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Presentation  (Prof. JUAN DE DIOS VIAL CORREA and ELIO SGRECCIA)

Discourse of HOLY FATHER JOHN PAUL II

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PRESENTATION

The concurrence of the Jubilee Year and the 5th Anniversary of the publication of the Encyclical "Evangelium vitae" characterized the work of the 5th General Assembly of the Pontifical Academy for Life. There is a reciprocity between the two events: on the one hand, the Jubilee brings with it an appeal for conversion and a renewal of social life in relation to respect for the image of God that is innate in each human person; on the other, the themes of the Encyclical "Evangelium vitae" prompt an examination of conscience on a wide range of issues of social morality.

Hence the choice of the theme for the General Assembly: "Evangelium vitae": 5 years of confrontation with society.

The aim was to conduct a review of the social and legal situation with regard to the legislation in force in the various countries or in process of being reformed throughout the world in terms of respect for life, five years after the publication of "Evangelium vitae".

Five years are very few to be able to gauge the results of a document of the magnitude of "Evangelium vitae", which the Holy Father himself compared with Leo XIII's "Rerum Novarum". But the Assembly's reflection was not intended to be a final balance sheet, but rather an aid to the Church's pastoral service, which cannot fail to take account of the current legislative situation and socio-political problems, as well as a means of evaluating the objectives and methods of its action.

We believe that the picture that emerges from the various reports and communications presented during the General Assembly is important, thanks to the high level of the contributions and those who brought experience, competence and detailed knowledge to bear on them. Their contributions, moreover, are a powerful incentive, pledging to future action the members of Assembly, of whom many were present (some 120), also due to its coincidence with the Jubilee event.

The reports had been prepared through a joint consultation process, conducted prior to the Assembly, on two preparatory days on 13-14 September 1999, according to the method of the Task-Force and other procedures by now well-consolidated in the research of the Pontifical Academy for Life.

The reports regarding the continents of Asia and Africa have especially enriched our knowledge of a situation that was in part better known in Europe. The series of contributions, distinguished by countries and contents, was opened by a wide-ranging review by the Most Reverend Msgr. J. L. Tauran on "The defense of life in the context of international policies and norms". His report provides, perhaps for the first time, an overall picture of the specific theme of respect for life at the legislative and social level.

Incorporated within the meeting reserved for the members of the Pontifical Academy for Life was an official commemoration of "Evangelium vitae": the centre of our attention, like the apse of a basilica that draws the believer's contemplative gaze as the central point richest in light and closest to heaven. And this commemoration was open to a wider public, since it was organized by the three offices of the Holy See most directly concerned: the Pontifical Council for the Family, the Pontifical Council for Pastoral Assistance to Health Care Workers and the Pontifical Academy for Life.

The issues covered by the Encyclical were then reviewed, and its cultural, ethical and anthropological importance was evaluated, in the valuable reports of Card. A. López Trujillo, the Most Reverend Msgr. J. Lozano Barragán, and Prof. R. Spaemann.

The General Assembly, as we mentioned, was not just academic in aim: it was aimed not just at reconstructing the facts or identifying the problems, but at inspiring future action. A first problematic, indeed dramatic, issue to emerge is in the legislative field. It concerns the position of the Catholic legislator—or more generally of the faithful in his/her moral dedication to the defence of the right to life—in relation to the drafting or amendment of laws, when the laws in question—as is often the case—are
unjust and, even if improved, remain imperfect. From this point of view, the report, both authoritative and enriching, of the Most Reverend Msgr. T. Bertone: "Catholics and Pluralist Society: 'Imperfect Laws' and the responsibility of legislators" provides guidance for and helps to elucidate the political commitment and Christian conscience of legislators in conformity with the doctrine of the Church. The communications that represent the final part of the volume, despite their brevity and summary character, enriched the debate with references to specific issues and enlivened it with their various contributions.

Not only the Direction of the Academy but the readers of this volume of the Proceedings must, I believe, express due thanks to all those who have contributed to the work of this Assembly, whether in the form of the light of doctrine or the stimulus of action. We would especially like to express our gratitude to the Holy Father, whose spoke in the Synod Hall at the end of the Celebration of the 5th Anniversary of his Encyclical. His address was widely commented on by the press of every persuasion in the days that followed. It set a doctrinal seal on this teaching on the value and inviolability of human life which he has taken particularly to heart. John Paul II has tackled the most challenging and delicate issues of the defence of life and the dignity of human procreation, as pointed out in the report dedicated to the contribution of the pontificate of John Paul II by the Most Reverend Msgr. A. Laun with the title: "John Paul II: Pope of life and Pope of responsible parents". 
JOHN PAUL II
DISCOURSE

Your Eminence, Venerable Brothers in the Episcopate and the Priesthood, Ladies and Gentlemen,
I would first like to thank the Pontifical Council for the Family, the Pontifical Council for Pastoral
Assistance to Health-Care Workers and the Pontifical Academy for Life for having planned and
organized this day commemorating the fifth anniversary of the publication of the
Encyclical Evangelium vitae. It is taking place within the framework of the Jubilee Year celebrations
and is meant to be in prayerful harmony with the pilgrimage I will make to the Holy Land next month
to venerate the places where “the Word became flesh” (Jn 1:14).
I greet Cardinal Alfonso López Trujillo and thank him for the sentiments he expressed to me in his
address. I also greet all of you, participants in this reflection on a document which I consider central to
the whole Magisterium of my Pontificate and in thematic continuity with the Encyclical Humanae
vitae of Pope Paul VI of venerable memory.
In the Encyclical Evangelium vitae, whose publication was preceded by an Extraordinary Consistory
and a consultation of Bishops, I started from a vision of hope for humanity’s future. I wrote: “To all the
members of the Church, the people of life and for life, I make this most urgent appeal, that together we
may offer this world of ours new signs of hope, and work to ensure that justice and solidarity will
increase and that a new culture of human life will be affirmed, for the building of an authentic
civilization of truth and love” (n. 6).
Life, truth, love: words full of stimulating suggestions for human efforts in the world. They are rooted
in the message of Jesus Christ, who is the Way, the Truth and the Life, but they are also impressed
upon the hearts and yearnings of every man and woman.
What we have experienced within society, to which the Church has brought her message with renewed
zeal in the past five years, enables us to point out two facts: on the one hand, the persistent difficulty
which this message encounters in a world marked by serious signs of violence and decadence, on the
other, the unchanging validity of this message and also the possibility of its being accepted in a society
where the community of believers, with the concerned involvement of people of good will,
courageously and unitedly expresses its commitment.
The evidence shows with increasing clarity how policies and laws opposed to life are causing societies
to decline, not only morally but demographically and economically. The Encyclical's message can
therefore be presented not only as true and authentic guidelines for moral rebirth, but also as a
reference point for civil salvation.
Thus, there is no reason for that type of defeatist mentality which claims that laws opposed to the right
to life — those which legalize abortion, euthanasia, sterilization and methods of family planning
opposed to life and the dignity of marriage — are inevitable and now almost a social necessity. On the
contrary, they are a seed of corruption for society and its foundations.
The civil and moral conscience cannot accept this false inevitability, any more than the idea that wwar
or interethnic extermination is inevitable.
The chapters of the Encyclical that address the relationship between the civil and moral law deserve
great attention because of the growing importance they are destined to have in the restoration of social
life. Pastors, the faithful and people of good will, especially if they are lawmakers, are asked for a
renewed and united commitment to change unjust laws that legitimize or tolerate such violence.
No effort should be spared to eliminate legalized crime or at least to limit the damage caused by these
laws, but with the vivid awareness of the radical duty to respect every human being's right to life from
conception until natural death, including the life of the lowliest and the least gifted.
However, another extensive area of endeavour in the defence of life is open to the initiative of the
believing community: this is the pastoral and educational field which the fourth part of the Encyclical
discusses, offering particular guidelines for building a new culture of life. In the past five years, Dioceses and parishes have started many projects, but much remains to be done. An authentic apostolate of life cannot be simply delegated to specific movements, however praiseworthy, that work in the sociopolitical field. It must always be an integral part of the Church's pastoral ministry, whose task is to proclaim the "Gospel of life". For this to be effective, it is important to set up educational programmes, as well as services and special structures for guidance and support. This requires first that pastoral workers be prepared in seminaries and theological institutes; it also calls for the correct and consistent teaching of morals in the various forms of catechesis and of conscience formation; lastly, it should be given practical expression by offering services that will enable anyone in trouble to find the necessary help. Through joint educational activity in families and schools, efforts should be made so that these services become a "sign" and a message. Just as the community needs places of worship, it should sense the need to organize, especially at the diocesan level, educational and operational services to support human life, services that will be the fruit of charity and a sign of vitality. The changing of laws must be preceded and accompanied by the changing of mentalities and morals on a vast scale, in an extensive and visible way. In this area the Church will spare no effort nor can she accept negligence or guilty silence. I turn in particular to those young people who are sensitive to the values of our bodily nature and above all to the value of newly conceived life: may they be the first agents and beneficiaries of the work that will be done in the context of the apostolate of life. I renew the appeal that I made in the Encyclical to the whole Church: to scientists and doctors, to teachers and families, as well as to those who work in the media, and especially to jurists and lawmakers. It will be through everyone's commitment that the right to life will be concretely applied in this world, which does not lack the necessary goods, if they are properly distributed. Only in this way will we overcome that sort of silent, cruel selection by which the weakest are unjustly eliminated. May every person of good will feel called to play an active part in this great cause. May he be sustained by the conviction that every step taken in defending the right to life and in its concrete advancement is a step towards peace and civilization. As I trust that this commemoration will stir new and zealous efforts to defend human life and to spread the culture of life, I invoke upon you all and upon those who work with you in this sensitive area the intercession of Mary "Dawn of the new world, Mother of the living" (Evangelium vitae, n. 105), and cordially give you my Apostolic Blessing. (From L'Osservatore Romano, English edition, N.8-23 February 2000)
My dear Brothers and Sisters,

The Gospel is Good News precisely because it is the Gospel of Life! Life indeed is the very mission of Jesus: "I have come that they may have life and have it to the full"[1]. Jesus is "the Way, the Truth and the Life"[2]. During these days of the Sixth General Assembly of the Pontifical Academy for Life, we have listened to and learned from one another, sharing and exchanging ideas and ideals on a variety of topics and themes related to the preservation, the protection, the promotion and the defense of life. Together we have appreciated the precious gift of life, that comes from God, the Source and Giver of all Life, underscoring its political, legal, social, medical, ethical and religious aspects.

This Assembly has gathered on the occasion of the fifth anniversary of the Encyclical Letter, "Evangelium Vitae", on the value and inviolability of human life. Our hearts go out in praise and admiration to His Holiness, Pope John Paul II, who with dauntless courage has confronted society, sinking under the decline of public morals, with a teaching at once clear and uncompromising, on an issue that is so very vital for the whole of humanity. One of the outstanding marks of the Pontificate of Pope John Paul II is its pro-life stand. The Pontifical Academy for Life itself was established in 1994 at his initiative to study problems relating to the promotion and defense of life so as to foster a culture of life in line with the Magisterium of the Church. I wish to propose for our common meditation this morning three reflections that spring from the Liturgy of today, the Sixth Sunday in Ordinary Time and the very ambience of this beautiful Chapel.

1. The first reading from the Book of Leviticus describes for us the sorry state of those suffering from leprosy. Victims of what was once regarded as a dreadful disease were declared unclean, untouchable and unapproachable. They had to live in seclusion outside the camp away from society. Even though science has made much progress and the disease can be arrested and even cured, society in general, still views leprosy as a scourge and a stigma and condemns its victims to isolation. We are struck by the deep faith of that leper in the Gospel of today who approached Jesus with a request and kneeling down asked for healing: "If you will to do so, you can cure me."[3] But what strikes us even more forcefully is the deeper compassion of Jesus Who, setting aside all social conventions and customs and extending His hand, touches the leper bringing about an immediate cure saying: "I do will it. Be cured."[4] The attitude of Jesus shows without the slightest trace of ambiguity, that He is pro-person, pro-health, pro-life. In fact, all the miracles done by Jesus, whether He healed the sick, fed the hungry, or raised and resurrected the dead, demonstrate that Jesus is on the side of life. He preserves, promotes, protects and defends life.

But the life that Jesus gives and shares with us is far deeper for its goes well beyond mere physical health and well being. Jesus comes to give us new life. He comes to share with us His own divine life and make us heirs of eternal life. In the Bible leprosy is used at times as a symbol of sin. Sin too destroys, deforms and disfigures us. It renders us ugly, unclean and impure and makes us lose our beauty and dignity as children of God. Even more, sin separates us from God, others and ourselves. Jesus comes to redeem what was lost, to restore what was broken, to renew what was destroyed. How appropriately can we apply to Him the words of the Book of Revelation: "Look, here God lives among human beings. He will make his home among them; they will be his people, God-with-them. He will wipe away all tears from their eyes; there will be no more death, and no more mourning or sadness or pain. The world of the past has gone [...] Look, I am making the whole of creation new".[5] In a world that is at times marked with suffering and sadness, despair and death, we are called and commissioned as disciples of Jesus to profess and propagate the Gospel of Joy, Hope and Life.

From medical science we know that leprosy brings about a loss of sensation and feeling. It causes a certain numbness that makes its victims become insensitive. If allowed to develop and go unchecked, it
eats into the very limbs of the human body. Does not our world at times manifest similar symptoms when it promotes the virus of death, that eats into the very fabric of moral and religious values? "The greatest sin of our world is that it has lost the sense of sin", prophetic words that, we must painfully admit, have come true. Human intelligence and ingenuity have been subtly abused to coin new terms and phrases that tend to blur, if not blot out altogether, the sense of sin. Abortion, which is nothing less than downright murder, is casually dismissed as "interruption of pregnancy"; promiscuous cohabiting between married persons which is nothing less than adultery is termed "irregular union"; the "living together" of persons of the same sex with the choice of adopting children is claimed as a "legal right". There is besides the risk of we human beings trying "to play God" as we attempt to meddle and tamper with the laws of life that God has ordained. We tend to forget that life is a gift that comes from God; to Him it must return. He alone is its author and final destiny. God reserves to Himself the sacredness and sanctity of its beginning and end. Like the leper in today's Gospel our world stands in need of healing. Jesus alone, Who is the Way, the Truth and the Life, can make whole our faltering and flawed humanity by freeing us from this virus of evil and death that threatens to plague and pervert our world.

2. In the Second Reading from the First Letter of Paul to the Corinthians, he spells out for us a personal programme of life. Coming at the end of the question as to whether it is permitted or not to eat food that had been offered to idols, Paul concludes by stating that one must not look out for one's own advantage, or much less give offence or be a stumbling block to others but instead eat and drink - in fact do everything - for the glory of God. This is indeed a text that we need to ponder in silence. The glory of God must be the motive of all that we do. "Whether you eat or drink - whatever you do - you should do it all for the glory of God"[6] exhorts Paul. If by eating and drinking, or for that matter any other action that we do, we can glorify God, how much greater glory to God can we not give Him by preserving, protecting and promoting life from its very conception right up to death? What greater glory can we offer to God than by appreciating so precious a gift that He has given us? In so doing, we are glorifying and praising the Giver of life. One can recall the beautiful saying of St. Irenaeus: "The glory of God is a man fully alive and the life of man is the vision of God!"[7]In other words, the more fully alive is the human person, the more is God glorified. Being pro-life, in as much as it contributes to the fullness of human life, contributes also to divine glory. The relationship of the disciples of Jesus to the world as that of a soul to the body[8] is an ideal that all pro-lifers can put into practice cutting across the frontiers of countries, creeds and cultures.

3. This Chapel of the Rosminian Sisters is called the Chapel of the Crucified. The statue of the Crucified Christ dominates the sanctuary and this Chapel. Behold the wood of the Cross on which hangs our salvation! There He hangs, with arms outstretched and extended in a gesture that embraces the whole wide world. Jesus is the price of our redemption for "he has entered the sanctuary once and for all, taking with him not the blood of goats and bull calves, but his own blood, having won an eternal redemption."[9] Having loved His own, He loved them to the end, even unto death on the cross. "Dying He destroyed our death, rising He restored our life [...][10] Jesus nailed to the Cross, unable to stir a limb, is apparently powerless. But in His powerlessness He is powerful for it was on the Cross that He saved the world. The Cross must therefore be regarded not just as an instrument of humiliation and shame invented by the cruel Roman executioner. Rather, the Crucified Christ is the agape of God's love; He is "the power of God and the wisdom of God".[11] That is why Mother Church is never ashamed of the Cross. She does not conceal or hide it. She exalts it, raises it high as a banner of victory and glories in it. Every Eucharist is a memorial that renews the sacrifice of Jesus on the Cross. It is the gift of His love and life. "I am the living bread which has come down from heaven. Anyone who eats this bread will live for ever; and the bread that I shall give is my flesh for the life of the world."[12] May our sharing
in this sacrifice fill us with His love and life strengthening us to live in His presence and to do what is just and right.[13] Like the leper in today's Gospel who earned a fresh lease of life, may we too go about freely and fearlessly proclaiming loud and clear the Good News of the Gospel of Life. Amen.

FINAL COMMUNIQUÉ

In agreement with the Encyclical Evangelium vitae we reaffirm our conviction that "man is called to a fullness of life which far exceeds the dimensions of his earthly existence, because it consists in sharing the very life of God.... The Gospel of God's love for man, the Gospel of the dignity of the person and the Gospel of life are a single and indivisible Gospel" (Evangelium vitae, n. 2). This Gospel is waiting to be proclaimed to all men and women, so that they will love the life of every human being and strengthen their awareness of the need to defend life also during its earthly experience, from fertilization until natural death.

In analyzing the international discussion over the fast five years, we recognize the great timeliness of the Encyclical, in which the Church condemns a series of attacks on human life, such as contraception, sterilization, abortion, artificial procreation, the production, manipulation and destruction of human embryos and euthanasia. Today these call for ever greater social and legal vigilance, since there is a tendency to recognize them as positive rights.

Indeed, the distinctive feature of our time consists not only in the killing of innocent human beings, which has been perpetrated since antiquity, but in something far worse: the legalization of this crime in specific circumstances, as though it were "a right". It is no surprise then that the most serious and critical controversies arise precisely with regard to the law (cf. Evangelium vitae, n. 72). Recent history indicates, as the Holy Father has observed, that "the evidence shows with increasing clarity how policies and laws opposed to life are causing societies to decline, not only morally but demographically and economically. The Encyclical's message can therefore be presented not only as true and authentic guidelines for moral rebirth, but also as a reference-point for civil salvation" (Address at the Commemoration of the Fifth Anniversary of the Encyclical "Evangelium vitae", 14 February, n. 4; L'Osservatore Romano English edition, 23 February, p. 4).

We, academicians, fully agreed with the Holy Father's statement that "there is no reason for that type of defeatist mentality which claims that laws opposed to the right to life -those which legalize abortion, euthanasia, sterilization and methods of family planning opposed to life and the dignity of marriage- are inevitable and now almost a social necessity. On the contrary, they are a seed of corruption for society and its foundations. The civil and moral conscience cannot accept this false inevitability, any more than the idea that war or interethnic extermination is inevitable" (Ibid.).

On the other hand, we note that if there are countries, including those rich in economic resources, where ways of suppressing human life have been legalized, in many other countries such laws are rejected by the popular conscience; and in others we can see a growing opposition to such laws. To know the status of the right to life more precisely at the legal-juridical level, to identify the deep cultural trends, to foresee possible developments, to enshrine justice for human life in the law is the primary task of intellectuals, whether Christian or not, particularly of jurists and politicians.

We recall the Church's right and duty to proclaim and to present publicly the principles of moral and social life that are inspired by the Gospel and Christianity's 2000-year tradition. While this duty derives from the mandate which Christ himself gave his Church, the corresponding right is the expression of a religious and political freedom accorded the faithful by a just democratic society and finds codified recognition in almost all the concordats between Church and State; this right cannot only be understood generically, but extends to the whole area of human and social rights, first among which is the defence and promotion of human life.

Therefore, as the Pope reminds us, "no effort should be spared to eliminate legalized crime or at least to limit the damage caused by these laws, but with the vivid awareness of the radical duty to respect every human being's right to life from conception until natural death, including the life of the lowliest and the least gifted (Ibid.).... The changing of laws must be preceded and accompanied by the changing of mentalities and morals on a vast scale, in an extensive and visible way. In this area the Church will spare no effort nor can she accept negligence or guilty silence" (Ibid., n. 6).
Therefore, the Supreme Pontiff has **good reason** to write: "To all the members of the Church, the people of life and for life, I make this most urgent appeal, that together we may offer this world of ours new signs of hope, and work to ensure that justice and solidarity will increase and that a new culture of human life will be affirmed, for the building of an authentic civilization of truth and love" (*Evangelium vitae*, n. 6). "Life, truth, love: words full of stimulating suggestions for human efforts in the world. They are rooted in the message of Jesus Christ, who is the Way, the Truth and the Life, but they are also impressed upon the hearts and yearnings of every man and woman" (*Address*, n. 2).

We see signs of this sure hope on several continents where families, even amid difficulties, are continuing to live their ideals and to teach the young (the political leaders of the future) the indispensable values of life. We see other signs of hope in those constitutions, laws and national and international conventions which are meant to promote and defend human life at every moment of its existence and in its proper environment, with the knowledge, though only implicit, that "it is impossible to further the common good without acknowledging and defending the right to life... Only respect for life can be the foundation and guarantee of the most precious and essential goods of society, such as democracy and peace" (cf. *Evangelium vitae*, n. 101). We find other signs in the dialogue between Catholics and non-Catholics on the defence of the right to life and the dignity of every person. These signs of hope, which the Holy Spirit always offers people of good will, also give certainty, serenity and strength to our renewed denunciations of the **culture of death**.

We accept the urgency and difficulty of this task, knowing well that Christians are called to be active in the real world of today: uncertain and changing, tempted to sacrifice transcendence to immanence and the supreme values to prosperity, they are also prompted to take refuge in pragmatic and utilitarian conventionalism, rather than to ally themselves with truth and reason. However, our hope is based not only on help from the Lord of life but also on the conviction that the sacred value of human life can be recognized in the natural law alone, written in the human heart, disregard for which is at the root "of a tragic obscuring of the collective conscience" (*Evangelium vitae*, n. 70).

According to Gospel teaching (cf. Mt 13: 24-30), the coexistence of the good seed with the weeds is an experience that cannot be removed from the history of man's temporal life. But this fact, far from leading to the temptation of a negative, sterile resignation or a facile conformity to the prevalent mentality, confirms our responsibility as Christians in the Church and in society, and leads us to seek opportunities for reflection and dialogue with everyone who recognizes that the genuine progress of society is based on the unconditional protection of the fundamental good of human life. In particular, as the Holy Father says, "another extensive area of endeavour in the defence of life is open to the initiative of the believing community: this is the pastoral and educational field which the fourth part of the Encyclical discusses, offering particular guidelines for **building a new culture of life**" (*Address*, n. 5).

At the dawn of the new millennium, as believers and members of the *Pontifical Academy for Life*, we sense the Church's obligation to proclaim to men and women, with courageous fidelity, the full truth of the Gospel of life which is at the heart of Jesus' message (cf. *Evangelium vitae*, n. 1). In grateful unity with His Holiness John Paul II, to whose teaching we confirm our full and filial adherence, and under the protection of Mary, Virgin and Mother of the incarnate Word, we renew our total commitment to serve the life of every human being.

JEAN-LOUIS TAURAN
The Defence of Life
in the Context of International Policies and Norms

A review of the progress of the debate in international circles over the last five years makes clear how timely was the Encyclical *Evangelium vitae*. The Encyclical authoritatively presented the Church’s position on an array of threats to human life, especially at its beginning and at its end, which are now taking on a new form inasmuch as they seek to be recognized as rights. In effect, in the years following the publication of the Encyclical, the fundamental moments of human life, as well as the transmission of life, have been present in an unprecedented way, not only in scientific research but also in the formulation of policies and the creation of international juridical instruments.

