamation of the truth is an exercise in charity to assist men and women in their search for God and their quest for eternal life. It is not a demand for conformity to be visited with penalties for non-belief. Regrettably, many recent emanations from the Curia have been portrayed, either accurately or otherwise, as demands for conformity. Thus the "Statement of Conclusions" of the meeting before the Oceania Synod was dismissive of the Australian characteristic of tolerance although "it has many positive elements". Note the

shift in language adopted by the prelates to make their point: "tolerance of *and openness* to all opinions... can lead to indifference...." What are the Australian faithful to make of this? That tolerance should be suspect as subversive of truth? That a closed mind is needed to sustain faith? *The Tablet* said the Statement was to guide the Australian Bishops so that they may "affirm, admonish and correct" their people. The Statement is again in the language of the ghetto, fearful of exposing and expounding the truth in the public forum.

You express some surprise about an ex-Judge's espousal of the primacy of conscience, but that view reflects (with some modifications) the familiar distinction between the definition of crime (the objective norm) and the criminal responsibility of an alleged offender (who must be acquitted unless the criminal act is done with *mens rea*). So if I translate that approach, *mutatis mutandis*, to the case of your good priest who was preaching heresy, I distinguish between his action (which must be opposed) and his conscience which, if formed in good faith, must be respected. You write: "it was my duty not to respect the primacy of his conscience, but to oppose him publicly". That, I respectfully suggest, is a false dichotomy. Given that it was your episcopal duty to oppose publicly the proclamation of what was unarguably false doctrine, would it not be right "to respect the primacy of his conscience" and then to endeavour to lead him away from error?

This long epistle started from my lament about the proposition that "*Catholics should stop talking about the primacy of conscience*". I find some confirmation of my lament in the Pope's New Year message (*The Tablet* 22/29 December, p 1859):

"... even when the truth has been reached-and this can happen only in a limited and imperfect way- it can never be imposed. Respect for a person's conscience, where the image of God himself is reflected (cf Gen 1:26-27) means that we can only propose the truth to others, who are then responsible for accepting it."

I respectfully and humbly accept every word in that statement. I suggest that, properly understood, there can be little difference between the views in your letter and what I said in "The Sky is Red". The difference, I fear, lies in our understanding of the meaning of teaching authority. For me, the Church has authority to teach what is true and, as she proposes truth for my acceptance, I love and trust her. But that is an authority over religious truth, not an authority to compel belief or action. I fear that the distinction is being missed in the ecclesiastical bureaucracy of today.

Yours sincerely,

A handwritten signature in cursive script that reads "Gerard Brennan". The signature is written in dark ink and is underlined with a single horizontal stroke.