

'Why Archbishop Chaput's abortion stance is wrong'

Douglas W. Kmiec | Oct. 31, 2008

Commentary



I greatly admire Archbishop Chaput. As the former dean of the Catholic

University law school, I often benefited from the Archbishop's writing and insight. I still do.

The good Archbishop, however, has taken issue with my recent book, *Can a Catholic Support Him? Asking the Big Question about Barack Obama*, suggesting, in his personal view as a private citizen, that Catholic teaching does not support an affirmative answer.

[\(Chaput on a vote for Obama.\)](#) [1]

At the outset, it should be observed that whatever disagreement the Archbishop perceives between us, it is not over the essence of Church instruction which gives primacy to the promotion of human life, but rather, the preferred means of implementing it.

The Archbishop argues for the necessity of promoting life through law (primarily, litigation before the courts to reverse *Roe v. Wade*, which reversal is a necessary pre-condition to additional legal protections enacted into statutes) and discounts reducing the incidence of abortion by cultural (economic and social) means.

A legal course is possible, of course, but given its unsuccessful history (the Court has five times refused to overturn *Roe*, and even its upholding of the partial birth ban is only on its face - that is, the Court has reserved the right to refuse to apply the ban individually as applied) and the genuine uncertainty (judicial vacancies are wholly speculative) and insufficiency of its future prospects (overturning *Roe*, requires at least one and possibly three additional votes on the high court), the deliberations of conscience lead me to conclude that an alternative way to promote life must exist.

And, of course, it does, and it is the way of Senator Obama's alternative social and cultural support for expectant mothers (adequate prenatal and postnatal care; funded maternity leave; a caring adoption procedure). This kind of assistance especially into the lives of poor women has been shown to have significant impact in the reduction of abortion.

By this calculus, which I detail more fully in the book, I conclude a Catholic can vote for Senator Obama with a clear conscience. The Catholic difficulty stems not from having to avoid casting a ballot with the intent of not promoting or encouraging abortion - for, honestly now, who does that? - but instead having one's vote proclaimed cooperation with sin or evil without what the Church calls "proportionate" reasons.

By this demanding measure, neither of the major party candidates is a perfect Catholic candidate on abortion. Whether the voter chooses McCain or Obama, there is some remote cooperation with sin ? with McCain, reversing *Roe* leaves the states effectively pro-choice; with Obama, leaving *Roe* settled respects the woman as the decision-maker. Neither course guarantees absolute legal protection to human life.

Now, of course, a Catholic could refuse to vote, but that seems highly irresponsible in light of the challenges of the nation. So what to do? Cardinal Ratzinger (now His Holiness Benedict XVI) accepting the idea that voting results in a type of remote cooperation with sin counseled:

"When a Catholic does not share a candidate's stand in favor of abortion . . . but votes for that candidate for other reasons, it is considered remote material cooperation, which can be permitted in the presence of proportionate reasons."

In short, Catholic voters -- like other citizens -- are not morally precluded from picking an imperfect candidate. Does applying the Ratzinger formulation help resolve the disagreement between Archbishop Chaput and myself? Not completely, but it does reveal some divergence between Cardinal Ratzinger and the Archbishop.

The Cardinal clearly affirms that Catholics -- like all Americans in the 2008 election -- have the full slate of parties and candidates available to them, with the determination of what is a "proportionate reason" to vote for an imperfect candidate a matter for individual conscience. It's hard to see Archbishop Chaput's essay as agreeable with the Cardinal's proposition.

For the Archbishop, Catholics in the 2008 presidential race do not have both major candidates from which to choose - they have the one offered up by the Republicans.

With obvious and justifiable concern, the Archbishop observes that there is no proportionate reason that can outweigh the 1.2 million abortions each year. There can be no reasoned disagreement. Yet, with respect, as horrific as that declarative statement is, it cannot be the proposition invited to be tested by the Cardinal's formulation. The 1.2 million abortions are built into the ethical calculus offered by the Cardinal otherwise the statement is a tautology.

Q. When can I vote given millions of abortion?

A. When there are not millions of abortions.

This is The Archbishop' method, but with respect, it can't be the import of the inquiry since then the occasion for Catholic voting would always be the null set. Clearly, Cardinal Ratzinger was speaking of a Catholic voter who - notwithstanding the awful rate of abortion -- is capable of voting now, even as doing so "cooperates" with (the always wrong) abortion, since the voter has "other reasons." It is the other reasons in relation to the number of abortions that demands comparison.

In brief, the Archbishop has undertaken to balance not the competing candidate policies as they relate to abortion, but abortion against any candidate policy. The former permits intelligent voting in a universe of imperfect candidates; the latter disenfranchises Catholics from the American electoral exercise until, well, "God mend thine every flaw."

Doing the proper balance, reversing *Roe* does not save the 1.2 million children. Obviously, as a pro-federalism/pro-state-choice mechanism, reversing *Roe* cannot assure that. As a matter of logic and conscience, there is no direct improvement in the protection of human life from the McCain-Chaput legal course of action. Were improvement to derive from the McCain-Chaput approach, it would derive from the independent actions

of the states.

By contrast, empirical study confirms abortion reduction through the Obama cultural and economic assistance course of action. Further, Obama's center-piece commitment to improving the economic and health related conditions of the average family embraces (far more than McCain's continuation of the trickle down policies of President Bush) the wider definition of "culture of life" in the Church's pastoral constitution. Given that, Obama presents both a proportionate reason to favor him (Obama's policy saves at least some children as against saving none) and Obama quite simply presents the better alternative in terms of overall Catholic social teaching.

To conclude, let me just briefly address one further label Archbishop Chaput affixes upon Senator Obama: "the most committed 'abortion-rights' presidential candidate of either major party since the *Roe v. Wade* abortion decision in 1973." While not stated explicitly by the Archbishop, such allegation is typically premised on the Senator's promise to sign the so-called Freedom of Choice Act (FOCA) which has been sitting around Congress for two decades or so.

There is much dispute over FOCA's intended effect. Its opponents (including me) argue that it will roll back important policies like waiting periods; its supporters (including the Senator) think it more a non-discrimination principle, allowing restrictions on abortion but only when they exist on other comparable medical procedures. Either way, is this an independent reason for Catholics to disregard Obama's commitment to social justice?

Not really. At the Democratic convention, leading members of the House and Senate publicly expressed the view that FOCA is so deeply flawed - some scholars believing it unconstitutional and most lawmakers finding it unacceptable as a matter of policy - that it will never reach the president's desk. This is a fact that has some plausibility given its history, but of course, one that may change with the composition of the new Congress. This is more fairly an issue regarding the election of others, and not primarily Obama or McCain.

In any event, voting seldom translates to "I support all of the policies of this candidate," as opposed to "of the choices available, this candidate is the most acceptable at this time." In some elections, of course, voting may not even mean this. In too many elections, a vote has been used only to keep a worse alternative from office.

Voting may thus mean no personal endorsement at all of any of a candidate's policies, and given that, it makes one wonder whether applying the theological concept of "cooperation with evil" to voting is itself mistaken, or at least, overstated.

The circumstances for Catholics in 2008 are a happier one than Archbishop Chaput lets on. The social justice policies of Senator Obama and his ability to work toward the common good upon common ground makes him a source of hope for all Americans, including sincere and faithful Catholics -- except those who are wittingly or unwittingly ensnared by the artificial cultural divisions of the past or trapped within the narrative framework of one political party.

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