In order to have an adequate picture, a fundamental distinction must first be made. On the one hand, there are trends emerging from the global Conferences organized by the UN which are more “political” in nature but which nonetheless affect the activity of the international bodies of the UN system. On the other hand, there is the level of norms stated by Conventions which are binding on States; these are often limited to individual questions.

**The defence of life at the international Conferences (Cairo and Beijing)**

After the collapse of ideological opposition between the blocs, it seemed possible, at the beginning of the nineties, to develop a world consensus on the principal problems of humanity. A series of global Conferences organized by the UN were held; these - it is right to note - helped to focus attention on the needs and the prospects of humanity and to establish a more balanced definition of development - which is not only economic but sustainable, human and social (“Place people at the centre of development and direct our economies to meet human needs more effectively”)

As far as the defence of human life is concerned, the cultural climate at the time was affected by two factors: first, by apocalyptic forecasts of a population boom exceeding the resources of the planet and, second, by a radical feminist ideology calling for women to have complete control over their own bodies, including any unborn children.

In this context, the **International Conference on Population and Development** (Cairo, 5-13 September 1994) did emphasized population control rather than development and was under powerful pressure to concentrate on "women’s reproductive health". Consequently, abortion was considered an aspect of demographic policy and a health service (“reproductive health service”). On the other hand, despite strong pressure, and thanks also to the firm commitment of the Holy See Delegation, there was a reaffirmation of the principle agreed upon in Mexico City in 1984, namely that abortion is never to be considered a means of family planning, and there was no endorsement of a so-called "right to abortion". These points were also upheld a year later, at the **Fourth World Conference on Women** (Beijing, 4-15 September 1995), where the pressures earlier in Cairo reappeared even more forcefully, leading to the insertion throughout the final documents of language about which the Holy See had expressed serious reserves in 1994. A balanced evaluation of these great international meetings must nevertheless recognize that other conclusions - like those of the 1995 World Summit on Social Development in Copenhagen or the 1996 World Food Summit in Rome - proved decidedly closer to the positions of the Holy See, especially with regard to social issues. The tendencies present in Cairo and Beijing re-emerged when the UN sought to evaluate, five years after the Conference, the implementation of the Action Programme adopted at Cairo. There a move was made to introduce the novel and equivocal expression "emergency contraception" as a pretext for medically induced (by pills) early abortion. The Holy See, with the support of Argentina, Nicaragua and some other countries managed not to have this expression approved. The Holy See also denounced the tendency to accept
sexual relations outside of marriage, even for adolescents, and to consider abortion as an aspect of demographic policies and as a method of choice. In view of the efforts being made in society to defend human life, we may ask: what weight do the conclusions of these world meetings have? We may point out that these are not texts which are binding on States; rather, they establish, by consent, general principles which merely serve as guidelines ("soft law"). These principles are meant to create or confirm tendencies which will then influence the policy decisions of the individual countries. Furthermore, these principles can become conditions for multilateral or bilateral assistance to poor countries.

It must be made clear however that we are dealing with tendencies which are not resolved on the basis of a single term or an individual paragraph: although the expression emergency contraception was not finally approved at "Cairo+5", at the very same time the abortifacient pill RU486 was being liberalized, under the name Mifegyne, in some European states. And this grave fact can be seen as related to the other statement of the Action Programme of the Cairo Conference, namely, that "in circumstances where abortion is not prohibited by law, it should be carried out safely" (No. 8.25). As you know, the "morning after pill" has been distributed for several weeks in the schools in France and, experimentally, in the London pharmacies.

It should be noted that the reasons adduced in support of these tendencies have gradually changed. In the beginning - e.g., before and during the Cairo Conference - an appeal was made to the spectre of uncontrolled population increase, but this fear has been proved unfounded: as demographic projections are being revised downwards, the international documents are now linking the issues of population growth and the "population aging". Lately a so-called "human rights approach" has become more common: all these issues are seen in terms of human rights. Often an appeal is made to the freedom of individuals over their own body, that of adolescents in particular.

**Lines of Action of the Convention Committees and the Agencies of the United Nations System**

The conclusions of the global Conferences also have a second effect. They constitute guidelines for the Convention Committees and directives for the political activities of international agencies and bodies, those of the United Nations system in particular, but others as well. Thus CEDAW, the Committee for the 1979 Convention on the Elimination of All Forms of Discrimination against Women, which affirms women’s rights in matters of family planning, issued in February 1999 a General Recommendation calling for laws condemning abortion as a crime to be amended by removing penalties against women; the Recommendation also states that a State is bound to furnish reproductive health services even in cases where health officials are conscientiously opposed to this. We can thus say that all the development efforts of the United Nations now bear the stamp of Cairo and Beijing, and that the operative principles of the action plans of those Conferences are being proposed in counseling, in contracts of cooperation and in various forms of assistance offered both to Governments and to non-state institutions. We should not be surprised if they are proposed, for example, to Catholic Universities, health centres or Dioceses: in such cases, a careful evaluation is needed of the responsibilities assumed and the impact of any such agreement with an international agency within the local context.

At the level of general declarations, the World Health Organization sought, at least until 1998, to accommodate opinions opposed to the concepts of "reproductive health" and "reproductive rights". This enabled the Holy See to make its voice heard, with the result that, for example, the document with which the WHO accepted the conclusions of the Cairo Conference avoided some of the more controversial points of that Report. Furthermore, the Ethics Committee on human cloning and medical research reached relatively acceptable conclusions. Regarding concrete policies in the field of health care, it should be noted that the World Health Organization assists States in developing health care.
programmes within the context of a worldwide consensus. Many programmes are also financed by certain States and by private foundations. Hence, alongside many perfectly acceptable programmes, there has also been the Human Reproduction Programme, aimed at developing the technology of contraception and medically induced abortion.

It must however be pointed out that the present leadership of the World Health Organization, which took over in 1998, has adopted a much more decisive stance in favour of birth control and reproductive health. Official declarations now reflect practical tendencies, unfortunately in a sense unacceptable to the Holy See. At the same time, a needed restructuring has led to the elimination of sectors most at odds with the views of the new leadership (and most sympathetic to those of Evangelium Vitae). Among other things, plans to establish an ethics committee have been postponed and perhaps even eliminated. Significant resources have also been set aside for research in the field of so-called "reproductive health". 15

Among other organizations, we may also mention UNICEF and UNHCR as particularly significant. The former has for some time launched contraceptive and sex education programmes; as is known, the Holy See has suspended its symbolic contribution to UNICEF in the light of the latter’s refusal to guarantee that this contribution would not be used for programmes contrary to Catholic principles.

The United Nations High Commissioner for Refugees provides for the support of 22.3 million refugees, displaced persons and returnees throughout the world. In November 1996, the UNHCR announced that it was joining UNFPA in making available "emergency reproductive health services" which include "post-coital" or "emergency" contraception and assistance for "incomplete abortions" in refugee camps during the civil war in Rwanda. The International Federation of the Red Cross and the Red Crescent Societies also agreed to follow this project. The UNHCR also published the notorious Interagency Field Manual, which emphasizes the sex education and "reproductive services" to be provided to adolescents. A recent illustration of these policies with regard to refugees was the sending of "emergency reproductive health kits" for 350,000 people announced by UNFPA during the recent Kosovo crisis.

As for relations between the international agencies themselves, there is a growing movement away from forms of partnership for cooperation on specific programmes to types of strategic alliances where the technical leadership of some organizations tends to lose ground to powerful agencies which are politically and economically present in the territory. UNAIDS, the United Nations programme to combat AIDS, is a case study of how this kind of cooperation between the organizations and agencies of the United Nations ends up deprecating the technical function of some agencies and favouring various kinds of lobbies.

International directives regarding the themes of the Encyclical

We now pass to the normative juridical texts on the international level which regulate the sensitive areas of the beginning, end and transmission of life. While to this point we have been considering trends, it is now time to examine specific areas, without neglecting new issues as they arise.

The right to life and abortion 16

It is important to begin by noting that international juridical instruments solemnly proclaim a fundamental right to life. 17 It must be pointed out however that, beginning with the first discussions on the international level after the Second World War, the numerous and pressing requests to define this right in terms of a ban on abortion met resistance also from traditionally Protestant countries. 18 On the level of the juridical instruments of the United Nations, the strongest affirmation of the right to life even of unborn children is contained in the Declaration and the Convention on the Rights of the
Principle 4 of the Declaration, repeated in the Preamble of the Convention, states that every child needs "appropriate legal protection, before as well as after birth". But this statement could only be made because it was left to national legislation the determination of when a human being begins to exist.

On the regional level, we can mention international juridical instruments and policies concerning the unborn in Europe and America. With regard to the Council of Europe and the European Union, it is sadly taken for granted that access to abortion is an acquired right, although legislation in certain countries (Malta and Ireland) does not permit it. When international juridical instruments which might touch on this theme are drawn up - like the Council of Europe’s recent Convention on Human Rights and Biomedicine - terminology is used which will not interfere with the legislation of individual nations, in order to enable a consensus. It should be noted that in particular situations, as in the Kosovo conflict, both the Parliamentary Assembly of the Council of Europe and the European Parliament adopted resolutions affirming the right to abortion on the part of women who were raped. The American Convention on Human Rights, which went into effect in 1978 and was ratified by 25 countries of North and South America and the Caribbean (out of a total of 34 countries in the region), is the only international convention on human rights which grants juridical recognition to life from the moment of conception, and this commitment is clear to the member States. The Holy See has made frequent reference to this Convention in its interventions before the Organization of American States and other organizations of the so-called "inter-American system". These interventions have consistently been well-received.

A specific question within the context of abortion is raised by the problem of so-called "forced pregnancy". This involves the particularly painful case in which a woman who was raped for ethnic reasons is forced to bear the child against her will. The term "forced pregnancy", which is per se ambiguous, appeared in the final documents of the Vienna Conference with direct reference to situations of conflict; it was then taken up again at the Cairo and Beijing Conferences. During the attempts to establish the International Criminal Court at the Rome Diplomatic Conference in the summer of 1998, some countries - considering the continuance of ethnic rape in Bosnia-Hercegovina - wanted to include an explicit reference to "forced pregnancy" in the list of crimes against humanity. Since the term could be interpreted as a justification of abortion, either in situations of armed conflict or as a precedent for other situations, the Holy See, after unsuccessfully attempting to have the term deleted or replaced, asked that it be clearly defined. The crime was thus given a foothold in international law, but with no reference to a right to abortion. Despite some resistance, in the end the delegates defined "forced pregnancy" as "the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall in no way be interpreted as affecting national laws relating to pregnancy".

**Experimentation on Embryos**

Experimentation on human embryos is an issue which has encountered such difficulties in international debate that no consensus has yet been reached. On the world level, the UNESCO Universal Declaration on the Human Genome and Human Rights, while dealing with matters of genetic experimentation, is silent on the issue of experimentation on the human genome, despite the observations put forth by the Holy See together with other delegations. One difficulty arises from the tendency begun by the "Warnock Report" and followed, among others, by British legislation, which accepts experimentation on embryos up to the fourteenth day. This means that the embryo is not recognized as being fully human until the period of implantation is completed. To obtain the agreement of the British, while on the other hand sensing a need to protect the embryo, the negotiators of the text of the Convention on Human Rights and Biomedicine, which the Council of Europe presented for signing at Oviedo in 1997,
deferred treatment of the issue to a future additional Protocol, specifying in Article 18 of the Convention two points which, while insufficient, have a certain value in principle: (1) whenever the law permits research on embryos, such research must ensure that the embryo is adequately protected; and (2) the creation of embryos for research purposes is prohibited. It would be desirable for the additional Protocol to call for full respect for the human embryo: even if such a position would not receive widespread support, it would represent a clear statement of principle in international law.

The Human Genome and Cloning

In connection with experimentation on embryos, it seems appropriate to mention two issues which taken on greater importance in recent years: the use of the human genetic patrimony and human cloning.

With the growth and scientific progress made in the Genome Project, prospects opened up for the possible appropriation and economic exploitation of human genes as such. The then Director-General of UNESCO, Federico Mayor Zaragoza, proposed a juridical instrument which would establish principles in this sensitive and as yet unexplored area. In January 1993 a process began which led to the drafting, by the International Consultative Committee for Bioethics, of the Universal Declaration on the Human Genome and Human Rights. This was adopted by UNESCO on 12 November 1997 and then by the General Assembly of the United Nations on 9 December 1998. The entire process of the drafting of this document was carefully followed by the Holy See which, in addition to various other points, insisted above all on the need for emphasis on the protection of each individual human being (rather than the entire complex of humanity’s genes), the prohibition of all cloning of human beings, the inadequacy of the concept of "heritage of humanity" with regard to genetic patrimony, the need to defend the embryo, and control over the political, economic and military interests which could influence genetic research.

The Declaration as adopted, in addition to various principles about the respect due to patients, proclaims in an infelicitous formula that the human genome "is the heritage of humanity" (even if "in a symbolic sense"), prohibits using the human genome in its natural state for financial gains and states that the cloning of human beings - unfortunately for reproductive purposes only - is contrary to human dignity and should not be permitted. This rejection of cloning, not originally planned, was added towards the end of the drafting of the text, following the well-known experiment of Dolly the sheep. Whereas the UNESCO Declaration is, by nature, a statement of principles (provisions have been made, however, for a process to oversee its implementation in each country), the first binding juridical instrument dealing with this latter issue was drafted by the Council of Europe. On 12 January 1998, 19 countries signed in Paris an Additional Protocol to the European Convention of Biomedicine on the Prohibition of Cloning Human Beings. This protocol, which also calls for serious criminal penalties, forbids "any procedure aimed at creating a human being genetically identical to another human being, living or dead", regardless of the technique used, with no exceptions even for reasons of public security, the prevention of criminal offences, the protection of public health or the protection of the rights and liberties of third persons.

Both in the case of the UNESCO Declaration and in that of the Council of Europe Protocol, it must be pointed out that, although the discussion took place at a time when the public opinion was very much aware of the issue and in favour of the establishment of precise norms, the only consensus that could be reached on the international level (after considerable effort) was a ban on human cloning for reproductive purposes, but not for other purposes, such as research or therapy.
Questions about the patenting of human life

In April 1994, with the implementation of the Marrakesh Accord, the World Trade Organization was established. From the point of view of the defence of human life, its agreement on the protection of intellectual property could prove important. In compliance with the agreement States must grant patents to pharmaceutical products and biotechnological inventions. A State can nevertheless exclude from its patenting provisions those inventions which it considers inadmissible on moral grounds or for reasons of public order. As is known, a patent grants its holder a monopoly on the commercial benefits of an invention for a period of twenty years. If a given product or invention is not granted a patent, one may profit from it but only in the context of free competition, in which anyone is free to "copy" it. At the present time, biotechnological research calls for an enormous financial outlay, which means that a monopoly on commercial gain is a condition sine qua non for the release of a product (since otherwise it would prove unprofitable). Therefore, should a State deny a patent for some line of products, the companies producing those products would not market them. This norm seems important, especially given the products and procedures related to the use of aborted fetuses and embryos, or from human cloning. Nevertheless, producers who are pressing to expand their market will probably insist on obtaining patents, and so a change of the norms is likely. Should this occur, the European Directive 98/44/CE of 6 July 1998 on the legal protection of biotechnological inventions is important. Strictly speaking, this Directive binds only the Member States of the European Union; nevertheless it provides a series of substantial definitions in the area of patenting, with which the Member States of the World Trade Organization OMC/WTO (162 countries) will have to bring their present practice into compliance. The Directive will thus represent a theoretical and legislative guide for other States and also for future legal coordination within the various economic and commercial blocs now being organized (MERCOSUR, APEC etc.). The European Directive lays down the principle that it is forbidden to patent the human body and its parts, and embryonic human cells; it also forbids the patenting of the human embryo, of methods of human cloning and of procedures for modifying the foundational genetic identity of human beings. The patenting of the use of human embryos for industrial and commercial purposes is also banned. This text of the European Union is important because it fills a legislative gap; even so, respect for these principles will also depend upon their legal interpretation and the political will of the European nations in future negotiations on the worldwide level.

The Death Penalty

As is known, positions concerning the death penalty have traditionally been divided: while some States rightly consider the abolition of the death penalty to be established principle of modern legal thought, others consider it an effective deterrent measure. When the Encyclical mentions "among the signs of hope" the "growing public opposition to the death penalty", and affirms that "the problem must be viewed in the context of a system of penal justice ever more in line with human dignity", it can appeal to specific juridic facts. In the Council of Europe, Protocol No. 6 to the European Convention on Human Rights, Concerning the Death Penalty, of 28 April 1984, declared in its first article that "The death penalty is abolished. No one can be condemned to this penalty nor executed", while exceptions are admitted only in time of war or in imminent danger of conflict. Within Europe, this tendency has gained momentum: in October 1994 the Parliamentary Assembly of the Council of Europe adopted a Recommendation calling for the complete abolition of the death penalty in all Member States, rejecting by a large majority an amendment intended to preserve the right of States in cases of high treason and espionage. A similar tendency also emerged within the European Union: in March 1992, the European Parliament adopted a resolution calling for the abolition of the death penalty in every country of the world. The countries of the European Union are committed to deny the extradition of accused persons.
subject to the death penalty. Furthermore, the commitment to the abolition of the death penalty throughout the world has set this as a condition for negotiations with other countries. The position adopted by *Evangelium Vitae* has also drawn attention on the international level. As is known, the Encyclical states that it should never come to "the extreme of executing the offender except in cases of absolute necessity, when it would not be possible otherwise to defend society". It likewise points out that "today however, as a result of steady improvements in the organization of the penal system, such cases are very rare, if not practically non-existent".

In June following the Encyclical’s publication, the European Parliament asked the United States to abandon the application of the death penalty. In May 1999, the Strasbourg Parliament again requested that the issue of a universal moratorium on executions be included in the next General Assembly of the United Nations.

The reaction at the level of the United Nations appears significant. In May 1996—little more than a year after the Encyclical’s publication—the Fifth Session of the UN Commission for Crime Prevention and Criminal Justice discussed the issue, and the Report of the Secretary General devoted an entire section to the position taken by Pope John Paul II in *Evangelium Vitae*. In the Working Group on the issue (the Third), Austria, together with Germany and Italy, presented a draft resolution which met with opposition from Islamic countries, which considered it a matter of divine law, and from other countries such as Tunisia and Japan. As a final compromise, the resolution, as adopted, "takes note with appreciation of the continuing process towards worldwide abolition of the death penalty". On the other hand, the proposal of a moratorium on capital punishment, presented to the General Assembly in November 1999, was postponed in the face of strong opposition from many countries.

It is important to point out that the International Courts for Rwanda and the former Yugoslavia have not made provisions for the death penalty. This is especially significant in the case of Rwanda: in that African country the accused are subject to the death penalty, but not if they are found guilty by the International Tribunal. The Diplomatic Conference of Rome, which established the International Criminal Court, did not provide for capital punishment in its list of penalties.

**Euthanasia**

The debate concerning "easy death", carried on at times with definitions poorly adapted to the scientific facts and the ethical issues involved, had begun before the publication of *Evangelium Vitae*. It can be pointed out that on the international level—hitherto the debate has been limited to European institutions—whenever it has been a question of voting for juridical instruments, the defence of life has thus far prevailed.

In the European Parliament, as early as 1991 a Resolution on assistance to the dying which actually permitted euthanasia and had received the approval of the Commission for Environment, Health and Consumer Protection, was not presented to the plenary assembly, due in part to the intervention of the European Bishops and Parliament members sensitive to the Catholic position. In 1996, the Parliament adopted a Resolution concerning attacks on the right to life of the handicapped. The Resolution forcefully rejects the claim that minors, patients in a state of unarousable awareness ("coma vigil") and the newborn do not have an unrestricted right to life; it affirms that the right to life is granted to every human being regardless of health, gender, race and age; and it rejects active euthanasia with regard to patients in a state of unarousable awareness ("coma vigil") and newborn children with handicaps.

In June 1999, the Parliamentary Assembly of the Council of Europe approved a Recommendation favouring the continuation of an unconditional ban on the deliberate ending of the life of the terminally ill or the dying. All the Member States are asked to adopt whatever legislative measures are necessary to ensure the legal and social protection of the terminally ill; everyone must be guaranteed palliative care even at home and the availability of analgesics, even when these, as a secondary effect, might aggravate the patient’s condition. The adoption of this stance therefore rejected the argument of a "right
to die" put forward by many organizations; it may reopen debate in the Netherlands and Switzerland, where euthanasia is practised under strict controls, and it may influence other countries like Belgium and Luxemburg, where legislative proposals in this regard have recently been presented.

**Conclusion**

At the present time, international policies and norms on human life present a checkered and uneven picture, combining decisions made at different times and reflecting different concerns, and one still in a state of flux.Yet if we wish to grasp their "logic", so to speak, we may observe that:

a) the life of persons already born is well protected, even vis-à-vis the interests of scientific research and, at least hitherto, of the individual’s own will: the idea of euthanasia is not accepted.In this regard, one can point to a non-acceptance, at least on the worldwide level, of the death penalty;

b) whenever there is a conflict between the interest of a person already born and the life of an unborn human being (a fetus or embryo), the latter is sacrificed (e.g., by abortion, assisted procreation, the use of surplus embryos and even cloning for therapeutic purposes);

c) the interests of scientific research tend to prevail over respect for unborn life;

d) some fixed limits have been set: the rejection of cloning for reproductive purposes and, in Europe, the rejection of the production of embryos for research purposes.

In this overall picture, which emerges from a framework of legal positivism, it is not difficult to see inconsistencies and substantial contradictions. With a view to activity in favour of life, I would consider it helpful to keep in mind that these international policies are in effect the reflection and the result of ways of thinking - which might be called hedonistic or neo-Malthusian - which are widespread in the developed countries and associated with real or alleged economic and political interests. The political consensus forged at a World Conference or the application of a Convention can have a significant influence on the national level, yet they themselves are conditioned by public opinion, which can be influenced by what is being done from below. On the other hand, the international juridical instruments, for all their limitations, do contain principles to which citizens can appeal in demanding from States a greater protection of human life. In addition, there seems to be ample room for activity "from below", inspired by charity. Much can be done to defend life and to create a sense of hope within the broader public before the issue reaches the level of international debate. Activity can take place on many levels, from the national down to the local: by careful attention to the granting of patents, by practical acts of solidarity with mothers struggling to accept an unborn child, by insistence upon the right to conscientious objection without discrimination for health-care workers, and by commitment to scientific research which will respect life.

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1 Hereafter cited as EV.
2 EV 11.
3 *Copenhagen Declaration on Social Development* (12.03.1995), No. 26a.
4 "In no case should abortion be promoted as a means of family planning" (ICDP Platform 8.25).
5 This would have in effect overridden the prohibition of abortion as a method of family planning sanctioned at Cairo.
7 The pill, marketed in France, Great Britain and Sweden, was authorized on 6 July 1999 in Germany and the following day received the "go-ahead" of the Belgian medical authorities; the manufacturer expects that approval will soon be given in Austria, Denmark, Spain, Finland and the Netherlands.
In the French text: "Dans le cas où il n'est pas interdit par la loi, l'avortement devrait être pratiqué dans de bonnes conditions de sécurité".

The international bodies most affected are, in the UN system, UNICEF, UNFPA, WHO, UNDP and the UN Economic Commissions ECA, ECLAC and ESCAP. In particular, UNFPA, together with the IPPF (International Planned Parenthood Federation), has programmes in 157 countries lobbying to change laws and to implement programmes of birth control, with reserves of 335 million US dollars. Among those bodies not belonging to the UN system, the World Bank, Regional Banks for development and the OECD can be mentioned.

Convention cited above, art. 12 and 14.

"When possible, legislation criminalizing abortion could be amended to remove punitive provisions imposed on women who undergo abortion": *Implementation of Art. 21 of the Convention...General Recommendation on Article 12: Women and Health* (1 February 1999), No. 31c, p. 14.

"It is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women. For instance, if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers" (*Ibidem*, No. 11, p. 5).


In the Programme Budget 2000-2001, the "Health systems and community health programme" saw a 20.37% increase of its budget. It will be in a position to draw on US$145,022,000, the largest amount after that set aside for communicable diseases. Of this amount, $21,622,000 comes from the ordinary budget, while $123,400,000 comes from other funds. One notes that $64,561,000 (about 50%) will be set aside for reproductive health and research. The other areas of the programme which will receive financing are health systems, the health and development of children and adolescents, women's health. The indication is clear: to increase and spread ideas, initiatives, programmes on reproductive health from a secular viewpoint with all the moral consequences relating to sexuality and the family.

Cf. EV 13, 17, 58-60.

*Universal Declaration of Human Rights*, Article 3: "Everyone has the right to life, liberty and security of person"; *International Covenant on Civil and Political Rights*, Article 6.1: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

Great Britain and Denmark in particular.

"Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth" (Preamble of the Declaration of the Rights of the Child, proclaimed by General Assembly Resolution 1386 - XIV - of 20 November 1959); "... He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and his mother, including adequate pre-natal and post-natal care" (ibid., Principle 4). Twenty years later, in the Convention, Principle 4 of the Declaration was repeated in the Preamble, and in article 6 it was recognized that "every child has the inherent right to life"; but in article 1 the following definition was formulated: "a child means every human being below the age of eighteen years", mentioning the *terminus ad quem*, but not indicating precisely the beginning and leaving the interpretation of the term "human being" to national legislation, for the precise purpose of making the text acceptable also for those countries opposed to an international prohibition of abortion.

Second part, April 1999.

March 1999 Session.

*Pacto de San José de Costa Rica*, dated 22 November 1969; it went into effect on 18 July 1978.

Article 4 § 1: "Toda persona tiene derecho a que se respete su vida. Este derecho estará protegido por la ley y, en general, a partir del momento de la concepción. Nadie puede ser privado de la vida arbitrariamente."
This is one of the reasons why the United States of America did not ratify the Convention. Argentina, in the constitutional reform of 22 August 1994, in Article 22, granted constitutional status to the Declarations of Rights of the American Convention, as well as to those of the two Covenants on Human Rights of the United Nations. In 1998, San Salvador also incorporated into its Constitution the provisions of the American Convention.

Since it is difficult to view the birth of an innocent human being as a crime; instead we have here a combination of crimes to which heavy penalties have already been attached: sexual violence, unlawful confinement, etc.

Cf. EV 63.


In addition to the French Episcopal Conference, which published an interesting and timely position paper.

Cf. Article 4.

"Practices which are contrary to human dignity, such as reproductive cloning of human beings, shall not be permitted".

Denmark, Estonia, Finland, France, Greece, Iceland, Italy, Latvia, Luxembourg, the Former Yugoslav Republic of Macedonia, Moldavia, Norway, Portugal, Romania, San Marino, Slovenia, Spain, Sweden and Turkey. The Protocol will go into effect when at least five of the signatory countries have ratified it. It has been presented for signing to the 41 Member States of the Council of Europe and to others which took part in its drafting, such as Australia, Canada, Japan, the Holy See and the United States.

The reference here is to the ADPIC/TRIP Accord (Aspects des droits de propriété intellectuelle qui touchent au commerce / Trade-Related Aspects of Intellectual Property Rights), which establishes a common provision for the protection of intellectual property.

Accord de Marrakech instituant l'Organisation Mondiale du Commerce (Marrakesh, 15 April 1994) - Annexe 1c: Accord sur les aspects des droits de propriété intellectuelle qui touchent au commerce (ADPIC), Articles 27 and 73.


This would be an example of how action on the regional level can have a positive influence on the universal level.

Directive 98/44/CE, Article 6, §2.

EV 27.

Protocol No. 6, art. 2; States must report to the Secretary General of the Council of Europe about their respective legislation. Countries which have joined the Council subsequently are requested to adjust their legislation by abolishing the death penalty (in 1995 the Ukraine stated that it would respect a moratorium on executions in view of the abolition of the death penalty within three years).

Cf. EV 27, 55-56.

EV 56.

Vienna, 21-31 May 1996.


Session of 20-24 May 1996.

It should be noted, however, that no reference is made to the life of unborn children.
1) The attention to civil law's problems concerning life defence is all but marginal within *Evangelium Vitae*. Suffice it to remember paragraph (par.) 18: the "more sinister and disturbing" aspect is to "interpret crimes against life as legitimate expression of individual freedom, to be acknowledged and protected as actual rights". Indeed, we can say that nowadays' novelty is not mainly innocent people killing, rather the legality of this act. It is no surprise, therefore, that the most serious and widespread disputes concern precisely law. That's why the Holy Father - especially from par. 68 on - openly faces the relationship between civil and moral law, reaching the conclusion that "laws which authorize and promote abortion and euthanasia [...] are completely lacking in authentic juridical validity". Thus, it is a primary duty of Christian intellectuals - particularly jurists and politicians - to know exactly what has been happening about right-to-life in our time, with reference to the strictly juridical-legal level, to interpret facts, to discover deep tendencies, to foresee the possible evolutions, to outline a strategy of political-legislative interventions in order to restore justice in the law concerning human life.

2) Since others in this meeting illustrate the law on human life within specific countries, I believe my task is to give an overall view of European situation. I would start from the supranational perspective of Europe and then ask: what is Community law attitude towards human life? Community law comes from European Union's law, the treaties that originated the Union, and the regulations issued by Community institutions - at a secondary level. At first sight, however, we will notice that the European Union (EU), which has been conceived mainly as an economical structure so far, did not have many important chances to speak of human life. What I mean here is some binding juridical rules, since the European Parliament has repeatedly performed political acts, that is non-binding declarations about abortion, artificial fertilization, euthanasia, death penalty. Still, they are not juridical rules. To tell the history of parliamentary motions, questions, and interpellations is one thing, to tell the history of laws is quite another. This occasion requires to talk about juridical rules - that is law -, the juridical principles inherent in regulations, the way judicial organs interpret them. Given this limitation to the subject, within the EU - until now dominated by economic guidelines - we do not find any "law" about human life, except when human life touches economy. This happened with the recent directive concerning the juridical protection of biotechnological inventions (July 6th 1998): it states that the inventions which use modifications of human genetic code at a germinal phase are immoral and contrary to public order, therefore not patentable. The same directive declares human body and its parts not patentable as well, including the single human genes in their natural state and not isolated. Although this directive shows the acknowledgment of human dignity from the very conception on, and certainly refuses the distinction between embryo and pre-embryo, we cannot deduce from it that EU's law is engaged in right-to-life defence. Similarly, it is under almost completely economic principles that the European Court of Justice dealt with the only abortion case it was given. It had to decide whether the Irish prohibition against the advertisement of pro-abortion English clinics was lawful according to Community law. In the SPUC versus Grogan case - sentence of April 4th 1991 - the Court of Luxembourg considered only Community regulations about free services within the EU. Thus, the voluntary termination of pregnancy made according to the law of a Member State is defined "a service", while the Irish authorities' prohibition against the ones who advertised such English "service" in Ireland was considered legitimate only because the advertisers were not personnel or representatives of the English clinics; on the contrary, they acted in total autonomy. As regards the most important issues related to abortion, the Court of Justice explicitly excludes its competence "towards any national regulation which does not fall within Community law". This seems to imply that Community law on right-to-life is not very important. Still, the treaties of Maastricht (1992, art. F) and Amsterdam (1997, art. 6) extended the European Convention for the Protection of Human Rights and Fundamental Rights.
Freedoms, which was adopted by European Council in 1950, to the Community. This Council is an inter-governamental organization different from the EU; it acts within international law, therefore is able to issue juridical rules only through mandatory treaties, if and to the extent that the Member States ratify them. The 1950 Convention turned the ONU Universal Declaration of Human Rights into a real treaty, adapting it to the European context; in art. 2 it ensures "everyone's" right-to-life ("toute personne" in the French text), whereas the Amsterdam treaty says that "the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedom, and the rule of law, principles which are common to the Member States. The union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on November 4th 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law". We can affirm that right-to-life has become part of Community law. However, the problem is that there are unsolved disputes about the possibility of referring the art. 2 of 1950 Convention also to unborn babies; moreover, even the mention of the treaty of Rome included in the Amsterdam treaty is surrounded by such a circumspection that it seems that the normative content of 1950 European Convention must be reduced to the lowest common denominator of the constitutional traditions of the Member States.

On the other hand, the increasing jurisdiction of the EU, along with its progressive transformation into a real political unity, lets imagine an increase in Community law importance related to right-to-life. On the contrary, European international conventional law, due to the activity of the Council of Europe, had a great importance already. In fact, besides the 1950 Convention of Rome, we must also recall the Convention of Oviedo (April 4th 1997) for "the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine". Its preamble affirms "the need to respect the human being both as an individual and as a member of the human species and recognising the importance of ensuring the dignity of the human being"; the same principle is repeated in art. 1, in which we also find an equivocal language: on the one hand it promises to "protect" human beings' dignity and identity, on the other hand says it guarantees "everyone's [...] rights" "without discrimination". In the art. 2 of this Convention the principle that "the interest and welfare of the human being shall prevail over the sole interest of society or science" is really appreciable; however, in art. 18 - whose formulation was very controversial - the ambiguity explodes, since the Convention limits itself to forbid the production of embryos for research purposes, but lets the Member States completely free of issuing laws about research on embryos in vitro, with the only faint limitation of assuring an "adequate protection of the embryo". Moreover, the Convention of Oviedo generated four work groups to prepare as many additional protocols. The one on human cloning (which is forbidden) has already been made, but the one about the status and the identity of the embryo is still under discussion. It is clear, anyway, the importance of international conventional law drafted with the imput of the Council of Europe organs. It is likely that in the future this law will more and more represent a limit and a guide for Member States' legislations about right-to-life. Such a foresight follows the logic of events, because the Council of Europe, which does not have any direct legislative power, was born with the primary purpose of promoting human rights in Europe - unlike the EU, which was born under the sign of economic integration - . In addition, the European Court for Human Rights, located in Strasbourg, was created to ensure the respect for pactional rules; its functions have been largely extended with the 11th reform protocol (November 5th 1994), come into force on November 1st 1998. The Member States can appeal to this Court also to obtain an interpretation of the Convention of Oviedo, therefore we are probably going towards an increasing interdependence between state law and Council of Europe concerning our matter.

Nonetheless, a synthetical evaluation of the present European regulations - the Community as well as the conventional ones - suggests two conclusions:

A) There is a difficulty in facing and deciding the problem of human embryos' status. Many sophisms are used with the purpose to avoid taking up a position.
B) Until now state laws have stronger influence on European law than vice versa, in the sense that right-to-life matters are regarded as falling within the competence of the state, and in the sense that supranational interventions try to avoid conflict with internal laws, however different they may be; finally, in the sense that the juridical culture of supranational European institutions is definitely influenced by individual states' juridical culture.

As regards abortion, this situation is highlighted by the sole decision taken by the European Court of Human Rights on this matter so far (Open Door and Dublin Well Woman versus Ireland case, Sept. 23rd 1992); it is also highlighted by the reports of the European Commission for Human Rights, a political - rather than juridical - institution, which was suppressed in 1998 and had the purpose of screening and solving debates in order to prevent them from reaching the Court of Human Rights, apart from rare and extreme cases. The analysis of these documents - which we cannot do right now - shows the predominant refusal of taking up a definite position on the meaning of the art. 2 of the European Convention on Human Rights. With regard to this point, the above mentioned ruling of the European Court of Strasbourg is exemplary. The same thing happened with the case brought to the Court of Justice of Luxemburg, as we said before; in Ireland two feminist associations and four women applied to the Court of Human Rights, complaining against Irish authorities' prohibition of giving information on the English clinics in which it was possible to have an abortion. Their petition relied on the art. 10 of the Convention of Rome, that guarantees free thought and communication "without any interference from public authority", unless restrictions are necessary to defend "someone else morality or rights", besides other values. The Court noticed that abortion was considered immoral in Ireland, therefore justified the authorities' prohibition with no need to inquiry whether the word "someone else" may be applied to embryos or not. Consequently, the Court's conclusion was that there was no need to verify if art. 2, which guarantees right-to-life for each human being, can be referred to embryos too. We cannot give more details about European regulation (Community or conventional), all the more so as it is now more useful to verify national laws tendencies.

Before concluding this point, however, it is convenient to make two more remarks. The first is that supranational European juridical material is globally scarce on right-to-life; political interventions (recommendations, resolutions) are much more frequent and discerning. Within European Council it must be underlined the negation of the notion of pre-embryo, the affirmation of embryos' continuous development from conception on, the pressing for a definition of the embryo's juridical status that takes his dignity into consideration (1986 recommendation nr. 1046 and 1989 recommendation nr. 1100).

Besides, the Parliament shows two contrasting directions. When discussing abortion, the Parliament has always showed a widely permissive position, but when the problem of human embryos has been posed separately from abortion questions the Parliament payed more attention to newcoming life, as it can be seen in the two resolutions on genetic engineering and artificial fertilization (March 16th 1989), which invite the Member States to forbid embryos' experimentation and discipline artificial fertilization, taking special account of unborn babies' rights from conception on; these rights are specified as rights to life, family, biological and psychological identity.

The second remark concerns euthanasia. Until now there has been an intense debate on the art. 2 of the European Convention concerning the defence of fundamental rights and freedom, with reference to embryos' right-to-life. It is not just as easy to exclude the protection of old and sick people, for nobody can doubt their status of persons; as a matter of fact, the above mentioned art. 2 allows the killing of human individuals just in case of execution as a result of the final judicial sentence of death penalty, self defence, need of overcoming resistance to authority. Since also the legitimation of euthanasia has been introduced in Europe and the debate is likely to increase, I think it right to recall the same art. 2, that contributed to stop a resolution in favour of euthanasia within the European Parliament in 1992. Yet an "overall sight" on European law cannot ignore individual States' regulations, considered not in themselves, but in their attitude to express a synthetical unitary tendency. We can discover it either through a particular kind of comparative, dynamic, and non-static examination, or comparing the two
highest jurisdictional organs, namely the Constitutional Courts. This way, it will be possible to understand what is more urgent to do in order to guide European laws, both national and supranational, towards a general and consistent respect for right-to-life.

3) The cause of any law against life ultimately lays in the "eclipse of the sense of God", as Evangelium Vitae says in par. 21. The European history of abortion law does prove it looking at the very chronology. Abortion is made legal in Europe before everywhere else within the area of real communism, that is theoretical materialism: Sovietic Union's law arrived 47 years before the English one. As a matter of fact, as soon as the communist dictatorship extended to other European countries permissive laws were introduced. The case of Rumania is peculiar: also in this country communism introduced a law on abortion immediately. Then, under Ceausescu a reversal of the trend occurred, with elsewhere unimaginable stiffness; however, it followed a materialistic logic, because the reason for the restrictions was not the acknowledgment of the intrinsic value of unborn children, but a policy of power which was trying to contrast the breakdown of births. Abortion in Western culture is more contradictory, because of the value attributed to individuals with their autonomous meaning and because of its proud pretension of promoting human rights. As a matter of fact, permissive laws arrive much later in the West - not without suffering and contrasts - together with the affirmation of utilitarian life models, brought about by practical materialism. The first law was issued in 1967: the Abortion Act of the United Kingdom. This liberalization impulse spread quickly beyond the Atlantic Ocean to the United States, where - a unique case in the world - abortion is made legal by two sentences of the Supreme Court, instead of the Parliament. The two sentences are the decisions of January 22nd 1973: Roe versus Wade and Doe versus Bolton, in which the very culture of individualism and human rights lays the foundations of constitutionally guaranteed right-to-abortion. Obviously, the price is the negation of embryos' human individual character. The explanation, in fact, focuses on the concept of "privacy" as the "women's right to be left alone", which is the natural consequence of the principle that "any American - except the case of clear damaging behaviour - must be free of having whatever life he/she wants and doing whatever he/she likes". Such a "privacy" is not limited by the rights of the child in the womb but by women's interest towards babies' birth and also by the public interest of the State. That explains the "quarterly" structure of its regulation. Legal abortion came back from America to Europe with more strength. We have already remembered the dates of Seventies' and Eighties'. The last to surrender was Belgium in 1990. Meanwhile, after the fall of Berlin's wall, attempts to go back to life respect started in Eastern countries. The most relevant of them took laboriously place in Poland, where the law of January 7th 1993 replaced the old 1956 communist law, accepting a sort of compromise. On the one side, in fact, art. 1 declared that "every human being has a right-to-life from conception on, that is intrinsic"; on the other side it did not punish abortion in the event of "serious danger for the mother", of suspected "serious and irrecoverable malformation of the foetus", and of rape. Anyway, the 1993 law showed a tendency to protect life. However, the subsequent victory of post-comunist power brought Poland back to a pro-abortion position, which has been stuck until Walesa remained the President of the Republic, but afterwards ended in a widely permissive law on August 8th 1996. The Polish Constitutional Court carried out heavy demolitions of this law with the sentence of May 28th 1997, whose main originality consisted in binding the foetus' right-to-life to the concept of "democratic constitutional State", as depicted by Constitution. The Hungarian events after Berlin's wall fall should be mentioned too, for the tendency to reduce the legitimacy of abortion, although in a less effective way than in Poland. Anyhow, it is confirmed that legal abortion reveals a materialistic culture. What happened in Germany after the reunion is another interesting proof of that. All the regulation of the Western Republic were extended to the Eastern one. All of them, except one: the abortion law. The Germans in the former
Democratic Republic recognized the superiority of Western law with the exception of the law on abortion, which was much more liberal in the east. Similarly, the Federal Republic proudly affirmed its supremacy on everything but abortion regulation. For this reason, the issuing of a unitarian new law was decided in the unification treatises. This law, with a very permissive content, was passed on July 27th 1992. Two interventions of Federal Constitutional Court - an interlocutory first one (August 4th 1992), and a definitive second one (May 28th 1993) - destroyed it and compelled the ordinary legislator to make a new intervention. The new law - approved on June 29th 1995 - tried the impossible mediation between materialism and personalism, counting upon the role of family advisory centres.

The recent stance of the Holy Father about the role of German catholic advisory centres (letter of January 11th 1998 directed to German Bishops) touches a question which is not only German, but European: this question must be faced by all those in Europe who refuse to resign themselves to unjust laws and, at the same time, accept a logic of realistic graduality in order to modify them, although this graduality does not have to contradict fatally the unquestionable respect for right-to-life. Until now, yet, I recalled German events just to show my point: abortion is a sign of materialism, both in the form of theoretical materialism and in the less explicit form of practical materialism.

4) What can we understand from European laws, especially when commented by constitutional jurisprudence? I can answer with a single word: anxiety. John Paul II revealed the roots of this European anxiety in his Evangelium Vitae. In par. 18 he describes the "surprising contradiction" that causes anxiety: "Precisely in an age when the inviolable rights of the person are solemnly proclaimed and the value of life is publicly affirmed, the very right-to-life is being denied or trampled upon, especially at the more significant moments of existence: the moment of birth and the moment of death". If we consider European laws globally - either concerning abortion or artificial fertilization - we clearly see this contradiction. It brings about uneasiness and dissatisfaction. It would be so easy to justify permissive legislations just fixing, once and forever, that human embryos are not human beings, but things. However, European juridical conscience cannot pronounce this abominable judgement. Practical desires, the facility of the edonistic perspective, the trouble of complex and full of sacrifices alternative solutions pull towards right-to-abortion, as well as to produced or demanded children. The legislator and the jurist are not able to front this pressure. And yet human rights culture, which is so typical of our present time, cannot be brutally contradicted. Thus, both legislative and jurisprudential inconsistencies appear as regards the most permissive law contents and - of course - as regards the formal affirmations of right-to-life equally assured to everyone. The limits of this paper do not permit too much detailed explanations. Nonetheless some pictures of this contradiction-anxiety can be presented.

A) What is the sense of announcing the state commitment in defence of human life from conception on if the killing of unborn children is allowed - as it happens within French and Italian laws -?
B) Why the free choice of abortion is surrounded by - at least formal - caution (documentation, waiting time, advisory interventions) if what is involved is not a human life, but only a woman's free choice concerning her personal life?
C) Why the production of embryos for research purposes through FIVET is forbidden, whereas frozen extra embryos, who are in conclusion sentenced to death, are not cause of concern?
D) What does it mean - as the art. 18 of the European Convention project on Human Rights within Biomedicine says - that the Countries must reserve a treatment appropriate to embryos' dignity whenever they consent to embrional experimentation? Why dignity? What does it involve? What does "appropriate" mean?
E) Most of all, what's the point in the nearly obsessive avoidance of a definition of the human embryo's juridical status? Where does the constant censure of the question about who or what the human embryo is come from, if not from anxious fear? Eluding the problem seems to be a constant in European law. Italian law, for example, refuses to determine whether abortion law is in contrast with the constitutional
guarantee of right-to-life or not, using procedural arguments that in fact remove the most important fundamental right - always and ever - from constitutional control. Moreover, Italian law distinguishes "human being" from "person" without giving any reason for that; doing so, it implies that the grounding of protection is the juridical capability; in other words, it gives a definition of positive law on a matter which precedes and judges positive law itself. Finally, by forcing the interpretation of the ordinary regulation, Italian law interprets abortion discipline only as an extension of necessity state. Spanish and Portuguese laws consider any individual's right-to-life, that is a subjective right constitutionally guaranteed, a commitment to defend objectively an objective good not subjectivized, just as environment, artistic works, and animals. French law, which is literally indecent in its irrational laconicity, just appeals to the words of the ordinary law that engage the State in life defence. Austrian law maintains the constitutional duty to defend right-to-life within relationships between private citizens and State, but not within relationships among private citizens. Hungarian law, after recognizing embryos as human beings, does not dare to cancel the ordinary law which permits their suppression, since the same ordinary law does not attribute the unborn baby a juridical subjectivity. I could go on much longer. In conclusion, when reasoning of life, there is a drop of rationality that can be interpreted in various ways, maybe pessimistically as hypocrisy or verbal deception which tries to balance in a context of contrasting and incompatible positions. Maybe it is also possible to interpret it more optimistically as anxiety, namely the unescapable persistence within our culture of a value so high - the value of human dignity - that it cannot be denied facing it directly; it can be deceived only looking away.

5) If this interpretation is correct, then the propelling strength of a possible positive change will consist in forcing to focus on the problems with the purpose to make contradictions explode and become unbearable. I find Evangelium Vitae prophetic here too, as (nr. 19) it poses the problem of subjectivity and repeatedly insists on human rights doctrine, which is the achievement and pride of modernity. Who has the right to human rights? My idea is that it is necessary to concentrate our energies in order to obtain a formal and written answer to this question from the laws; this answer, which has already gone through an evolution that freed slaves, blacks, women - at least at a political-legislative culture level - must free also unborn children, dying people, everyone who does not count, and proclaim their equality, therefore their juridical subjectivity. Within this context, the reform of people rights is maybe even more important than the reform of the laws against life. In any case it is a matter of carrying out a cultural action with the purpose to ban the distinction between human being and person (cf. E.V. nr. 60), because 'person' is just another name for human being, and because what is more important in order to change the laws is the juridical datum. Three recent suggestions let us hope. I have already mentioned the Polish constitutional sentence. It considers the legislative formalization of embryos' juridical capability unnecessary only because this capability already results from the attribution of right-to-life. Also the recent Hungarian constitutional decision mentioned above, although unacceptable, shows the great importance of recognizing embryos' subjectivity through positive law. In the end, the Italian sentence nr. 35 of Feb. 2nd 1997 may represent a positive evolution of Italian constitutional jurisprudence; this sentence, even if it just had to decide the acceptability of a referendum aiming to extend abortion legitimacy, had the chance to affirm embryos' right-to-life clearly, pointing out that it is one of the fundamental values of the regulations "that have always find an increasing acknowledgment also international". It is exactly the same thing to attribute a subjective right to an entity and to recognize his/her legal capacity. In my opinion, the attention to this point implies that within European context we do not have to waste our energies along other directions such as, for instance, asking for the penal prohibition of abortion. Jurists well know the possibility of an illegal behaviour which however does not determine the enforcement of a criminal penalty. The modern doctrine of criminal law as "extrema ratio" (the last chance), that is as an instrument to be used only if no other effective means are possible to protect civil
life, let us admit the compatibility between the strong and definite affirmation of embryos' personality and the acceptance of a wide renounce to penalties in order to defend them. The German constitutional sentences can reliably guide us along this direction. Similarly, I well know there is a close link between contraceptive mentality and abortion legalization (E.V. nr. 13). Indeed, everywhere in Europe permissive laws are not a consequence of a scientific demonstration of embryos' non-humanity: on the contrary, biology has been more and more showing their human identity, whereas the corruption of sexual behaviour - fastened by contraceptive technical facilities -, after trivializing the sexual act and theoretically depriving it of any responsibility, found it necessary to remove children, that are the last and most important source of responsibility. However, the reference to human rights is like a wedge penetrating the inner layers of modernity. That implies that the Parliaments must refuse to keep on negating the humanity of embryos levelling abortion and contraception.

6) The par. 73 of *Evangelium Vitae* realistically takes responsibility for the present situation and accepts that Christian politicians and legislators, on certain conditions, work for a law defending life which is not perfect, but achievable. In other words, we cannot wait the total subversion of the situation without doing nothing. Instead, everything possible must be done day after day. The lesser evil notion (the reduction of damage) coincides with the notion of the greatest realizable good. With regard to abortion, we must of course distinguish among those countries which fortunately do not have permissive laws, such as Ireland and Malta, those countries in which abortion legitimacy is submitted to control (indications solution) and those which admit women self determination (terms solution). Obviously, as for the first countries, any further step represents a worsening; as for the second, the removal of social and economic causes from the conditions of abortion legitimacy is a step forward. The problem of advisory function and methods concerns all, especially the regulations providing self determination. For this reason I said that the issue John Paul II raised in Germany is not just a German problem. Within European conscience - continuing along the path of a moderate optimism - such notions as "preferences about birth" and the possibility of "post-conceptional prevention" seem to become manifest, while until some decades ago the only conceivable way to avoid abortion was, for most people, the prevention of conception. When pregnancy had started in absence of free will the only acceptable decision was abortion. According to the present less extreme perspective, the advisory centres may play an important role, provided that the equality between born and unborn children, together with the concept of abortion as "loathsome crime", must not be forgotten. Within German society, as well as Italian, even the segments of population more sincerely willing to contrast abortion think that the introduction of advisory centres counsel as a fixed course towards abortion legitimacy represents an improvement in the legislation. However, if the fulfillment of this procedure is the necessary premise of State abortion (and in fact it must be certified by proper certification), then we cannot maintain its consistency with the acknowledgment of embryos' human subjectivity and right-to-life. The advisory action is well justifiable as the realization of this woman's duty: trying to obtain every kind of help before coming to the abortion chance. Yet, if we speak of abortion using the same logic we use for murders and for an attempt of discouragement from murder through a talk, we are led to call the person who provides the gun to kill at the end of the talk an accomplice, though reluctant. On the other hand, we cannot exclude that the advisory talk may avoid this death sentence. How can we escape from contradiction? How can we avoid that a sort of "pactum sceleris" (evil pact, which means "if you come and talk to me you will not be punished") is considered prevention? How can we avoid to be deceived by language, since the certification of the talk - whatever its content may be - is in fact a weapon (the gun is a gun, no matter if we call it differently)? How can we avoid that the different moral perspectives diminish the advisory centre job in any case? In my opinion we have to change our perspective. We have no longer to concentrate on women's duty to let them be helped but on public institution's duty to help the child to be born. The point is no longer the attention to women's "choice", rather the attention to the State "choice", therefore to the urgent need
of creating structures - different from criminal ones- in order to defend the new lives. The advisory centre should be such an unambiguous structure. It should be unambiguous in its staff, strumentation and checks (the 1992 and 1993 sentences of the German Constitutional Court gave clear directions), but also and particularly in its exclusion of any involvement in abortion. The advisory centres should demonstrate that even if the State renounces to penal prohibition it does not renounce to defend life. As far as I am concerned, the obvious solution does not lie in planning women's juridical obligation to approach the advisory centre, but in the centre's juridical obligation to look for women with the purpose to cooperate with her minds and hearts, appealing to any possible common ground in order to make pregnancy go on. This may be achieved by requiring sanitary structures to inform the advisory centre about abortion intentions and by giving the centre all the needed power of action. The performance of advisory centres should be controlled by the State, maybe through the judiciary authority who is responsible for minors' tutelage. It should not, instead, grant any certification to women, nor should legitimate abortion. I am aware my idea is against the general trend; though, given the present difficulties in Germany and Italy, that would be a relatively simple solution, as it is grounded on the positive experience of pro-life volunteers and it is effective if accompanied by warrants of advisory centres' staff and of their activity control.

Another point in need of urgent intervention is medically assisted procreation. The field is confused, still developing, but, despite some exceptions - the German law of December 1990 is perhaps the strongest defence of embryos' rights - the general tendency goes towards the acceptance of extra embryos', their freezing, experimentation, heterologous fertilization, the suppression of residual embryos after a certain expiry date. As a positive fact, the largely prevalent refusal of pre-embryo concept must be noticed (although not in Spain and in the United Kingdom). The prohibition to product embryos for experimental purposes is less interesting; in fact, it is a general but useless statement, since one only has to product embryos for pregnancy purposes, then will have extra embryos to be used as experimental matter...

If my hypothesis is true, namely that the main point is the acknowledgment of human embryos' juridical subjectivity, then realistic graduality imposes a hierarchy of goals to be attained, given the illegitimacy of in vitro fertilization, both heterologous and homologous, for the well known reasons. The first goal is preventing the final levelling of embryos to things, as it happens when they are thrown away like an expired product or they are submitted to letal experiments. The basis is the extra production of embryos, that must be forbidden with rigour and determination. This does not imply the approval of FIVET, but the elimination of the most serious attempt against right-to-life, an attempt whose social and cultural effects would make the reform of abortion regulation almost impossible. When the embryo is in a tube, the question about his being a human or a thing cannot be avoided any more, just as it (confusely, though) happened with regard to abortion. Well, if the answer is human reification also abortion law is locked. Instead, if Europe anxiety for in vitro embryos overcomes its blindness and gives a definition of embryos' juridical status according to their dignity, then the gradual side effects on abortion may be not far.

7) In Italy, during the whole period of the current legislature, the Parliament has been working to issue a law on human artificial fertilization. The Chamber of Deputies approved a text which proclaims the unborn baby a subject of right and consequently establishes the principle that each embryo in vitro is destined for birth, therefore must not be selected, destroyed, frozen, extra producted, submitted to experimentation. A document subscribed by "the democratic women of the left" branded it with "contrary to Europe", being not respectful of women's free choice. I answered that the legislative European frame about artificial fertilization is still very varied. First of all, I asked which kind of Europe we are thinking about: the one of decadent materialism, which assumes the label of relativism or utilitarianism each time, or the one of human rights, which centres on the dignity of any human being, including the little ones and the weakest persons? I have already pointed out how a consistent
strategy for European history and culture should be, in order to make laws evolve towards the 
overcoming of their present hostility for the lives to be born. This strategy connects life after 
conception more with human rights than with sexual ethics; persistently asks who is the subject of 
human rights; appeals to the principle of equality; calls for reason and science arguments; raises the 
question of the very foundations of positive law and of the relationship between legality and justice. 
The fact that this strategy is successful is demonstrated precisely by that feeling I called "anxiety" of 
European juridical culture, which - although desire or opportunity or indolence have suggested not to 
contrast pro-abortion laws and the suppression of in vitro embryos - could not deny embryos' humanity 
so far. The analysis of European judiciary organs is convincing in this sense. It may seem surprising 
that until now embryos' humanity has been affirmed within none among the 39 rulings of the European 
Constitutional Courts that had the chance of speaking of embryos (they were twenty in Italy between 
1975 and 1997; three in Germany in 1975, 1992, and 1993; one in Austria in 1974; three in French in 
and 1998; two in Hungary in 1991 and 1998). We have already mentioned the sentences of the 
European Court of Justice and of the European Court of Human Rights. The affirmation of embryos' 
right-to-life (see Germany, Poland, and finally Italy) or at least their humanity (see Portugal, Hungary 
and the first Spanish sentence) is sometimes quite clear. Most times, however, European constitutional 
jurisprudence refrained from answering the question whether embryos are subjects of law or not, 
desperately recourse to any kind of stratagem just to avoid the question. That is the way Italy acted 
when declared the insignificance of right-to-life question (that is, the impossibility to take any decision, 
because of Court procedures and for reasons of competence, rather than for a matter of substance). That 
is the way Austria acted, coming to the conclusion that the constitutional defence of life must operate 
as a consequence of actions directed against the State, not against private citizens; that is the way 
French acted, as the constitutional Tribunal has considered himselfunable to compel national legislators 
to apply the international treatises; that is the way Spain and Portugal acted, considering it enough to 
evaluate embryos as objective value without stating if there is a subject to be defended or not; that is 
the way Hungary acted - and also Italy, in a sense - , as the lack of a declaration of embryos' juridical 
capability by the civil legislator justified permissive legislations on abortion.
I cannot go further into details. Despite of the presence of obscurities, the juridical rationality which is 
peculiar to European culture and history will not be able to refrain longer from confronting with the 
question: human embryo is one of us or not? Not only the safety of many human lives depends on the 
answer, but also the safety of law as such, which means as legality inspired by justice, therefore 
separate from force. Even the existence of the foundations of Europe depends on it. A dramatic 
statement pronounced to the European Conference of Bishops Council by John Paul II (October 11st 
1985) comes to mind: "the introduction of laws permitting abortion has been considered a principle of 
freedom. Let us wonder whether this is the triumph of the principle of material wealth and selfishness 
over the most sacred value, namely human life. It has been said the Church had been defeated because 
it could not make moral rules be acknowledged. Instead, I think the one who has been defeated in this 
involutional and extremely sad phenomenon is the man and the woman. The doctor, who denied 
medicine's oath and noblest qualification - defending and saving human lives - has been defeated. The 
'secularized' State has been really defeated, renouncing to defend the fundamental and most sacred 
right-to-life; it became the instrument of a supposed interest of collectivity, and sometimes it appears 
unable to safeguard the observance of its very permissive laws. Europe shall reflect on this defeat".
DAMIÃO FRANKLIN
Legislative Trends Regarding Life, Procreation and Birth
(Portuguese-speaking African Countries)

As a first approach, I will present a Phenomenological Picture, make a brief Interpretation in the second part, and conclude with a part on Pastoral Therapy.

I. Phenomenological Picture

This picture refers to the five Portuguese-speaking countries which are also called "Lusophone" countries (Angola, Mozambique, Cape Verde, Guinea Bissau and Sao Tome and Principe). I have obtained something about four of these countries, with the exception of Guinea Bissau, despite the efforts made in this regard.

The Constitutions of Angola, Mozambique, Cape Verde and Sao Tome stress one basic principle with regard to our theme. In fact, the dignity of the human person is the "leitmotif". The fundamental freedoms and rights are the inspiring principles of the Constitutions in question.1 The Constitution of Mozambique, which is being revised, also follows the same lines. I wonder if the lawmakers' intention corresponds to the governmental rules regarding interpretation and application.

In order to understand the current picture better with regard to our theme, it would be useful to present some aspects of the historical premises.

In the traditional era, life is sacred in the parameters of Bantu culture. Although the fetishist mentality contradicts this now and then, this principle generally guides the Bantu. We have reliable data that allows us to say that the number of murders of our fellow citizens is becoming a disaster when, under the pretext of a groundless accusation, they are purely and simply exterminated because they are taken for "wizards". 2

In the colonial period, euthanasia, assisted reproduction or assisted fertilization were not spoken about because they did not exist. However, therapeutic abortion was spoken about in line with the Portuguese Civil Code that was in force and acting in its colonies. A certain ethical dualism was also noted (on the one hand, the Western style and, on the other, the traditional Bantu). After independence, the five Lusophone countries adopted Marxist regimes. Angola, Mozambique and Sao Tome were strongly Marxist and its theories regarding subjects such as death and abortion are well-known. A certain practical materialism prevailed (cf. EV 22-23). The key to understanding life ceased to have any sacred connotations. Human dignity was evaluated according to Marxist categories. What else could be expected?

What is the picture today?
It is urgent to see how life, procreation and birth are protected. What legal and judicial mechanisms do we have? What is the reaction of the respective Magisteriums in support of John Paul II's Evangelium Vitae?

Some preliminary considerations would help to answer this:

- Can we really speak about promotion and protection of fundamental rights in a country that is underdeveloped or not very technically developed?
- And what can we think about a country that is at war or just coming out of a war like Angola, Mozambique or Guinea Bissau?
- How can the dignity of persons be reconciled when their basic needs are not guaranteed (health, food, education, information, housing, drinkable water...)?
- How can we speak, for instance, about the fight against euthanasia when undernourishment, the lack of food (hunger) and the situation of poverty already bring about an indirect or camouflaged euthanasia?
• How can we speak about the anti-abortion mentality when most women carry forth their pregnancies with difficulty, and giving birth is often a risk; when family planning is done by using anti-Christians methods, and when certain moral values are inverted?
• How can we speak about the life of the newborn when in fact infant morality, which is very high according to UNICEF statistics, is the Achilles' heel?
• How can we speak about the right to life when endemic diseases (measles, malaria, AIDS, tuberculosis, sleeping sickness...) abound with impunity and continue to cut down human lives when they do not leave grave consequences?
• How can we speak about the defense of life when war kills everything and everyone like a monster always greedy to consume more and better?
• How can we speak about promotion and protection when the juridical police system itself is inadequate because it is powerless, precarious and without the means needed to carry out its mission: namely, the protection of human rights?
• How can we speak about human rights when attention is guided more by "reasons of State", territorial integrity, etc.?

With the exception of Cape Verde, which regulates the interruption of pregnancy, in the remaining countries there is nothing in legislative terms regarding the themes of abortion, euthanasia, assisted reproduction, etc. Nonetheless, abortion is performed and even in the official hospital services, often depending on the individual conduct of the medical health worker. Infanticide before and after birth is a reality. We have proof of the modern, most libertine artificial family planning methods which surely lead to voluntary and involuntary abortifacient practices. The natural method is used very rarely because most people consider it obsolete and ineffective. Officially, euthanasia does not exist but, in practice, it is a given fact, at least indirectly, owing to the precarious living conditions. The demographic phenomenon is of concern. In this area, a "war of the powerful against the weak" (EV 12) can be seen. The amorality of some Structural Readjustment Programs that tend to protect hegemonic, geopolitical and economic interests rather than the human person in his/her rights and duties (EV 18,5), also prevails in the Lusophone countries.

II. Interpretation of the Picture

The picture is gloomy, but there are some hopeful aspects. To speak about life, procreation and birth in the countries in question is to deal with something that is ambiguous yet current. To confirm this, there is a series of questions that should be asked before presenting the picture. And so, I will say that the modernity and positivism of Natural Law do not spare the Lusophone countries either. The influence of Marxism, although it is officially banished, still continues to act in favoring a materialist mentality and an ethical and moral relativism that is consolidated in worldly canons regarding such transcendental concepts and values as life, freedom, the meaning of duty, personality, happiness (cf. EV 18). This subversion of values is also felt by the young persons themselves and not only by parents or adults. The organizational and administrative "deficit" in the area of education continues to grow where central disciplines like civic, ethical, moral and religious education are lacking or, when they do exist, they are presented in an unfavorable way.
The "imbroglio" of a limited vision of the secular notion of the State and the embryonic situation of civil society's role-- which could help to fill the gaps in the State's macro-organization--affect this problem. It is a fact that many families give up their role as the privileged educational actor. So many young people learn more "on the street" or in ways other than in the family, and I am not forgetting the dramatic situation of the growing number of single mothers. On the other hand, civil society could exert much more influence in this area through Associations of art/culture by wagering on the character formation and authentic freedom of their members and associates.

The role of non-Christian religions and the traditional religion, like the Muslims in Mozambique and Guinea Bissau, may provide sexual ethics that are not in conformity with the Christian vision of life because the cosmo-visions are not in agreement with one another. Consequently, as the Encyclical Evangelium Vitae reminds us, we are witnessing a tendency toward a culture of death - a secularized vision of freedom to act subjectively according to ephemeral models like pleasure and fleeting happiness, rather than adhering to values such as the objective truth and real happiness. Ethical relativism is derived from this secularized vision.

III. Pastoral Therapy

The message of Evangelium Vitae was well received by the Churches of these five countries. With me, I have pastoral documents from only three of the countries6, despite efforts to obtain them from the remaining two (Mozambique and Guinea Bissau). I cannot omit the role of the regular, normative Magisterium for homilies and catechesis.

The fundamental concern of the pastoral messages by the Bishops' Conference of Angola and Sao Tome and of the two countries (Sao Tome and Cape Verde) is to fight for a culture of life (gift of God, sacredness), and a careful formation of consciences in this area through catechetical instruction, formation of a strong laity, pastoral care of the family, programmed dissemination of the natural method of family planning (e.g., the Archdiocese of Luanda), special attention to young people in order to remove them from ideological and ethical-moral disorientation, the use of the mass media, such as radio broadcasts ("Radio Ecclesia" - Angola), "Radios Comunitarios" (Mozambique), prudent recourse to the historical values of the traditional pro-life culture (sacredness, its defense, natural planning method), timely and untimely denunciation of governmental policies against life, alerting national opinion to demographic outrages by international aid organizations, such as UNICEF, UNIFRA, partnerships with other Churches to combat immorality, and respect for the human person, his/her rights and duties.

I also include the contribution of social infrastructures such as educational institutions (schools, Universities...), health institutions (hospitals, medical stations and centers...), and "Pro-Life Centers", in order to attend to the people's needs.

At this time, the Churches of these countries can contribute to an ethical-social conscience, the fruit of a national reconciliation that is built and protected by the Magisterium of the Church and suitable social pastoral care.

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1 Constitution of the Democratic Republic of Sao Tome and Principe: Law 7/90 DR No. 13, art. 21: Human life is inviolable; 20/IX/90: In no case will there be the death penalty.
Draft of the Revision of the Constitution of Mozambique "1998" - art. 41: Every citizen has the right to life and physical integrity and cannot be subject to torture or cruel or inhuman treatment; art. 21: In the Republic of Mozambique there is no death penalty.
Interpretation and integration of the constitutional precepts relating to fundamental rights in agreement with the Universal Declaration of Human Rights and the African Charter of the Human Rights of Peoples.

2 CEAST (Bishops' Conference of Angola and S. Tome) - Letter to the Angolans (in 19/03/98-7) "The Church in Angola between War and Peace", Ed. Secretariat for Pastoral Care, Luanda, p. 378, Nos. 3 and 4.

3 Ibid., p. 377, No. 2.

4 Decree-Law 9/III/86 of December 31: Interruption of pregnancy

5 CEAST - Letter to the Angolans, op. cit.
   • Regarding the Nation's Moral Health 23/07/95 in "Church in Angola...", op. cit., pp. 346-356.
   • Evora, Paulino, Homily on Life, Diocese of Cape Verde, Christmas 1986.
   • Ibid., Pastoral Note in the Certificate Regarding Abortion, Diocese of Cape Verde.
JEAN-MARIE MPENDAWATU
Trends of the legislations in French-speaking sub-Saharan Africa
with regard to the right to life, procreation and natality

The theme I was asked to develop is quite interesting, but it also presents sum difficulties. It is always interesting and pleasing to know, to what extent a message of such great importance like that of the Evangelium Vitae was received within a particular cultural socio-political context. Yet, trying to describe the juridical situation in French-speaking sub-Saharan Africa with regard to legislations on the right to life both in its beginnings and its terminal moments, proves to be an almost impossible venture. In actual fact, the geographical and cultural diversity of the countries that are taken into consideration, does not facilitate such an undertaking. May be the greatest difficulty is that of access to the documents necessary for such an enterprise. Moreover, even in this internet and electronic era, communication with Africa is still difficult.

In unfolding the above indicated theme, I will first of all say a word or two, about the political and socio-cultural context of French-speaking sub-Saharan Africa, into which Evangelium Vitae was received. After which, I will present the trends of some legislations on life in its initial and terminal moments. This will be followed by some observations and reactions of the local bishops in the face of threats to life and the inherent dangers of artificial contraception. Prior to the conclusion, we shall ask ourselves as to whether and to what extent can the message of Evangelium Vitae be of help to the African people, crushed by miseries, which are due to exploitation and underdevelopment that continue to frustrate any efforts towards the improvement of the fate of millions of people living in total poverty.

1. Socio-Political Situation of French-speaking sub-Saharan Africa in the 90s

I was speaking on a previous note about the difficulty of developing the theme assigned to me. This is not because the problem of the violation of the right to life is less serious here than in other parts of the world, but rather because it is much difficult to find a common denominator between the concern states, that is, between the ex-French and Belgian colonies. In west African countries, the majority of the population are Moslems, who are therefore, probably less inclined to listen to the teachings of a supreme religious authority other than their own. Moreover, apart from a few states like Rwanda and Burundi each one of the above mentioned nations is a mosaic of historically diverse ethnic groups, brought together by colonisation in the first half of the 20th century. They are therefore, young states that are still getting to terms with the unfamiliar circumstances of their causal or artificial make-up. On a strictly legislative level, they are marked by an immense juridical emptiness with regard to the right to nascent or terminating life, to such an extent that any comparison with western Europe or north American states is not to be proposed. The reason for this is simple; the recent introduction of both the culture of writing and positive law. With regard to our topic, there are very few French-speaking African countries that can boast of having legislations made expressly for the protection the right life, both at its beginning and terminal moments. The situation becomes more complicated, when one takes into consideration the extent to which these laws, -where they exist- are not at the disposition of the general public for study and consultation. In such countries, public libraries outside a university or an institution are not of common place. In general, the culture of writing and that of law in particular are almost non-existent in these parts. What is more alarming is the fact that education in sub-Saharan Africa still remains the appanage of a few privileged ones.

Another serious difficulty, is caused by the total absence of both public and democratic discussions on these issues. Such absence is due to the political situation of the countries in question, that is characterised by continual instability of political, social and cultural institutions. The lack of even purely formal democracy in such states, exposes them to the permanent risk of coup d'États and consequently special laws. In a document of the Symposium of the Episcopal Conferences of Africa and
Madagascar (S.E.C.A.M) of 1978, the bishops lamented of this phenomenon in the following terms "...as a result of politics that hinges on personal interests, the continent suffers from increasing instability. From 1990, Africa has experienced 43 coup d'État, marked by the assassination of ten heads of state." Thus making an annual average of 2.58! The immediate consequence of this with regard to legislation, is the bad habit of governments giving themselves to similar ways of approaching the most urgent problems, in an equally undemocratic way; that is, the continued emanation of presidential or ministerial decrees and injunctions, which deny any involvement of public opinion and democratic discussion. The persistence of ferocious military dictatorships, and the protraction of civil wars that last for decades do not facilitate the legitimate vindication of the rights of people. Such a way of governing has sunk the African continent into an immeasurable political, socio-economic, and cultural crisis, that seems to have cut it from the race of development.

2. Some legislations of sub-Saharan French-speaking African Nations

In the considered countries, one may distinguish three trends followed by the legislators in regulating the right to life, procreation and natality; the first one which affirms, without mincing words, the prohibition of abortion except in cases provided for by law (Burkina Faso, Guinea); the second one which promotes family planning as an integral part of the government's Health policy (Gabon, Senegal) and the third which prefers to create governmental bodies to study, and inform the populations about the problems of uncontrolled population growth and also propose ideal solutions (Congo-Kinshasa, Rwanda).

2.1 Legislations that prohibit abortion and euthanasia.

As indicated above, the countries that prohibit the induced termination of pregnancy are Burkina-Faso and Guinea; two countries that are geographically very big but sparsely populated. The demographic policy here aims at encouraging more births.

2.1.1 Burkina Faso legislation on crimes and offences against the family, and indecent behaviour.

In the second chapter of the Burkina-Faso Penal code on crimes and offences against the family and indecent behaviour, the legislator provides for 1 to 5 years imprisonment and a fine of 300,000 to 1,500,000 Francs, for whoever procures or attempts an abortion using nourishments, drinks, drugs or any other manoeuvres, through violence or any other means, to the detriment of a pregnant lady or presumably so, with or without her consent. In case of death the penalty extends from 10 to 20 years (Art.383).

Voluntary interruption of pregnancy or an attempt of the same are punishable with a penalty that extends from 6 months to 2 years imprisonment and amends of 150,000 to 600,000 Francs or either of the two.6

A Contravention of these norms is possible in the following two cases (art. 387):
1) In case of an eminent danger of death of the mother, approved by two doctors of whom one works in the public sector, the interruption can take place at any stage of pregnancy.
2) In cases of rape or incest that have been ascertained by the Public prosecutor, recourse to abortion within 10 weeks, is provided for (art. 386).

It is important to note that the Burkina Faso legislator does not at all address the issue of euthanasia. The juridical framework is that of fighting crimes and offences against the family and not that of defending life as such. And so one wonders whether the problem of euthanasia exists in Burkina Faso,
or whether it is considered a crime or it is just ignored. The text at our disposal does not offer any answer to these questions.

2.1.2 *The Code of Medical ethics in Guinea-Conakry*

The Guinean legislator is more severe than the one of Burkina Faso. Here in fact, the code of medical ethics forbids doctors from interrupting pregnancy except in cases provided for by law (art. 17). It forbids euthanasia and emphasises that the doctor has the duty to provide medical care to the patient in a terminal stage, until the last moment of his/her life. He has no right to deliberately provoke his/her death (art. 37).

Here one notices a juridical set-up of laws on abortion and euthanasia, or the regulation of medical ethics and not that of defending life as such.

2.2 *Legislations in favour of contraceptive technologies*

Among the countries that promote contraceptive technologies we find Senegal and Gabon.

2.2.1 *Senegal*

In 1996, a Consultative committee on contraceptive technologies was instituted in the Senegalese ministry of Public health and Social services. It has the duty of informing the civil authorities on all matters related to contraception and contraceptive technologies; to help improve on the services of family planning; act as advisor on the methods and the means of contraception; give an opinion on all the research in the sector of reproductive health and lastly promote the diffusion of both the results of clinical tests as well as those from the research on reproductive health (art. 2).

2.2.2 *Gabon*

The health policy in this country establishes two priorities; family planning and the prevention of premature pregnancy and clandestine abortions (art. 11).

2.3. *The option of creating state organs in charge of the demographic policy*

Besides the previous groups, there is another one made up of countries which instead prefer to legislate directly on the issues of life from its beginnings to its final moments. They preferred to create organs, which while controlled by the government have the duty to promote a massive sensitisation on the real or innate problems of uncontrolled population growth. Here we cite for example Congo (Kinshasa) and Rwanda. Until the 70-80s a law inherited from Belgium in 1933, was in force in Congo and Rwanda, prohibiting the use, exposition, advertisement or sale of contraceptives. However, these orders were surpassed in 1973 in Congo with the creation of the "Comité National des Naissances Désirables" which later became the Projet des Naissances Désirables, and in 1981 in Rwanda with the creation of "Office National de la Population (ONAPO). " These bodies, which are financed by the state, carry on family planning activities in public health Centres, they form the staff in charge of this task, and concentrate their efforts on education and information on matters of family planning using the methods of artificial contraception. The resistance of the population, prevented the concern States from immediately proposing abortion as one of the methods of contraception.

2.4 *Some Observations*

Generally, there is no public debate on problems raised by the policies on the planning of population growth. In fact, it is not the parliamentarians in the strict sense who vote on the laws in question. In most cases, they are one party parliaments - a State in total absence of any form of opposition.
The legislations cited here do not speak of the right to life in the considered States, but of family planning and ad hoc services. Moreover, they are not conceived within the context of the protection of life in its initial or terminal moments, but within the context of effective methods of contraception that are considered as means of planning population growth, which is regarded as an obstacle to development.

In countries like Guinea where abortion is forbidden, the question is treated in the context of medical ethics. The base given to this quite fundamental legislation, appears too exiguous to stand the weight of the promoting forces for contraception, a source of huge economic gains.\textsuperscript{11}

There remains a certain indecision in the Senegalese and Gabon's legislation. Often they speak freely about family planning and artificial methods of contraception, but never about abortion or euthanasia as methods regulating population growth. However the door remains open for future legislative interventions. For the time being the issue is left in a free zone.

This situation has been denounced several times by Episcopal Conferences of some African countries.

3. Reactions of African Episcopal Conferences to the policies of population control

The politics of such programs like the methods adopted for the control of population growth, lead to serious preoccupations on part of the African Episcopal conferences since the early 70s. Many of them have denounced the innate inhuman character, hedonistic materialism and rejection of life of these programs that are out to promote abortion, sterilisation and contraception.\textsuperscript{12}

On the occasion of the Synod of Bishops on Penance and Reconciliation, the representatives of the African continent, denounced in a strong message, the sale or donation to Africa in the north-south exchange, of products that are a threat to the health and life of the people, programs for sterilisation as well as the free distribution of contraceptive products instead of the essential medicine of which the population is in need.\textsuperscript{13}

Besides this politics obviously contrasts with the disproportionate population of most African countries.\textsuperscript{14}

On their part, the Nigerian bishops denounced the lack of respect for the human person and the devaluation of life that is noted in the increase of abortions.\textsuperscript{15}

All these denunciations were re-echoed in the work of the synod Fathers during the Special Assembly for Africa of the Synod of Bishops held in Rome in 1994. The Bishop of Bunia, Democratic Republic of Congo, lamented of the serious crisis of the family, one attributed to multiple causes among which rank contraception and abortion.\textsuperscript{16}

These are few, but I believe some of the very significant reactions of the African hierarchy to the various attempts on life on the African soil, which have crossed the boarders of the black continent to protest against injustices and above all to declare that Africa is not and should not be the dumping ground for pharmaceutical industries of the north.

4. \textit{Evangelium Vitae} and African legislations with regard to the right to life

4.1 Absence of influence

The few notices at our disposal, make us realise that the Encyclical \textit{Evangelium Vitae} promulgated on March 25, 1995, did not have any influence on legislations concerning the right to life, procreation and natality in French-speaking sub-Saharan Africa. In fact the countries like Burkina Faso and Guinea which issued laws favourable to births or at least explicitly prohibiting abortion, are predominantly Muslim. Moreover, one notes that these legislations are set into a socio-juridical context different from the one described by \textit{Evangelium Vitae}. Others like Senegal and Gabon, made laws that are contrary to the teachings of \textit{Evangelium Vitae}. They in fact chose contraceptives as a means of controlling population growth. As for countries like Congo and Rwanda, which are predominantly Christian, their respective governments have chosen a shifty way, or rather to win the consensus of public opinion
through state offices in charge of promoting campaigns in favour of artificial contraception, sensitise the population through the press, radio and television and supervise the free distribution of contraceptives through public health structures. In this way, an anti-birth mentality is created thus paving the way for appropriate legislative interventions.17

Another fact testifies to the little resonance of the Encyclical on the African continent. Going through the messages of some African Episcopal conferences from 1995 to 1999 quoted in *La Documentation Catholique*, a French bimonthly on current religious events, one does not come across any quotation, or reference to *Evangelium Vitae* even in places where the issue of attempts on life is dealt with.18

4.2 For what reasons does Evangelium Vitae seem to remain unattended to in sub-Saharan Africa?

It would be risky pretending to give a satisfactory answer to this question. This requires an inquiry with the responsible people on site. However, we can always attempt a provisional interpretation. Some facts can actually provide us with elements that help us to know the situation of most of the African countries at the date of the promulgation of the Encyclical letter *Evangelium Vitae*. The first fact whose social and cultural consequences are of extreme importance is of political order: the struggle of the African people for democracy, tired of a thirty years totalitarian rule imposed on the pretext of an anti-Communist struggle.19 The early 90s were marked by disputes of the one parted corrupt regimes, installing themselves after coup d'États: demonstrations, strikes, creation of clandestine political parties and other means forced the generals/life presidents to legalise the opposition parties induce the sovereign national conferences, with the mission of favouring bloodless transition from the one party dictatorship to multiparty. The situation was high-spirited because after the collapse of the Berlin wall, some European powers showed a certain sensitiveness for a democratic change.20

The second fact, important for African Churches was the publication in the same year of the Post-synodal Apostolic Exhortation "Ecclesia in Africa," following the Special Assembly for Africa of the Synod of Bishops. This event, even though this might appear contradictory, actually made the *Evangelium Vitae* pass for the second place.

The third fact seems to be related to the content itself of the Encyclical. While laying special emphasis on the wounds of abortion and euthanasia,21 the encyclical might give the quick reader the wrong impression that it is especially directed to the European and north-American contexts, which at least in the near future will have to face up to the serious problem of the falling birth rate and the ageing population.

Finally, as far as the African Church is concerned, for almost twenty years the African hierarchy has had to face up to crazy and unceasing propaganda in favour of contraceptives. And they have effectively come up more than once with statements against the artificial methods of contraception, proposing continence and above all inviting all to the respect of the inherent human, family and social values of Christian marriage.22 To this point therefore *Evangelium Vitae* strongly enters in the doctrinal and pastoral trends of the African hierarchy, or rather emphasises many times that human life is sacred and inviolable from its conception up to its natural end. This however makes one think about the little influence of the teachings of the new Encyclical. Here one needs also to take into consideration the scarce number of catholic institutes and universities on the African continent, and as a consequence, their little contribution as to the diffusion of the papal messages.

4.3 Would Evangelium Vitae, therefore be of no interest to Africa?

The immediate answer is definitely no. The Encyclical of John Paul II on the respect of life, particularly interests the African continent in as much as it risks becoming, that is if it is not yet a sad realty, the dumping ground for the industrialised world, one in which the violations of the right to life
are the last concerns of foreign powers operating through multinational companies present on site. J.M. Ela writes on the complicity of the latter in the sufferings of the people of Equatorial Guinea:

"What we need to pay attention to here is the fact that in that country which has been pushed on to the tragic track of regression, the foreign powers in the name of co-operation observed an accomplice silence. There is no other situation in black Africa in which the domination and oppression have been so tight as in Equatorial Guinea... A country in which the dictatorship has caused the collapse of the economy through the elimination of the structures and an accruing immigration, and is not capable of guaranteeing the good functioning of the basic public service (telephone, electric current, road infrastructure etc..) could not have been able to stay in power and go on if it were not for the support of formidable financial powers that had there interests there....while many countries are attracted by the mineral and agro-forest resources or the strategic position of Equatorial Guinea, they do not do anything to guarantee the protection of the population. They are not concerned about the "internal affairs" in as far as their interests are secure, neither do they care for the plight of population deprived of their rights and subjected to a barbaric tyrant in power...Several witnesses reveal that the daily experience of thousands of countrymen, youths or intellectuals finding themselves in prisons as in a brotherhood of galley-slaves, is made up of abductions, mysterious "disappearances", hit bodies, group executions, and life imprisonment under inhuman conditions."

The situation described by the Cameroonian author has to do with Equatorial Guinea of the 70s. However, the forces in Liberia, Ethiopia, and in Chad in the 80s, just like those in Rwanda, Burundi and Congo in the 90s, have nothing for which they could be possibly envied by the victims of the previous regimes. Rather they were worse. Speaking of the socio-political turmoils of Africa in the 90s and the incapacity of the concerned governments to subdue the tensions and give adequate answers to the then vehement claims, our author observes with anxiety that: "In Africa that is subdued to the dictates of the I.M.F, one needs to ask if we are not moving towards a state of implosion judging from the measure in which the future of poverty runs the risk of being the banner for urban violence."

Could there be a coupler for the teachings of the Holy Father contained in the *Evangelium Vitae*, in a such a confusedly uncertain situation like the one described here above? The answer cannot but be affirmative, though also admitting that the work will have to be long and difficult. The encyclical *Evangelium Vitae* teaches the way of respect for life, its protection and promotion, denouncing at the same time anything determined to obstruct it:

"In truth the life of man is not the "ultimate" reality, but the "penultimate"; it is however a scared reality that is entrusted to us, so that we may safeguard it with a sense of responsibility and bring it to perfection in both love and in the gift of ourselves to God and neighbour... Even though amidst difficulties and uncertainties, every person who sincerely open to the truth and goodness, can with the light of reason and the secret influence of grace, arrive at recognising inthe natural law written in his heart (Rm. 2, 14-15) the sacred value of human life from its beginning to its end, and at affirming the right of every human being to have this primary good of his, totally respected. It is on the recognition of this right that human cohabitation and the political community itself are founded."

In this sense, the solution of the manifold cultural, social, economic and political problems, cannot take the respect of the right to life of every person for a secondary issue of little importance. Before being a problem of progress and development or poverty and misery, it is first of all an issue of life or death. Nowadays, in Africa people die of hunger, wars, torture, fortuitous or staged incidents, many die of AIDS or malaria, or simply in total indifference. Such a situation magnificently reflects what was denounced by Vatican II in the following terms, which is also quoted by *Evangelium Vitae*:
"All offences against life itself, such as murder, genocide, abortion, euthanasia and wilful suicide; all violations of the integrity of the human person, such as mutilation, physical and mental torture, undue psychological pressures; all offences against human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the selling of women and children, degrading working conditions where men are treated as mere tools for profit rather than free and responsible persons; all these and the like are criminal: they poison civilisation; and they debase the perpetrators more than the victims and militate against the honour of the creator." 26

But the papal Encyclical denounces another evil that preoccupies very much the countries of the South part of the world: the demographic policies of the financial powers of the North confronted with the problem of the high denatality, resulting from the practices of contraception, sterilisation and abortion. These same practices are for almost thirty years now being imposed on the poor countries of the South, in the pretext of wanting to eradicate poverty from those lands. Nothing as deceptive. Instead of promoting more equitable social and family policies, guaranteeing the just distribution of resources, these powers "prefer to promote and impose with any possible means a massive control of births. The same economic help that they would otherwise have given, are being unfairly tied up to the acceptance of the anti-natalistic policies." 27

This type of politics is a violation, perpetuated against the thinking and customs of the African people. Father Dominique Nothomb of the Missionaries of Africa writes:

"...fecundity enjoys in the 'heart of Africa' such a coefficient of appreciation that one has to consider it a right distinguishing mark of its cultures that confers to them the right of claiming the title of authentic humanism. All that lives has to produce a fruit similar and equal to itself. A man, in Rwanda, does not realise himself other than in the measure in which he reproduces himself in the image he has generated and drawn from himself." 28

In this sense, an offspring is considered a divine blessing and sterility a curse. The latter was and is very often a cause for divorce. In the context described by Nothomb, marriage is above of all a covenant between the two families before being a contract between the bride and groom. And it is a general norm that the family of the future bridegroom offers to the future bride a pledge of marriage, called Inkwano, in order to assure oneself of the right to the future offspring, fruit of their marriage: "In this way through marriage and the pledge of marriage a covenant is sealed whose position and expected fruit is more a question of life to be handed on than riches to be expanded or a couple to be united into a private society. The young man, heir to the patrimony and the traditions of the family, has above all the mission of continuing the of the lineage in history." 29

As indicated by studies made on the customs and cultures of the African people, the family is the cradle and bulwark of life, to such an extent that the marriage institution seems to be hanging only on its rising and its thriving. However one need not have illusions, for the culture of death that introduces innate forces of a different nature, 30 is forcing these people to legislate in the direction of their own destruction, putting into great difficulty the culture of respect that they normally nature naturally for every human life that comes into the world along its natural route.

5. How far is it therefore possible to promote the culture of life in French-speaking sub-Saharan Africa:

Will is power, so they say. The gospel of life is directed to the Africans in the same measure as it is to other people of the world. Its proclamation in French-speaking sub-Saharan Africa is not therefore optional, something that may be done or forgotten, it has rather to do with both an essential and vital question. It has to do with a radical choice between life and death. However it is now well known that human choices are not always obvious or foreseeable.
In the fourth chapter of *Evangelium Vitae*, the Holy father indicates some ways to be taken in order to contribute to the establishment of the culture of life and oppose all actions and ideas opposed to life that pollute the consciences of humanity. Some observations are worth the above mentioned African context. I am interested in underlining two that appear to be principal motives for the urgent promotion of the culture of life in sub-Saharan Africa.

Speaking of the systematic proclamation of the gospel in *Evangelium Vitae*, the Pope insists on the importance that should be given to both the educational work and the irreplaceable role of health organisations and hospitals as well as that of the various categories of health care workers. The greatest problem that needs to be tackled immediately in sub-Saharan Africa is that of shortage, in some parts, and deficiency in other parts of the scholastic and health structures and of hospitals. The only fortunate case is, however, that of the significant presence of the Church in the existing structure, thanks to the various religious congregations. This would facilitate the promotion of the culture of life through the proclamation of the Word of life and the testimony of charity to every single person "we have to take care of ....as one...entrusted by God to our responsibility." The promotion of the culture of life in French-speaking sub-Saharan Africa, requires strong human and material inputs in schools, which are the cradle for a proper and true culture. In fact, without an open mind capable of embracing the planetary horizons of interdependence in which the issues affecting the daily life are decided, it becomes practically impossible to react to the invasion of the rather strange movements that follow one another, promising all the contrary. The elitist school that has been favoured up to now in Africa, keeps the great majority of Africans under the power of ignorance and the excessive power of all sorts of dictatorships. For this reason, the promotion of the culture of life necessitates that the majority of the population be capable of understanding and evaluating the proposals of the systems of ideas and values that are both offered and imposed on to them. That is why, the culture of life in Africa should promoted through schools, and the Church is to be contacted in the first place.

Concerning the second suggestion, which is considered fundamental by the Holy Father, that is, the importance and the role of health structures and hospitals, it is now well known that these structures are used by public authorities as channels for the distribution of contraceptive products, for the practice of abortion and euthanasia. For more that a quarter of a century ago, similar practices were denounced by the bishops of Kivu. Nevertheless, we also know that the Church manages a considerable part of these structure through the widespread presence of religious congregations. The expansion of this presence, proceeding towards the creation of centres for assistance to life, for marriage and family consultations, centres for the promotion of the methods of natural family planning becomes another necessity in the programme for the promotion of the culture of life, and its infrastructure, so to say, in the present context of sub-Saharan Africa. It requires not only correct and complete information but also a faithful confrontation between competent people, and above all concrete and significant gestures like coming to the aid of people with serious problems, helping them to face their problems calmly and assess better the values in question. It therefore requires capable people and adequate means. In my own opinion, a consistent investment in the formation, education as well as in the health structures and hospitals constitutes an irreplaceable basis, without which it would be difficult to promote the culture of life on the African soil.

**Conclusion**

In concluding this presentation, I would like to affirm that in French-speaking sub-Saharan Africa principal causes for the violation of right to life are not to be sought neither in the loss of the sense of God, nor in the vindication of the absolute freedom of the individual, nor in the wrong conception of subjectivity. In continent guilty of the geological scandal of its underground, the life of individuals as well as that of the general population is continuously mowed down by wars, endemic diseases,
famine and other recurrent calamities. Besides, bad government has been cited by many authors who have analysed the causes of impelling crisis on the black continent. Nevertheless a phenomenon of unprecedented seriousness is happening in these parts: the governments of sovereign states are forced to legislate along anti-natalistic trends in the name of a promised entry into the click of beneficiaries of economic well being.\textsuperscript{36} An examination of the outcries of the various African Episcopal Conferences and of the Special Assembly for Africa of the synod of bishops, shows that contraception, sterilisation and abortion are imposed as conditions sine qua non for the access to the benefits of progress and development. The legislations of some African states on health matters generally confirms orientation. Policies of this kind, practically imposed from outside, are often difficult to oppose. Hence the reason why the message of\textit{Evangelium Vitae} concerning the absolute respect for life, ways and means of establishing the culture of life and a more enthusiastic reception for the already existing life, must be fully proclaimed.

\textsuperscript{1}The countries considered here are: Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Ivory Coast, Congo-Kinshasa, Congo-Brazzaville, Djibouti, Gabon, Guinea-Conakry, Mali Niger, Rwanda, Togo.
\textsuperscript{2}The 1991 census in Rwanda, revealed that of the 7,500,000 inhabitants, only 2.4\% had received secondary education and 0.2\% university education; statistics that reveal the same level as that of 1978! See \textit{Service National de Recensement}, Recensement général de la population et de l’habitat au 15 août 1991. Analyses des principaux résultats, Kigali, p.12.
\textsuperscript{6}One CEFA Franc is equivalent to 3 Italian Lire.
\textsuperscript{10}Conférence Episcopal du Kivu, \textit{Respecter la vie}, Bukavu 1984, pp. 16-17.
\textsuperscript{11}“While the pills and other contraceptive products cost a lot and thus bring in millions of dollars for the American companies that produce them, the Zairian project “Naissances Désirables” gives the impression of free help to its organization, distributing free contraceptive pills to the consumers, ignorant of indebted the Zairian State in this way, which will have to face the repayment of this destructive generosity.” Ibid., p. 6.

17 One notes also if necessary, the critical situation of wars and political instability in which the predominantly Christian countries, Burundi, Rwanda, Congo-Kinshasa, and Congo-Brazzaville have been involved for at least a decade. A situation of terror and uncertainties is surely not favourable to socially well-balanced laws.


20 We note the famous address of the then French President François Miterrand to his African friends meeting in the traditional *Sommet franco-africain* in June 1990, when he announced that from then onwards, economic and financial aids would be based on the progress made in the democratic reforms by the interested country. Unfortunately these remained only words that were never put into effect.

21 *Evangelium Vitae*, n.11


E.V., n.2.

G.S., n.27; E.V., n.3.

E.V., n.16


ID., The human group studied, just like most African peoples, is part of the patrilineal system. However, being matrilineal dose not change much with regard to the value attached to maternity.

Cf. E.V., n.100.

Ibid., n. 82, 88, 97.

Ibid., n.87.

Conférence Episcopale du Kivu, *Respecter la vie*, p.1

E.V., n.28.

E.V., nn.20-24.

“Africans have a great respect for conceived and new-born life. They value life and reject the idea that life can be stopped, even when the so called “progressive civilization” want to leads them to this...Practices contrary to life are imposed on them through economic systems that serve nothing else but the selfishness of the rich...” Cf. John Paul II, *Ecclesia in Africa*, n.43. in CHEZA, *Le Synode africain*, pp. 297-298; “Antinatalistic programmes of the World Bank and other International Organizations that stand out for the promotion of birth control without any concern for the spiritual well-being of the family were denounced.” H. Thiandum, “Rapport de synthèse des interventions orales et écrites des Pères synodaux, présenté par le Cardinal Thiandoum, rapporteur général de l’Assemblée spéciale pour l’Afrique du Synode des Evêques,” in Ibid., p.212.
The Portuguese Experience Concerning Legislation on Abortion

Until the so-called "democratic" revolution of 1974 the abortion, in Portugal was a crime punished by the Penal Code. And in the Code of Deontology of the College of Physicians (Ordem dos Médicos) an Article stated: "Is forbidden to the doctors:
• The practice of abortion
• The practice of euthanasia"

This position was always supported by the Portuguese Association of Catholic Doctors; and, in the tri-monthly Review "Acção Médica", published by the Association, the position against an abortion performed by doctors was reinforced in articles, in commentaries and with transcriptions of the Holly See documents on the subject. In The Code of Deontology of 1985 the therapeutic abortion and the withdrawal of hopeless interventions is admitted.

However the doctors, catholic or not, were aware of the great number of women which presents themselves, in emergency services, due to incomplete abortions, to receive medical treatments (to stop methroragies, sometimes with infection or uterine rupture). It's not possible to have confident figures of how many abortions were illegally performed in Portugal by non-competent people ("abortadeiras"; in rural areas they were named "angels makers" expressing the assertion that the aborted foetuses were angels, with no sins, going directly to the Heaven!) nurses and some doctors; as a pathologist working in a Central Hospital, near Porto, I examined two hundred cases of uterine curettings with embryonic tissues, a year, in only one Hospital; this can be a measure of the tragedy of illegal abortions in Portugal.

Almost no one of those cases arrived to the Court because doctors always qualified medically the cases as "spontaneous" abortions and the victim can not protest. Is the typical case of crime without victim or a silent victim.

After the revolution and with the stabilisation of a parliamentary democracy the communist and socialist parties initiated a campaign for the legalisation of abortion. At that time the Portuguese Church was in a very difficult position, for fight against, the leftist claiming the Cardinal and the Bishops as have being supporters of the fascism, receiving money and power from the dictatorship of Salazar and Caetano. The Bishops reaffirmed the position of the Catholic Church, the Portuguese Association of Catholic Doctors also made a statement against the participation of doctors in abortion acts but the public opinion was not mobilised to an active opposition against the political campaign of communists and socialists (and also the extreme-left wingers with very provocative graffiti and outdoors in the main cities).

However the main argument of the left Parties was a pragmatic one: There are thousands of abortions a year, performed in a clandestine way by incompetent people with a great risk, even of the life, for the poor women (the rich woman go to a good clinic in Spain, UK or in Portugal and pay a safe abortion). The legalisation is a question of a true social justice and of public health policy.

At 1984 an abortion law was approved by the Parliament (Law 6/84 of 8th May).

The main dispositions of that law can be summarised in this way: the abortion can be performed by medical doctors in public hospitals in situations of serious life danger to the mother, very important malformations of the foetus and rape.

As a matter of fact this Portuguese abortion law was a compromise which medical doctors, catholic or not, can accept if the medical rules for the therapeutic intervention, with abortion not intentionally performed but as a side-effect, were rigorously observed in each case, and if the eugenic abortion limited to the non-viable foetus is always a medical decision with a clear scientific justification. This washed however only a first step in the direction of the free-decision of the pregnant woman about the "interruption" of the so-called "undesirable pregnancies". During the subsequent years the number of legal abortions performed in hospitals was very small.
The second initiative of the leftist Parties - always communists and socialists together, with little differences in the propositions presented to the Parliament - was based on technical arguments with the aim of "ameliorate" the existing Law according to the scientific developments on the pre-natal diagnosis of malformations of the foetus.

The propositions of the Communist Party (Project of Law nº177/VII) was presented in June 1996.

The topics of this project of Law are, in summary:
- Until 12 weeks, the abortion is free of charge and performed in the National Health Service, at simple request of the pregnant woman.
- Until 16 weeks if the pregnant woman is toxic-dependent.
- Until 22 weeks in the cases of eugenic abortion including the risk of vertical transmission of HIV infection.
- Until 16 weeks in the cases of serious risks to the physical or mental health of the woman.
- Until 16 weeks in cases of violation.
- Until 22 weeks if the violation is of minors of 16 years or mental retarded women.

All those points were present in the proposition of the PCP presented in 1982 which the Parliament has refused adopting the text of the Law of 1984.

The Socialist Party presented two Projects. One, of the young organisation of the Party, was in the same line of the communists; the other presented by a deputy, doctor in medicine and specialist in Obstetrics, only proposed a modification of the time to perform the eugenic abortion, in this way:
- Until 24 weeks if the pre-natal diagnosis affirm a serious disease, non-curável and irreversible or a congenital malformation. No limit for the non-viable foetus, which can be aborted until the end of pregnancy time.
- Until 16 weeks in cases of violation and pregnancies in minors of 16 and in mental retarded women.

The verification of these circumstances is the responsibility of the doctors of a Technical Commission for the Evaluation of Congenital Defects to be created in the Hospitals.

In this project of Law the Art. 4th propose a limitation of the conscious objection, a right of the doctors which in the Law of 1984 was unlimited and free of any justification and with no obligation of search another doctor no objector.

The catholic reaction to those propositions was much more active and organised than in relation to the Law of 1984.

The Association of Catholic Doctors, which I was President, the Association of Catholic Nurses and many associations in favour of life, Catholics and Protestants, make pronunciations in newspapers, television and radio as well as in discussion meetings all over the country, but more in Lisbon, Porto and northern cities.

Our strategy for the discussion meetings was based on two very simple and direct points:
1 - The scientific arguments for changing the times of eugenic abortion (according to the Law of 1984) are not valid; so, no change is needed.
2 - The true objective is to prepare the way for the liberalisation of abortion until 12 weeks which is completely unacceptable.

According to the audiences these two points were more or less explained and developed.

At the request of the Bishop in charge with family and social affairs I have prepared a text answering to a questionnaire send by the Bishop. This text was the basis for a very formal statement of the Episcopal Conference on the subject.

The Catholic Doctor's Association prepare a motion signed by great number of doctors, Catholics or not, and send to the President of the Parliament in December 1996.

After some complicated political arrangements between the Parties a modified (but unacceptable) version of the project of Law of communists and another of socialists were put in votation: a clear majority against communists project was obtained; the socialist project was defeated by one vote.
At that time the relative majority in the Parliament was socialist and the government was also socialist. The Prime Minister, socialist is Catholic (Eng. Antonio Guterres) but declares this problem is to be decided in the intimacy of conscience of everyone; the Deputies have the right to vote freely and some socialists vote against and some social-democrats vote in favour.

During the discussion the problem of illegal abortions due to poor economic and social conditions was continuously presented by the leftists and the Catholic Church was accused of being against free abortion but doing nothing to the protection of the woman which became pregnant with no responsible father, no salary, no family support, living in so bad habitational conditions that a baby cannot be received and created at home.

I, myself in my weekly intervention in Catholic Radio Renascença propose the creation of a SOS phone call to counsel and support of pregnant women in difficulties and of a network of catholic organisations prepared to solve the problems of babies to be born from mothers who accept no to abort after counselling by SOS.

All this was created by Catholics and many lay organisations with the help of the population; the priests at parochial level are now very active in this field, with public visibility.

This type of social intervention of the Catholic Church was considered a priority after the great street demonstrations, before the votation in the Parliament, by Catholic organisations for life.

After the defeat in the Parliament the Communist Party and the young's Socialists deputies announce the intention of a new presentation of the same law of free abortion (abortion at the free decision of the pregnant woman).

The possibility of a new presentation of a voted law in the same legislature being constitutionally dubious the social-democratic party in the opposition propose a national referendum on the topic of free abortion.

After many discussions and a negotiation to include a second referendum about regionalisation of the country, the referendum on free abortion was adopted by the Parliament and fixed by the President of the Republic to the 28th June 1998.

The announcement of the referendum disclose an active mobilisation of the lay catholic organisations; however the catholic hierarchy was ambiguous: in the beginning they don't accept the referendum; in a second statement the Bishops declare that the life is not referendable but the Catholics can fight in favour of the NO to the question of the referendum.

The question was, in itself, ambiguous and prepared to favour the YES, namely from the people with low level of instruction.

The question is: "Do you agree with the depenalization of voluntary interruption of pregnancy if performed, by option of the woman, in the first ten weeks, in a health institution legally authorised?"

Our strategy was a threefold one:

- Explain, without technical words, the sense of the question. I propose this very simple statement: Do you agree that a normal woman, with a normal pregnancy and a normal baby can freely decide to kill her baby?
- Explain, with scientific documentation, that a baby at the 10th week has a clear human configuration; but even before he is a human body with a human morphology which change with the time, like after birth until dying.
- Finally that no one can have the power of deciding over the life and death of another human being.

Hundreds of public meetings and discussions were realised by different organisations in favour or against and I was invited many times to discuss with people in favour of YES, namely communist and socialist deputies, in private organisations like universities, NGO'S and obviously to catholic and protestants meetings, where I always present the same three arguments and the main conclusion - - Vote NO.
In the Sunday before 28th June I was invited to proffer the homilies in the Messes of the day (three times in Igreja da Lapa, one time in the Igreja da Foz) in order to secure the Catholics that voting NO, they are good citizens and good Catholics; and vote NO is not against the position of the Episcopal Conference "that a referendum cannot legitimate the abortion even if the result was in favour of the Law".

This disturbing position of the Bishops was due, in my view, to the results of the opinion public pools which are, all, consistently, favourable to the victory of the YES with a so great difference to the NO that a recovery seems impossible.

With the help of the "Centro Cultural Reconquista", a Brazilian movement present in Portugal, I prepared a book "50 questions, 50 answers on abortion, to the defence of an innocent life" and 35,000 books were distributed; this is a translation of a book well known by the Pro-Life Groups. (Some demagogic statements of the book are necessary in a situation, like a referendum, in which we need to gain the votes of all the persons, potentially against the free abortion, independently of the good or bad reasons, they are moved by).

The "Comissão Justiça e Paz" generally respected by the ponderation and equilibrium of the statements proffered, prepared a text presented in a round press conference - I organised in Porto, with the President of the Justitia et Pax Commission, Bagão Félix, and a lawyer, Lopes Cardoso. (This lawyer prepared and published the most exhaustive juridical argumentation against the abortion Law, on the occasion of the discussion of the Law of 1984, and was used in the subsequent years; the position of this Catholic Jurist, which was President of the "Order of Avocatis" and President of "The National Ethics Committee on Sciences of Life", is that the Abortion Law of 1984 is anti-Constitutional because is against an Article of the Constitution of Portuguese Republic which guaranteed the absolute respect for the human life, and foetus is a human life. However, in 1984, the President of the Republic suscited this question to the Constitutional Court, before the promulgation of the Law, and the decision was in favour that the juridical and constitutional protection of human life refers to the human being after birth. This decision was taken with a majority of only one vote).

This press conference was cited by newspapers and by TV1 with no comments.

Finally on June 1998, the NO get the victory, obtaining 50.9 %; in favour; the YES 49.5 %. The abstention was 68.1 %.

This was a very difficult situation to the Catholic Church in Portugal, to the Bishops and to the lay men and women which work in the field of social intervention under general orientations of the Catholic Church.

Regarding the results of the Referendum I propose to the reflection of our Assembly the following questions.

1 - The statistics of the declared Catholics in Portugal refer 80% to 95% according to the sources. If the universe of votants is 8,496,000 (eight millions and 496 thousands), we start with, at least, 6,400,000 Catholics votes for NO. In fact we obtain 1,356,754 (50.9%); 5,786,000 abstained (68.1%) and 1,308,130 vote YES (49.1%).

What is the explanation for these figures?

The abstainers are mainly Catholics because the leftists are all involved in the referendum with no divisions and have accepted the referendum because they are convinced to be the winners. I'm sure that the great majority of leftist have voted because this is the "mot d'ordre" of the Communist and Socialist Parties which have a hard core of fidelized votants.

Why the Catholics have abstained? In my opinion, this happened because, after the results of opinion polls, the Bishops decide that the good strategy was to be against the referendum (by good reasons, clearly) with the hope that a majority of abstentions will invalidate the referendum (according to the Referendum Law).

So to the 2,709,503 votants we cannot use the statistical figures of Catholic filiation. What we can say is that it was been possible to mobilise 1,356,754 Catholics to vote NO, to vote in favour of the life.
(Only 6.3% of the potential votes NO). These were sufficient to gain but the margin cannot be the good expression of the Portuguese Catholics opinion on the subject, I'm sure.

2 - Positive points
- The existence of a Catholic Radio Station, Radio Renascença, which is leader of audience in Portugal and transmitted, continuously, the opinion of Catholics lays and make references to Catholic meetings, all over the country, in broadcast news.
- The disponibility of prestigious Catholic doctors and intellectuals to speak to the people with an understandable language, at local meetings.
- A weekly newsletter ECCLESIA which is distributed all over the country and is reproduced in the local periodicals linked to the Church. I and many others intellectuals published little articles, easy to read, in favour of life. These articles were reproduced by a network of local radio-stations and weekly publications, regional or parochial, called "of Catholic inspiration" and organised in two national association, one of radios the other of the periodic press publications.

3 - Negative point
- No TV from our own (the TVI experience was a total and very disappointing failure) and in the three TV stations, two public and one private, no room for inviting the Catholics to the debates or for give notice of the Catholic initiatives and events. I was invited only one time to the private TV station, SIC, and never more (until the day of referendum where a panel was organised with the Conference of Bishops speaker and Secretary, D. Januário Torgal Ferreira together with the more prominent defenders of life on right side, and all the promoters and defenders of free abortion including some TV stars on left side. The idea of the program was to humiliate publicly the defenders of the life during the process of votation and after the final result - the expected victory of the YES. Finally the result was that the public (the greater audience of the four channels) have the good opportunity of seeing our dignity when the victory of the NO was finally announced).

4 - Lessons for the future
4.1 - More than the theoretical and moral statements - splendid, as they can be, like in Evangelium Vitae - we need, urgently, of practical initiatives which make clear, for the people, what is the Catholic answer to the suffering of individual and real persons involved in abortion decision.

The help, with goods and services, to the pregnant women, at any age, which cannot accept a pregnancy, is the only way to lower the abortions, legal or illegal. This help must be organised at parochial level and be a priority in the field of the social intervention of the Catholic people of the Parochy and of the Priest. It's important to profit of the diverse successful initiatives in the field. The objective is to save lives. One year after the Referendum (28 June 1999) the organisation "Juntos para a Vida". (Together in favour of life) realised a three days meeting in Lisbon in order to analyse what has been made and what needs to be made, jointing seven movements, presents in the field of the defence of life, each one with his own charisma. The existence of these movements, the positive work performed, and a personal intervention close to the population, were the most important contribution to the result of the referendum. We have a clear confirmation: in the field of action of the Movement All for the Life (Tudo pela Vida), Famalicão, the local results of the Referendum were: NO - 74,19% ; YES - 25,9% ; Abst. - 62,2% 

4.2 - We need a clear and well reasoned and balanced position of the Bishops, according to different sociocultural conditions, on sexual education of Catholics, of any age, married or not. In Portugal, and surely in many other countries, the Televisions, even by the way of movie-pictures for childrens, the weekly magazines and also the newspapers, are always presenting sexual messages, explicit or implicit. Between seven and nine years old the girls know that with a pill the pregnancy not happened (even if they don't known how to get pregnant). The genitality of the human body is becoming a banality; but the boys and girls, just before and just after puberty, have great and complicated problems of how to use the genitalia. According to my experience with the secondary schools students, boys and girls of twelve to seventeen years old, have a mutual difficulty in initiating
an emotional relationship because they imagine the genital contact is the previous and necessary way and are not prepared for it (in certain cases of pregnancy in adolescents, carefully studied by psychologists in our country, it was clearly demonstrated that the acceptance of the sexual intercourse was viewed by the adolescent as a way to obtain love in terms of protection and support, and not as a vicious use of the genitalia). I suspect that the ascending numbers of homosexuals, male and female, is, almost in part, due to the difficulty of create solid hetero emotional relationship in contrast with the facility of emotional relationship with other members of the same sex. The genital homosexual intercourse arrives later but is prepared by the emotional relationship if, in due time, the emotional orientation to the other sex is not obtained.

In my opinion, the Catholic moralists working together with teachers of Catholic schools with field experience with adolescents, boys and girls, some good psychologists with experience in solving sexual and emotional problems of adolescents, and gynaecologists as well andrologists, all need to prepare a modern corpus of orientations in the field of the education of the young's to a normal, healthy and happy sexuality. This corpus must include orientations in the direction of Catholic teachers and Catholic families in order to explain the new views of Catholics moralists in the understanding of sexual development of young's and of the importance of genitality and sexuality to the beginning and maintenance of human love, in a general framework of the education for the human love.

The sexual condition of the human being has became so important, in modern times, that is urgent to change the Catholic policies in the field of education to a good sexual realisation of everyone in the framework of the great Catholic values. A policy of secretism, ignorance, prohibitions and hypocrisy is no more tenable and is also dangerous.

Many of the difficulties we have found in our country in the question of abortion were here: the sexual education was left to the non-Catholic doctors, and the result is that: familial planning is only contraception, never education for love and for a responsible fecundity of the couples; if it fails, abortion is the good solution.

It's important that the Catholic Church accepts and promotes the natural methods, like Billings, not emphasising the "periodic continence" but the periodic loving of the spouses. If a pregnancy, not expected, arrive, it always will be a situation of love, not a "failure of the method".
TARCISIO BERTONE
CATHOLICS AND PLURALIST SOCIETY:
"IMPERFECT LAWS" AND THE RESPONSIBILITY OF LEGISLATORS

Church and society today

Pluralist society, democracy, the majority principle, human rights, etc., represent in some sense the horizon in which the question of the Christian assent to or rejection of "imperfect laws" is situated today. Before tackling the specific tasks of pastors and laity faced by this new problem, we need to analyse the new horizon in which it is situated. Taking my cue from the Symposium held by the Congregation of the Doctrine of the Faith in 1994 (Catholics and Pluralist Society - The case of "imperfect laws", Rome, 9-12 November 1994), I wish first of all to describe the current stage in the life of the Church and civil society by summarising the arguments of five contributions by distinguished scholars to that symposium.

Once we have recognized the fact that we are living in a pluralist society, in which various currents of thought based on human rights claim to co-exist and are forced to negotiate and seek agreement in the drafting of laws and in their enforcement, the question must then be posed whether "imperfect laws" can be assented to or not: how far can someone with a personal credo agree to participate in the drafting of a law that does not exactly correspond to his convictions? Or to put it in another way: how far can the person responsible for enforcing the laws give his support to them if he finds himself materially implicated in the development of a kind of society of which he disapproves? Prof. J. Joblin has tried to reply to these questions by examining the drafting of laws in a pluralist society. After having traced the emergence of pluralist society through history, he affirms: "The societies of the Western world... today no longer recognize the right of the authorities to maintain a consensus on certain moral values because, at their basis, is a broader consensus on the respect for freedom of opinion and expression". The result is that the majority of public opinion denies the Christian legislator the right to ask that certain higher values be respected, since such claims would seem an intrusion of an element of "ideological" division in society. Under these conditions what should be the responsibility of the Christian legislator who, by virtue of the social dimension of his being, must live in relation to and also participate in the political debate? Inspired by the teachings of the recent magisterium of the Church, Prof. J. Joblin takes the view that the Christian legislator should refuse to be constrained by the liberal view of consensus. Accepting such a view of things would threaten the very survival of society that has a need for positive and obligatory values. This rejection must clearly be accompanied by a positive explanation of the Catholic position. It should further be noted that, by such rejection, the Catholic legislator goes against the trend in terms of the modern way of conceiving the drafting of laws, which consists, as has already been pointed out, not in establishing the philosophical truth of a proposition, but in verifying how far an agreement may be reached beyond the motivations by which the legislators are variously inspired. 1

In his attempt to explain the pluralism of contemporary society by the phenomenon of secularization, Prof. S. Cotta has reached the conclusion that, in the field of anthropology and of ethics in particular, the spread of secularization has in truth reduced pluralism to a sharp dualism: on the one hand, the secular culture of immanence and praxis; on the other, the Christian culture of transcendence and being. This has given rise to the complete unification of public ethics with law, which ends up by stripping away from the foundation of the law the ontological reality of the human being, in favour of the foundation of an empirical and conventional nature, etc. In conformity with his assumption, Prof. Cotta does not pose the question of the attitude of the Christian legislator to "imperfect laws", but appeals to the essential theoretical principles that Christian metaphysics offer to those who must accept the challenge of secularization in the moral and juridical fields. These principles are: 1) the common foundation of morality and law in the structural truth of the human being; 2) the common role
of morality and law in their concern for each individual; 3) the formal and substantial universality of the moral and juridical norm in the Augustinian criterion "non erit lex quae juxta non fuerit". A synthetic expression of these principles may be found in the universality and perpetuity of the natural law in its symbiosis of morality and law.2

In the context of his reflections on democracy and the principles that support it in the post-modern culture of our time, Prof. F. D'Agostino speaks of a confrontation with "imperfect laws", in the light of a critique of the two extreme hypotheses (1. the so-called "reductionist" hypothesis, and 2. the hypothesis that favours the material request for the good life in relation to the historical and environmental emergencies of our time) aimed at resolving the crisis as a whole: democracy - juridical obligation - majority principle. If the confrontation is not only of a theoretical and philosophical, but strictly of a political and operational order, it would be necessary to fall back on the dignity and rights of man as essential factor of the social order. Those "imperfect laws" that guarantee the normative character of the social order as relational reality would therefore be tolerable. Conversely, those "imperfect laws" that, in the name of the promotion of a right, alter this relational character, thus contributing to legitimize an opportunistic management of the social order, would be intolerable.3

After having clearly described the dilemma in which the Christian legislator finds himself faced by the reform of the German law of abortion, following the ruling of the Bundesverfassungsgericht (the German Constitutional Court), Prof. M. Kriele tries to gauge the influence that a yes (= compromise) or a no (= rejection of compromise) to "imperfect laws" (more particularly the new law of 1995) may exert on the moral climate of the population. To this end, he studies the relation between law and morality. Even if the law is founded on morality, it is distinguished from it, in the sense that it only covers those aspects of morality that gravely threaten justice. But it cannot be inferred from these inherent limitations of the law that the State may renounce legislating in certain fields without this abstention contributing to weaken the moral climate of the population. Statistics show, for example, that respect for life suffered far more in the former GDR, in which the State favoured unrestricted abortion (the so-called "Fristenlösung") than in the Federal Republic of Germany with its more restrictive law on abortion (the so-called "Beratungslösung"). Should it be concluded from this that it is preferable to refuse to participate in the drafting of the law on controlled abortion? Before answering this question, a fundamental consideration needs to be addressed. The majority of the ethical principles underlying the constitution of a State have a utilitarian foundation: it is to protect one's own rights that one protects the rights of others. But even utilitarianism has its limits. There are in effect norms that go well beyond a mere calculation of interests and that, as a consequence, demonstrate the intrinsic weakness of such interests. Transcending the utilitarian defence of rights are the dignity of man and the fundamental principles that derive from it, such as: everyone ought to enjoy the same right to freedom and to the protection of his rights. These principles create a sum of juridical conditions that protect those who cannot find inspiration in the purely utilitarian calculation of the consequences, especially if interpreted and pushed to extremes by those who identify themselves with a Weltanschauung of materialistic type, in which the human foetus and even the new-born child are placed at the same level as an animal.

In the light of these considerations, the following problem emerges: does not the participation in the drafting of "imperfect laws" on abortion, justified by the principle of the lesser evil, favour, with its pragmatism, a legitimization of utilitarian thought? Should we not opt instead for an abstention that would unambiguously favour the confession - without pragmatic objectives - of the principle of the dignity of man? In favour of compromise, the following argument can be advanced: the reconciliation with utilitarian thought does not mean identification with it. To the extent that this option - the option of compromise - favours the maintenance of a certain conscience of the law and diminishes the number of abortions, it can be said to serve the protection of life and the recognition of the human dignity of the embryo. So what position should be adopted? The least that can be said is that compromise can only be justified on condition that it is publicly clear that it originates from a situation of opposition and that in
the last analysis it cannot be morally justified. That does not mean that the Church as such should place herself on the side of compromise. The exact opposite is true, without this meaning that the Church should fail to show respect for the Christian legislator who decides in conscience to opt for compromise, or to applaud those who refuse to accept it.4

After having painted a fairly gloomy picture of the "pluralist society" of our time, Prof. J. Finnis asks whether Christians engaged in politics can still reasonably attempt to modify the main lines of policy and public laws in conformity with the truths of the Christian faith. He conceives of this through participation in the drafting or amendment of unjust laws according to quite precise criteria. Without entering into the detail of his argument on the various cases reported - recurrent in contemporary society -, we will limit ourselves to the following two points that seem to recapitulate the substance of his thought: 1) the object of formal collaboration must be just, i.e. aimed at a positive result in relation to Christian values; 2) the gravity of the negative secondary effects inherent in material collaboration (bearing in mind the efforts required to limit it) must be reasonably proportioned to the evil to be avoided.5

We now come to the question of the respective roles of pastors and laity in relation to "imperfect laws". This is a question that is becoming increasingly open and urgently in need of clarification (cf. the problem of Catholic Counsellors in Germany and various legislative proposals on so-called assisted procreation). What does the social doctrine of the Church have to say on the matter? The study of Prof. P. Rodriguez provides us with several elements useful for a reply. "Imperfect laws" are here considered as "moral and theological questions". In this perspective, they may be subjected to clarification by the authorities of the Church through her magisterium. When it is a case of implementing "imperfect laws" in practice, they are considered as "concrete historical questions". In this case, they concern in the first place the activity of the responsible conscience of the lay Christian; and this conscience is formed not only in the perspective of a theology of creation, in which the classic question of the "co-operation with evil" is situated, but also in the redemptive perspective of the gratia sanans, of christological origin, in which this co-operation becomes cooperatio ad sanationem. This relation with "imperfect laws" clearly does not preclude the Christian legislator from entering into dialogue with pastors to explain the problems relating to his professional competence and receiving from them normative guidance of an ethical and theological order.6

In this regard, the study of an ecclesiological-juridical nature by Prof. G. Dalla Torre effectively shows that the Church enjoys a potestas moralis that is, in the last analysis, rooted in the libertas Ecclesiae (distinct from the right to religious freedom). This potestas enjoys an unchallengeable juridical value, whether it evokes a relation between the ecclesiastical authority and lay Christians engaged in the Christian animation of the temporal order (potestas magistri), or becomes the object of a dual consideration in civil organization: recognition of the role of the magisterium (general right) and recognition of the moral judgement on matters relating to the political order (specific right). Respecting the legitimate autonomy of the democratic order, the Church has the task, well founded in law, to promote "political freedom" and guarantee the "fundamental rights of the person". According to the doctrine of Vatican Council II, the Church may legitimately "pass moral judgement even in matters relating to politics, whenever the fundamental rights of man or the salvation of souls requires it" (Gaudium et spes, no. 76). An extremely topical example would be that concerning the proposals to legalize homosexual unions; such proposals jeopardize the institution of marriage, with grave damage to the common good of society. Catholic politicians must above all let themselves be guided by the recta ratio, objective criterion of the justice of every law. The relations between Church and political community are not exhausted by the juridical and institutional relations between them. In line with Vatican Council II, the Code of Canon Law attributes to the laity the special duty (distinct from the task of the hierarchy, but not separate from it) to impute and perfect the order of temporal affairs with the spirit of the Gospel (can. 225) and recognizes the laity's right to self-determination in this sector (can. 227). It is in this context that we speak of conscientious objection as dissent from the
conceived order by virtue of the latter's incompatibility with a higher law. According to the recent documents of the Church's magisterium, this dissent must be rooted in the objective moral norm recognized by the individual conscience and not in ethical principles produced by it and belonging to the scale of values that society creates in its historical development.  

Before leaving this section on the discussion of the respective roles of pastors and laity in relation to "imperfect laws", I would like to mention the reflections of Prof. W. E. May on the question. At the end of his study, Prof. May tries to explain why, in the great democratic societies of the world today, in which numerous unjust laws are in force, so many Catholics fail adequately to fulfill their duty to oppose these laws and thus contribute to their maintenance, whether with indifference, or with unjustified material co-operation. The fundamental reason consists in the weakness of the faith and of Christian commitment. Several aggravating factors characterize the current situation. One of these is the poor distribution of roles between pastors and laity. Prof. May argues as follows. The hierarchy sometimes muddies the water by statements that concern not the teaching of the faith and of the moral law, but prudential judgements of a socio-political order, judgements with which the laity may legitimately disagree. This may lead laypeople to adopt a passive role and discourage the formation of effective lay organizations. On the contrary, it is urgently necessary that the Church's pastors forcefully and integrally proclaim the Catholic faith and Catholic morality; that they remind the laity of their dignity and their specific apostolate; and that they admonish those Catholics holding public office who actively support unjust laws or fail to exercise their responsibility to oppose them.  

Prof. A. Rodriguez Luño recalls that contemporary political culture, through the constitutional principle and the democratic principle, translates some important ethical values (life and peace, freedom, justice and equality) into law. These values, moreover, are held to be fundamental: they are the conditions *sine qua non* for the search for higher values. They are, as a consequence, recognized as common political good. The degradation that this political culture is experiencing today, through ethical corruption and the unreasonable glorification of difference, cannot place in question the truth of these principles, nor the lay Christian's duty to participate in political life. The response requested of the layperson consists not in the global challenge of this culture, but in the effort to restore a Christian spirit to it, something that presupposes a constant attempt of discernment at the level of the political good. To clarify more precisely the question of material co-operation in evil through the participation in the drafting of "imperfect laws", Rodriguez Luño enunciates two principles: 1) A distinction needs to be drawn between common political good and supreme good of the person, between personal morality and political morality, which regulates not the acts of the person, but the acts of society as such. A law is not unjust merely because it permits or does not punish an action, the commission of which by an individual constitutes a grave sin; it may be called unjust solely if it is possible to show the complete incompatibility between this law and the common political good. 2) The duty to do good must be limited by the principle of autonomy, in the sense that no one can be accused of co-operation in evil merely because his professional service, which is required by a legal framework that is not self-evidently unjust, is abused by someone else in an autonomous fashion.  

These two principles deserve some further comment. The first concerns the legitimate distinction between moral order and juridical order. The second refers to the delicate question of "material co-operation" where it is sometimes difficult to distinguish between direct and indirect co-operation. In some cases, even though it is not a question of immediate material co-operation, there is a kind of institutional co-operation which is in itself scandalous and unacceptable (cf. for example the problem of the co-operation of Catholic counsellors with the State in Germany, and the controversial conventions between Catholic and non-Catholic hospitals in the USA).  

Recurring to Prof. May's intervention, we may define three types of unjust laws: those that permit the violation of a fundamental human right, those that establish a public policy that violates such a right, and those that institutionalize intrinsically evil acts. For each Catholic citizen what matters is to bear witness to the truth, to refuse to perform an evil act as a means to a good end, to be faithful and to trust
in the Providence of God. Each formal co-operation with unjust laws is therefore morally always to be excluded. A form of collaboration that implies the choice of an evil, even if considered as a means to achieve a good end, is to be considered as formal co-operation. Having said that, three attitudes to unjust laws may be morally justifiable, depending on case: opposition, tolerance or material co-operation. Opposition to unjust laws, pursued with morally acceptable means, is a duty for the Catholic citizen on condition that: 1) the person in question has the concrete possibility of expressing it; 2) it does not hinder the pursuit of the more important common good of society, bearing in mind the person's situation and personal vocation. Tolerance is the recommended position only if the opposition to the unjust law would cause greater harm to the common good of society. According to Prof. May, indirect material co-operation with an unjust law, i.e. the co-operation in which the implicit evil is accepted as involuntary secondary effect, may be justified and necessary if a grave moral responsibility is at issue, e.g. to limit an injustice of the law in question, or to respect the moral duty in another field.10

An emblematic case: the possibility that Catholic politicians may have to take the initiative in promoting more restrictive abortion laws.

Let us now examine a case that is frequently presented to the conscience of Catholics, and that may point the way to solutions in similar cases. In no. 73 of the Encyclical Evangelium Vitae John Paul II teaches that it is morally licit to support legislative proposals aimed at limiting the harm of a more permissive pro-abortion law that is already in force or put to the vote. With reference to this teaching, the problem is now posed whether a Catholic politician may not only support, but even take the initiative of promoting, a more restrictive law on abortion than the one already in force or put to the vote.

To elucidate the problem, it seems to me useful to recall some elements of the positive solution given in no. 73 of Evangelium vitae:

a) In this passage the Encyclical speaks of "a particular problem of conscience". Neither an ideal nor an abstract principle is enunciated. We are once again in the context of a person who reflects in conscience on the particular situation in which he finds himself.
b) What must remain clear, in such a case, is the "absolute personal opposition to procured abortion" and the impossibility to "overturn or completely abrogate a pro-abortion law".
c) The passage of the Encyclical speaks not only of "limiting the harm" of such a pro-abortion law, but also of "lessening its negative consequences at the level of general opinion and public morality" (i.e. the negative effects on personal consciences and on the collective conscience of a people). So what is important is not only the fact that a certain number of human lives are saved, but also the attitude or the ideology that is expressed through a law. It should be borne in mind, for example, that the arguments of many supporters of pro-abortion laws hinge on the fact that their initiative will reduce the number of clandestine abortions and save human lives, etc.

To proceed to an analysis of the problem we have just posed, it seems to me that it comprises at least three different cases.

First case

The first case would arise when, due to a change in public opinion or the forces present in parliament, a Catholic politician, or a group of Catholic politicians, see the chance of undertaking the reform of an already existing law on abortion by abrogating its more permissive articles and more negative provisions. If the conditions specified in no. 73 of Evangelium vitae are met, this case does not pose particular moral problems, provided that the reform aims at obtaining the maximum protection of the unborn human life that is hic et nunc possible to obtain. In this case, it is in fact clear that the object of
their action is the defence of life and the limitation of the harm that is here and now possible, without this implying any approval of, or responsibility for, what the reform fails to prevent.

Second case
The second case would arise if, due to a change in public opinion and in the political composition of parliament, a Catholic politician or a group of Catholic politicians see the chance of promoting a new law on abortion, more restrictive that the one in force or the one that other groups intend to promote. If the proposed new law sponsored by the Catholic group in parliament makes provision for some cases in which abortion is considered legal or at least depenalized, the question may be posed whether it is morally licit to promote such a law.

It is not easy to give a straight answer. Such a draft law promoted by Catholics may be the most intelligent way of limiting the evil as much as is humanly possible hinc et nunc, but it might also be, or might be interpreted as (and this is important on the level of culture and public morality), the expression of an attitude of compromise. This attitude could be described as follows: Catholics are utterly opposed to abortion; non-Catholics are favourable to abortion to a greater or lesser extent; given that the State is common to them all (Catholics and non-Catholics alike), it is not right to claim that the law should exclusively accept the position either of Catholics or of non-Catholics, because the law must be perforce a compromise, a mediation between different positions. This reasoning is clearly mistaken, because the defence of the unborn child is not only a need imposed by Catholic morality, but belongs to the ethical culture of the modern democratic constitutional state. Each pro-abortion law approves a criterion of discrimination, according to which it is not enough to be a human being to have an inalienable right to life, but requires other conditions to be satisfied too (to be wanted, to be physically sound, etc.). This discrimination, fatal for those who are subjected to it, is gravely unjust, and in the long run places in question a fundamental principle of social life. A restrictive law that were the expression of this political attitude of compromise would always have negative effects, at least on the level of culture and public morality, and would truly give rise to Catholic abortion, i.e. the abortion that "some Catholics" believe has a right legally to exist in a pluralist society like our own. All this is unacceptable.

In the light of these considerations, it seems to me that it would be morally licit for Catholics to become promoters of a new law on abortion that is more restrictive than the one in force, but that legalizes or depenalizes some cases of abortion, only if simultaneously three conditions are met:

1. those specified in Evangelium Vitae, no. 73;
2. that the promotion of a new law permits the maximum defence of human life that it is possible to obtain hinc et nunc, i.e. taking into account all the circumstances;
3. that it is not possible to achieve a similar level of defence of human life through a mere abrogative measure. The reference to the results must not mislead: it is not affirmed that everything that produces a good result is good, but that the negative aspects that the new law still possesses are, here and now, so inevitable as not to be morally attributable to its promoters. They are an indirect, involuntary effect, inevitably linked to their action in support of life.

The maximum defence of human life must not be understood purely in a quantitative sense, even though this is very important, but also in a cultural and social perspective. From this point of view the following conditions may for example be important:

1. that in the motivation of the proposed more restrictive law, it be affirmed in some way that the goal is to obtain a complete defence of the unborn life and that the proposed law is being supported to ensure that the chance of achieving a further improvement remains open;
2. that abortion be recognized as an act contrary to law, and hence illegal in general terms, even if it depenalized in certain cases;
3. that the depenalization be the result of the application of general principles of law (state of necessity, etc.) and not of a specific law that grants a special status to certain types of abortion;
4. that the depenalization be accompanied by legal provisions that encourage maternity (financial aid, measures to facilitate adoption, laws on women's employment, etc.);
5. that the broad interpretations to which the law may be subjected, both in the medical and judicial fields, be foreseen;
6. that conscientious objection be regulated in such a way as not to prevent objectors from performing a positive action of dissuasion;
7. that provision be made for penal sanctions for health-care personnel who break the law, just as in the case of employers who place difficulties in the way of women seeking maternity leave, etc.;
8. that abortion not be treated economically as an intervention of therapeutic nature; etc.

Third case

The case is that of a country in which abortion is illegal (e.g. Ireland). But changing attitudes in public opinion, the views of political groups, etc., make it reasonable to predict that it will soon be impossible to prevent the approval of a very permissive law. The following problem is then posed: would it be morally licit for a Catholic to forestall such an eventuality, with the intention of preventing a further deterioration of the situation, by becoming the promoter of a law that depenalizes only some strictly defined cases, and that establishes at the same time serious measures for the prevention of abortion?

It seems to me that the reply to this question must be no. In relation to the preceding legal situation, apro-abortion law, even if it be fairly restrictive, is morally negative, even if it may be relatively positive in relation to a possible or probable future legal situation. A Catholic ought not to take the initiative to do something that is by its very nature morally negative, to prevent others from doing something that is even worse. If the forces in the field make it impossible to prevent the pro-abortion law being approved, it would be preferable to follow the strategy of avoiding a frontal conflict: entering into dialogue, participating in the discussion in parliament of the articles of the law promoted by others, seeking to mitigate as far as possible their negative aspects, and voting against it in the final vote on the law as a whole. All this ought to be done in such a way that the personal absolute opposition to abortion is clear to everyone.

At the risk of repeating myself, it does not seem to me to be superfluous to recall that these general evaluations must be combined in each individual case with a careful analysis of the circumstances, of the possible consequences, of the possibilities of giving rise to scandal or confusion. Particular prudence is required by the public interventions of persons who in some way represent the Church (Bishops etc.), to ensure that some prudential criteria or guidelines be not mistakenly interpreted as doctrinal positions in favour of laws that do not guarantee a complete defence of human life. If it is licit to do what is possible to mitigate the evil, it is always obligatory to form consciences, also on social and political issues, in conformity with the doctrine of the Church.

Conclusions

The participation of lay Christians in the drafting of "imperfect laws" necessarily conjures up a kind of compromise with evil, as expressed in the traditional expression "choice of the lesser evil". The Church's obligation always and everywhere to proclaim the full truth about Jesus in the world, in our concrete pluralist world, in a world tempted to sacrifice transcendence to immanence, to seek refuge in convention rather than submit to reason and its rights, and to entrench itself in utilitarianism or pragmatism rather than open itself to the disinterestedness of the truth, etc., is incumbent not only on pastors, but on the whole Church. Lay Christians engaged in the affairs of this world and in the administration of the polis must also bear witness unreservedly to the truth of Christ.
On the basis of this common witness to truth in the world, the roles of pastors and laity are therefore **analogous but different**. Pastors must proclaim with authority inside the Church what is relevant for faith and morality. By right, they are also authorized to issue a doctrinal judgement on the great **values** or non-values that regulate the political community. Lay Christians, on the other hand, have the task of spreading the Gospel in the temporal order. It is a task that is specific to them and that must be respected as such. That does not mean that they should perform their mission without referring to the Church's pastors. They may receive from them guidance of a doctrinal character for their Christian activity in the world. Vice versa, pastors may draw on the specific competence of the laity to better understand the complexity of the world in which the Church lives.

By virtue of their specific vocation, it is **mainly** up to lay Christians to engage with "imperfect laws" in present-day democracy. Three attitudes are possible here:

1. **Prophetic resistance.** This attitude is absolutely recommended in the case of laws that attack the fundamental values of the faith. A law that, for example, would forbid the worship due to the true God or explicitly propagate the denial of the existence of God cannot in any way be the object of collaboration on the part of a Christian legislator. The example of the patristic Church remains ever-actual in this respect. The same attitude of prophetic resistance may, on certain conditions, be supported by the Church when it's a case of affirming a higher value than that proposed by the State (peace between men rather that the preparation for the legitimate defence of a country, for example). It may also be justified in the Church if a lay Christian prefers to opt for the value placed in question by the law rather than opt for the lesser evil.

2. **Collaboration.** A less radical attitude, or one of greater collaboration, is permitted by the Church if it is possible to promote a lesser evil than that proposed by the law. We may remark here that it is not the evil as such that is at issue here, **but the good, more specifically the good necessary to defuse or reduce the evil that the evil in question may produce.** In Christianity it is never permitted to do evil or use evil means to produce a good end; nonetheless each value, by the very fact that it belongs to what is good or what is true, asks to be respected. This attitude, that aims at what is good, within a situation characterized by what is evil, may be difficult to understand for those not directly involved in the political experience and unfamiliar with its very complex ramifications. Just for this reason, this choice of what is good, in a situation characterized by what is evil, must be **publicly explained** by those who take such a decision on grounds of conscience. Once this effort has been made with all the necessary seriousness, the legislator must not let himself be tormented, or change attitude, as a result of the false interpretation that may be given to his gesture.

3. **Tolerance.** The third attitude is the tolerance of the evil expressed through an unjust law. Such tolerance can only be possible if resistance to the evil would involve a yet greater evil. Here too, the object taken into consideration by the act of tolerance, is not the evil as such, but the good necessary to impede a greater evil.

As I have tried to show, the last two attitudes to "imperfect laws" do not seem idle compromises with evil, but different ways of affirming truth and goodness in the world, bearing in mind their concrete and often complex co-ordinates. In this respect, they are revealed as belonging to the same nature as the first attitude, i.e. they form part of the dynamism intrinsic to the truth that tries to affirm itself in the world in order to redeem it and lead it definitively to the trinitarian fullness. It follows from this that the person who tolerates "imperfect laws", or the person who collaborates with them, must not be judged by his fellow-Christian, who actively resists them, as a person of faint heart or weak character, but as a brother who tries to bury in the infinitely diversified soil of the contemporary world "a grain a mustard seed" (cf. Mt 13:31-32 and parallels) that could become, and in fact will become, a great tree.

Contrariwise, the person who resists "unjust laws" must not be considered by his fellow-Christian who tolerates them or collaborates with them, in the sense pointed out above, as a brother who has sprung from another planet or an extremist cut off from reality, but rather as a true champion of truth in the world. Here the Pauline idea of the different charisms in a single Body might apply (cf. 1 Cor 12:1 ff.).
And this leads me to insist on the importance of the fact that the different ways of affirming the truth in the face of "unjust laws" are rooted in a united and living local Church. It is from its life that the sowers of truth in the world must emerge, just as it is in it that they must be enlightened to take the right decisions and find the strength to remain steadfast in their pursuit. To use another expression, the Church ought to be capable of generating her own heralds of truth and ensuring that they remain, despite all their differences, within the bond of communion.

**Parable of the good seed and the darnel**

We must add one further unavoidable observation. Human reality as a whole has a twofold face (without being manichaeian): that of good and of evil. The passage in Matthew's Gospel (13:24-30 and 36-43 = parable of the good seed and the darnel) reminds us of this. Good and evil co-exist. The good seed suffers from this co-existence, and yet it is precisely where the seed sinks its roots that it becomes a reality of symbiosis between good and evil, a reality with a twofold effect... The success of the good is existentially - not essentially - linked to the evil.

This reality of space/time is subjected to our influence. We have the power to dominate it. Not as James and John, or the Apostles, wished to do by immediately tearing out the darnel, but by sharing and seeing from the viewpoint of God the good and evil that co-exist (the Crucifix too is the object of action with a twofold effect...!), and at the same time by bearing witness to the good that is within us, to that seed - "the implanted Word that is able to save your souls" (Jm :21) - that God plants in us so that we may bear fruit.

Christian morality therefore remains a **morality of witness**. Once the environment protected it; now it attacks it and asks for witness: "Christ fascinates me; Christians scandalize me" (Ghandi). Cf. the example of the physician, the Blessed Giuseppe Moscati, in the judgement of Benedetto Croce. We are called not to be "successful", but to be "witnesses".

Jesus offers yet another vision at the end of the same parable: **now**, the reality of the existence in space and time; **at the end of the world**, the return to the reality of the origin on the day of Christ's coming. And the reality of the origin is the axiological principle that dominates Gaudium et spes: "Man as the image of God" - "Christ the new man" who "reveals man to himself and brings to light his most high calling" (Gaudium et spes, nos, 12 and 22).

**Self-criticism**

It is true that Christians, in their relation to the historical process, cannot limit themselves to expressing judgements and uttering condemnations. On the contrary, every event must be for them an occasion to re-examine the past in a self-critical fashion and to dedicate themselves to the future. We wish today to help this re-examination.

A first cue for reflection is offered to us by a lecture given by the German Chancellor Helmut Schmidt to the Catholic Academy in Hamburg on 23 May 1976. In it he replied with his customary frankness to the observations contained in the declaration of the German Bishops on "The fundamental values of society and human happiness". After pointing out that a democratic state, in drafting its laws, must take into account what public opinion actually considers moral or immoral, and after drawing a distinction between fundamental values and rights, Schmidt affirmed as follows: "**Both as a politician and as a Christian I reach the same conclusion: it is first and foremost the task of the Church to keep alive the fundamental moral conceptions**". He then concluded witheringly: "If the Church's views on abortion truly did hold good for the 90 percent of the citizens who pay the ecclesiastical tax, the problem of the penal legislation on abortion would not even have been posed... The request for action by the state is in fact no more than a recognition of the Church's limitations in transmitting fundamental values".

These words cannot be totally accepted, because the State too has grave responsibilities, especially if its laws contribute - as was the case in Italy with its laws on divorce and abortion - to destroy the moral
conceptions of its citizens. But they do in part express a truth that must make us reflect. What has been lacking on the part of the Church was not the reaffirmation of the moral principles on the respect for life from the moment of its conception, but the ability to instil these principles into the consciences of individual citizens. In response to the spread of a skilful and forceful propaganda in support of the pro-abortion thesis, which eagerly seizes every possible pretext (from child-abuse to the dangers of an ecological disaster) to reinforce its case, Catholics have found themselves either the victims of an inferiority complex vis-à-vis the major organs of information, or extremely disadvantaged in the use of the mass media. The chance of exerting an influence on the process of the formation of public opinion has thus been reduced, and Catholics have limited themselves to lamenting the decadence of the moral conscience of citizens.

Crying over spilt milk no longer serves any purpose. The important thing is that each Catholic who wants to be such should fulfil his own duty to be the bearer, in the environment in which he lives, of the great moral principles contained in the Gospel message and dedicate himself to ensuring that the fundamental moral convictions remain alive in society. This responsibility will have different degrees depending on the position occupied by the person in question, but it is incumbent on everyone without exception. The conviction must grow that the first and most valid bulwark of public morality is not the laws - however necessary they are - but persuasion and conscientious assent.

Another motive for self-criticism ought to regard in particular those Catholics who hold responsible positions and are involved in political life. They ought to ask themselves what they have done, or what they have failed to do, that might have contributed to eliminating, or at least mitigating, certain situations that hamper the acceptance of a new life within the family or society. The document "The right to be born", issued by the Italian Episcopal Conference on 11 January 1972, spoke of measures to tackle the problem of unwanted pregnancy in marriage: measures such as a pre-marriage or marriage counselling service accessible to everyone that was in fact established in 1975. But even more so the Italian Bishops called for a courageous family policy that would comprise a greater protection of the unborn child at risk; assistance to illegitimate or dangerous maternities; prompt medical assistance for malformed or suffering minors; a housing policy sensitive to the conditions of the most disadvantaged, etc.

How many of these objectives have been reached, and how far has the failure to reach them depended on objective difficulties, or on lack of commitment? These are questions to which only the conscience of the responsible individuals can give an adequate reply.

3 Cf. F. D'Agostino, 'Democrazia, obbligo giuridico e principio di maggioranza', in op. cit., pp. 75-83.
WOLFGANG WALDSTEIN
Natural law and the defence of life in
«Evangelium Vitae»

In order to understand better the teaching of the Encyclical Evangelium Vitae concerning the importance of Natural Law for the defence of life, it seems to me necessary to take into consideration the objections coming from modern scientific opinions against the possibility of the existence or at least the knowledge of a natural law. We have witnessed even here in our Academy the influence of the way of thinking, which has been formed by the methods of natural sciences. If one is not aware of the limits of these methods, one can be led to think that they are the only scientific methods, and that nothing can be an object of scientific research that can not be examined exactly with these methods. Many recent methodological works have shown that a concept of science, limiting its scope on natural sciences, is not only insufficient, but inadequate and simply arbitrary. Already Aristotle was able to recognize the reason for errors of former philosophers in the fact "that although they studied the truth about reality, they supposed that reality is confined to sensible things. ... Thus their statements, though plausible, are not true".

It is, of course, not possible here to discuss the development of modern scientific thinking since the so-called "enlightenment". As especially Eric Voegelin has shown clearly, this entire development represents a decline of the natural light of human reason. It led to that "tragic obscuring of the collective conscience", of which, as the Holy Father states in Evangelium Vitae 70, the result is "an attitude of scepticism ... bringing into question even the fundamental principles of the moral law". This supposedly "modern" scientific thinking has also in the meantime widely affected practically all sciences in the field of humanities (Geisteswissenschaften, scienze umane). The consequences of this are especially disastrous in the field of moral theology and legal science. Our Holy Father has dealt with these errors in the Encyclical Fides et ratio. Because it is not possible to present the details here, I will limit myself to quoting one important passage concerning the danger of "scientism" (scientismus). The Pope explains: "This is the philosophical notion which refuses to admit the validity of forms of knowledge other than those of the positive sciences; and it relegates religious, theological, ethical and aesthetic knowledge to the realm of mere fantasy". This is equally true of legal science insofar as it does not only deal with positive law, but with questions of justice, human rights, and especially with natural law.

If one once has accepted in some way the position of scientism, one can not understand what the Pope really means by natural law. It would appear to be an unscientific fancy, due to some thomistic prejudice which has long been demonstrated to be a "naturalistic fallacy", as for instance Josef Fuchs dared to argue. It is easy to show that this position is in fact in every respect untenable. It simply ignores the entire reality of legal development since antiquity with the fact that long before the christian revelation man was, with the natural light of reason, able to clearly know natural law. I have already quoted two years ago a famous passage from Cicero concerning this knowledge, saying: "For Justice is one; it binds all human society, and is based on one Law, which is right ... command and prohibition. Whoever knows not this law, whether it has been recorded in writing anywhere or not, is without Justice". And all of that was not only some fancy theory, but the real fundament of the entire legal development of Europe. This development starts with the Roman jurisprudence in the second century B. C. and arrives at its culmination during the first three centuries of the christian time. Under the Roman emperor Justinian the heritage of this work was codified in the Digest in 533. The rediscovery of this work led in the Middle Ages first to the foundation of the University of Bologna with the school of the Glossators, later on to the development of the European ius commune, which was the European common law until the national codifications from the 18th century up to our times. These codifications, including the modern declarations and conventions of human rights, are all founded on the ancient Roman law, although combined with more or less great influences also of tribal and
national laws. In our own times the courts of the European Union show a tendency to go back to the European common law because judges of these courts can more easily find a consensus on these grounds than on grounds of different and even contradicting solutions of national laws.

Before dealing with the natural law, to which the Pope refers in *Evangelium Vitae*, it seems to me unavoidable to first have a look at the historical and legal reality of natural law in general. On this ground we can see clearer the reality to which the Holy Father refers in *Evangelium Vitae*. From this we can finally draw the conclusions concerning the importance of natural law for the protection of human life.

I. The historical and legal reality of natural law

As far back as we have sources concerning legal problems we find the clear awareness of the fact that man finds himself in a legal order not produced by man himself, but being part of the creation of the world. Already Hesiod saw the two fundamentally different orders in the world, the order of causality, which governs the non rational nature on one side, and the order of law, which tells man's reason what he ought to do on the other side, but leaves him the freedom also to act contrary to this "ought" and by this commit injustice, which is impossible outside the human nature. Already two years ago I have quoted one of the most impressive passages from *Antigone* of Sophocles, who argues against the unjust law of the king by referring to "the unwritten and unfailing ordinances of the gods. For these have life, not simply today and yesterday, but for ever, and no one knows how long ago they were revealed." Aristotle refers repeatedly to this famous text as argument for the knowledge and knowability of natural law. Especially the writings of Cicero, as mentioned before, give not only ample witness to this knowledge and knowability of natural law, but also to the obligation for man to know it. He says about the statesman, that "he must be fully conversant with (the highest law, *summi iuris*, which clearly means natural law), for without that no one can be just." I have already mentioned the parallel formulation in Cicero's *Laws* 1, 42: "Whoever knows not this Law ... is without Justice." All of this was not a matter of theory. Livy gives witness to a fact that shows how natural law was able to form historical decisions of Roman governors, even in war, which were regarded to be salutary for humanity. During the siege of Falerii in 394 B. C. by the Romans, under the command of the military tribune Marcus Furius Camillus, the Faliscans had entrusted children to a teacher, who led them fraudulently to the headquarters of Camillus. There he said to Camillus, "that he had given Falerii into the hands of Romans, having delivered up to them the children of those whose fathers were in power there." This teacher obviously thought to do the Romans a big favour, giving them the opportunity to conquer the besieged city without further combat. Under the aspect of utility that could seem very clever. And he most probably expected for that a rich reward from the Romans. The answer of Camillus, however, was founded on other criteria. He said: "Neither the people nor the captain to whom you are come, you scoundrel, with your scoundrel's gift, is like yourself. Between us and the Faliscans is no fellowship founded on men's covenants; but the fellowship which nature has implanted in both sides is there and will abide. There are rights of war as well as of peace, and we have learnt to use them justly no less than bravely." Here one can ask, why Camillus did not take advantage of the obvious utility of the offer. Cicero gives the answer concerning the motives for the different views. For the teacher's view as well as for many modern arguments is certainly true what Cicero says in *De officiis* 3, 36: "For with a false perspective they see the material rewards but not the punishment - I do not mean the penalty of the law, which they often escape, but the heaviest penalty of all, their own demoralization." This makes one immediately think especially of *Evangelium Vitae* 4, 21 and 70, where the Pope describes this "demoralization". But the teacher got his penalty immediately. As the report of Livy continues: Camillus "then had the fellow stripped, his hands bound behind his back, and gave him up to the boys to lead back to Falerii."
For Camillus himself is certainly valid what Cicero says about utility itself: "our standard is the same for expediency and for moral rectitude. And the man who does not accept the truth of this will be capable of any sort of dishonesty, any sort of crime". Therefore Cicero can also affirm: "Nature's law itself ... protects and conserves human interests". In the case of Camillus this became true in an unexpected way. As a consequence of the just dealing of the general the Faliscans rendered the city and asked for peace. Livy reports that the Faliscans said afterwards in the Roman senate among other things: "The outcome of this war has afforded the human race two wholesome precedents: you have set fair-dealing (fides) in war above immediate victory; and we, challenged by your fair-dealing, have freely granted you that victory". It is clear that Camillus in this case was motivated by natural law not to accept the most tempting opportunity to get the city easily rendered, but exactly that gave him the victory in an honourable way, called by Livy "a far better kind of glory than when he had entered it (the City) in triumph drawn by white horses".

It could be shown by many examples, that natural law really was a conscience-forming reality since earliest times. Due to this fact the Roman jurists, since the second century B.C., were able to give legal effectiveness to that natural law, that already long before was effective practically. A clear expression of that is given by the famous Cato Censorius in his speech for the Rhodians which prevented a war. The passage decisive for our question in the report of Gellius says: "And first of all, he very cleverly sought to find actions which are prohibited, not by natural or by international law, but by statutes passed to remedy some evil or meet an emergency; such for example as the one which limited the number of cattle or the amount of land. In such cases that which is forbidden cannot lawfully be done; but to wish to do it, if it should be allowed, is not dishonourable. And then he gradually compared and connected such actions as these with that which in itself it is neither lawful to do nor to wish to do".

That means that for this famous Roman statesman it was not even lawful to wish to do that which is prohibited by natural law, because it never and by no means can become not prohibited. In this regard the classical Roman jurist Gaius has given a clear explanation. He says: "While the logic of (order of) state law can destroy rights founded on the state law, it cannot affect rights founded on the law of nature". As Cicero solemnly proclaims: "We cannot be freed from its obligations by senate or people". And this has many demonstrable practical consequences in the legal order. All rights founded on natural law remain untouched whatever laws the state may introduce. And even more: It was clearly recognized since Plato, Aristotle, and Cicero that laws contradicting the natural law are unjust. They are only tyrannical acts of power. By enacting unjust laws, the form of constitution of the state in question turns into its "perversion or corruption". For democracy Polybios calls this perversion - at a, which one could call the tyranny of the mass.

Roman jurists never theorize about natural law as such, they just take it as a knowable reality which everyone in fact can and should know. Therefore Ulpian, explaining the sources of private law, can plainly state in Digest 1, 1, 1, 2: "Private law is tripartite, being derived from natural precepts, or from those of ius gentium, or from civil law". But civil law itself is explained by Ulpian as follows: "The ius civile is that which neither wholly diverges from natural law and ius gentium nor follows the same in every particular. And so whenever to the common law we add anything or take anything away from it, we make a law special to ourselves, that is ... civil law".

The fact that natural law really was the main source of Roman private law, was already seen at the rediscovery of the Digest in the Middle Ages and later on. Even a modern scholar, Fritz Schulz, in his Principles of Roman Law, published 1936, was forced to admit that, although he was strongly influenced by the positivism prevalent at that time. After describing various matters of Roman private law he says: "In all these matters it may be observed that legal writers are not satisfied with describing the positive Roman law in force at the time, but that they are at pains to evolve a law of Nature. This is the determining cause for the peculiar manner in which legal science is presented; it does not actually prove the rules stated, but derives them direct from the contemplation of life, from the ratio iuris. This accounts for its dogmatic assurance". And he then adds: "The aspect of Roman private law as natural
law is shown even more clearly in Justinian's compilation"29. Exactly by studying and explaining the content of this compilation, Roman law started, beginning with the University of Bologna, to form European legal culture. The first codifications of national private law in Prussia (1794), France (1804), and Austria (1811) were still Codes of natural law30. Therefore the Austrian Civil Code (ABGB), still in force today, contains in its § 16 the affirmation: "Every man has inborn rights, evident to reason". This is also the only possible basis for human rights' declarations and conventions, which necessarily become meaningless, if their content is not of unchangeable objective validity. Since antiquity man was seen as capable of knowing natural law. This capability has in general been lost progressively by the development of scientific positivism, relativism and scientism. One of the lethal effects of this loss is exactly the "culture of death", to which the Holy Father refers in Evangelium Vitae. This remark leads us now to the main point and to my theme:

II. Natural Law and the Defence of Life in Evangelium Vitae

Reading the Encyclical Evangelium Vitae it becomes obvious that the Holy Father speaks about natural law in the same way as was done since antiquity by philosophers, jurists, and legislators. Right at the beginning he says concerning "The incomparable worth of the human person": "Even in the midst of difficulties and uncertainties, every person sincerely open to truth and goodness can, by the light of reason and the hidden action of grace, come to recognize in the natural law written in the heart (cf. Rom 2: 14-15) the sacred value of human life from its very beginning until its end, and can affirm the right of every human being to have this primary good respected to the highest degree. Upon the recognition of this right, every human community and the political community itself are founded"31. Then the Pope lists the "New threats to human life" and becomes most explicit saying: "The Second Vatican Council, in a passage which retains its relevance today, forcefully condemned a number of crimes and attacks against human life. Thirty years later, taking up the words of the Council and with the same forcefulness I repeat that condemnation in the name of the whole Church, certain that I am interpreting the genuine sentiment of every upright conscience: «Whatever is opposed to life itself, such as any type of murder, genocide, abortion, euthanasia, or wilful self-destruction, whatever violates the integrity of the human person, such as mutilation, torments inflicted on body or mind, attempts to coerce the will itself; whatever insults human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the selling of women and children; as well as disgraceful working conditions, where people are treated as mere instruments of gain rather than as free and responsible persons; all these things and others like them are infamies indeed. They poison human society, and they do more harm to those who practise them than to those who suffer from the injury. Moreover, they are a supreme dishonour to the Creator»"32. We are all witnesses to practically all these things happening daily in the entire world. As the Pope further notes: "this disturbing state of affairs, far from decreasing, is expanding"33. The following passage is especially important for the question of natural law: "At the same time a new cultural climate is developing and taking hold, which gives crimes against life a new and - if possible - even more sinister character, giving rise to further grave concern: broad sectors of public opinion justify certain crimes against life in the name of the rights of individual freedom, and on this basis they claim not only exemption from punishment but even authorization by the State, so that these things can be done with total freedom and indeed with the free assistance of health-care systems"34. It is a very widespread opinion, even among Bishops within the Catholic Church, that if a democratic majority has issued a law allowing such things, one has to accept that. It is certainly true, that, as the President of the German Bishops' Conference, Bishop Lehmann, asserted, even the Pope does not have the power to effectively cancel the validity of a law of a certain state, albeit he thinks it to be unjust. But it is equally true that the Pope is entitled and even obliged to say that a law contradicting natural
law is not a valid law at all. In this regard the Pope makes clear that if "the original and inalienable right to life is questioned or denied on the basis of a parliamentary vote or will of the people - even if it is the majority ... the «right» ceases to be such, because it is no longer firmly founded on the inviolable dignity of the person, but is made subject to the will of the stronger part. In this way democracy, contradicting its own principles, effectively moves towards a form of totalitarianism. ... When this happens, the process leading to the breakdown of a genuinely human co-existence and the dis-integration of the State itself has already begun"35.

Later the Pope declares most solemnly:

"Therefore, by the authority which Christ conferred upon Peter and his Successors, in communion with the Bishops - who on various occasions have condemned abortion and who ..., albeit dispersed throughout the world, have shown unanimous agreement concerning this doctrine - I declare that direct abortion, that is, abortion willed as an end or as a means, always constitutes a grave moral disorder, since it is the deliberate killing of an innocent human being. This doctrine is based upon the natural law and upon the written Word of God, is transmitted by the Church's Tradition and taught by the ordinary and universal Magisterium36. / No circumstance, no purpose, no law whatsoever can ever make licit an act which is intrinsically illicit, since it is contrary to the law of God which is written in every human heart, knowable by reason itself, and proclaimed by the Church"37.

After having later quoted an important passage from John XXIII's Encyclical Pacem in terris, the Pope continues saying:

"This is the clear teaching of Saint Thomas Aquinas, who writes that «human law is law inasmuch as it is in conformity with right reason and thus derives from the eternal law (that is from natural law38). But when a law is contrary to reason, it is called an unjust law; but in this case it ceases to be a law and becomes instead an act of violence». And again: «Every law made by man can be called a law insofar as it derives from the natural law. But if it is somehow opposed to the natural law, then it is not really a law but rather a corruption of the law». / Now the first and most immediate application of this teaching concerns a human law which disregards the fundamental right and source of all other rights which is the right to life, a right belonging to every individual. Consequently, laws which legitimize the direct killing of innocent human beings through abortion or euthanasia are in complete opposition to the inviolable right to life proper to every individual; ... Laws which authorize and promote abortion and euthanasia are therefore radically opposed ... to the common good; as such they are completely lacking in authentic juridical validity. ... Consequently, a civil law authorizing abortion or euthanasia ceases by that very fact to be a true, morally binding civil law"39.

I thought it to be necessary to quote this important passage in full, because the confusion concerning these facts is almost universal. Fifty years after the tyrannical totalitarian acts of barbarism which provoked the General Declaration of Human Rights in 1948, one thinks that if a democratic majority allows such acts of barbarism, it could be lawful. One has completely forgotten, that a state, even if it is formally democratic, by enacting such unjust laws is turned into a tyranny, as was seen already in antiquity40 and as the Pope affirms in Evangelium Vitae 20 and 70.

In Evangelium Vitae 90 this point is taken up again by stating:

"I repeat once more that a law which violates an innocent person's natural right to life is unjust and, as such, is not valid as a law. For this reason I urgently appeal once more to all political leaders not to pass laws which, by disregarding the dignity of the person, undermine the very fabric of society"41. If the Pope "urgently appeals to all political leaders not to pass" such laws, then, I think, all those having an office in the Church should at least know what "is not valid as a law". It therefore must be regarded as an alarming reality that obviously even the German Bishops' conference does not know that, and moreover, regardless of all compelling arguments against it, coming not only from the Holy See and catholic writers, but also from legal experts42, insisted at first on the collaboration with the German abortion-law in spite of the objective crimes inevitably connected with it43 and against the clearly expressed will of the Holy Father.
The development in Germany is an especially tragic example for the progress of the "disturbing state of affairs" of which the Pope speaks in *Evangelium Vitae* 4. The new German constitution of 1949 gave already with its preamble the hope of a new beginning on the basis of the natural law in its full understanding. The preamble starts with the words: "Im Bewuβtsein seiner Verantwortung vor Gott und den Menschen ... hat das deutsche Volk ..." (In the consciousness of its responsibility before God and men ... the German people ... etc.). In one of the commentaries (Bonner Kommentar) to the Grundgesetz there is still in the edition of 1988 for the preamble only an empty page. Obviously the authors of this commentary did not dare to say anything about the "responsibility before God and men". Already in 1980 Ethel L. Behrendt wrote a book about the problem that this "responsibility before God" as a fundamental value of the constitution has been forgotten. Another commentary, however, contains a whole paragraph (IV) concerning "Verantwortung vor Gott und den Menschen" with most important affirmations concerning the constitutional bearing of these words. As I mentioned in my contribution to the Fourth Assembly, already in 1975 at a Symposion in Bielefeld a speaker, presumably from the Netherlands, N. N. Kittrie, proposed the creation of new bodies for decisions, which in a similar way as a jury should decide over life and death. He thought it to be a way for revival of democratic decision-finding which could help to distribute the new social responsibilities which modern science imposes on us, the responsibility to "play" God. This indicates the fundamental change in the sense of responsibility and a "grave moral decline", of which the Pope speaks in *Evangelium Vitae* 4. Man, instead of seeing his responsibility before God, which includes accepting God's laws for men, thinks to be forced by "modern science" to "play" God himself. What that means in its consequences, is shown especially in *Evangelium Vitae* 21:

"In seeking the deepest roots of the struggle between the «culture of life» and the «culture of death», we cannot restrict ourselves to the perverse idea of freedom mentioned above. We have to go to the heart of the tragedy being experienced by modern man: the eclipse of the sense of God and of man, typical of a social and cultural climate dominated by secularism, which, with its ubiquitous tentacles, succeeds at times in putting Christian communities themselves to the test. Those who allow themselves to be influenced by this climate easily fall into a sad vicious circle (the latin text is much stronger: *vitiōsi illius circuitus turbine facile capitur*, *turbo* meaning 'vortex' which can draw everything into an abyss):*when the sense of God is lost, there is also a tendency to lose the sense of man*, of his dignity and his life; in turn, the systematic violation of the moral law (which includes natural law), especially in the serious matter of respect for human life and its dignity, produces a kind of progressive darkening of the capacity to discern God's living and saving presence."

Before dealing with the actual situation, I have still to mention the fact that the German Constitutional Court (Bundesverfassungsgericht) still in 1951 declared that the Court "acknowledges a law above the positive law which binds also the constitutional legislator". And the Court declared at the same time itself "competent to measure positive law by that standard". There can be no doubt that with the "law above the positive law" the Court meant natural law, which is also mentioned expressly in other decisions. In 1975 the Court was, on this basis, still able to declare the first German abortion law to be unconstitutional. In 1993, however, the Court accepted, in contradiction with the principles declared before in the same decision, a solution which is known as "Beratungslösung". After consultation by a legally acknowledged consultant, who is bound by law to give to the woman an attestation of the consultation ("Beratungsschein"), the woman can use this attestation for the abortion without punishment. This legal construction is clearly an elusion of the constitutional norm. It is, in reality, nothing else than what the Pope says in *Evangelium Vitae* 4:

"The fact that legislation in many countries, perhaps even departing from basic principles of their Constitutions, has determined not to punish these practices against life, and even to make them altogether legal, is both a disturbing (anger animi is more than "disturbing") symptom and a significant cause of grave moral decline. Choices once unanimously considered criminal and rejected by the common moral sense are gradually becoming socially acceptable."
In the continuation of the text the Pope shows also the consequences for the medical profession. One of the problems of the legal system of permitting abortion without punishment is that also the consultation organized by the Catholic Church has been included in that system. In reward also the catholic consultants are paid by the state. After years of discussion the German Bishops with one exception wanted at any rate to remain in that system. Finally they agreed to add to the attestation, which gives access to abortion without punishment, the sentence, which the Pope asked them to add in order to exclude the possibility to use this attestation for unpunishable abortion. The sentence is very clear: "This attestation can not be used for carrying out abortion without punishment". But the attestation as such fulfills the legal precondition exactly for that. Bishop Lehmann now declared publicly that the additional sentence is only a moral appeal without any legal effect. The attestation, once handed over to the woman, can be used for abortion without punishment as before. According to declarations from the side of the state one seems to agree with that. In this way the Bishops succeeded, with remarkably sophistical argumentation, to elude the norms of natural and canon law, including the clear order of the Pope, as well as those of the German constitution and to give preference to a law contradicting all these norms. They, obviously "influenced by this climate" to which the Pope refers in Evangelium Vitae 21, did not take into account anything that already the experience of antiquity shows, much less what the Encyclical Evangelium Vitae says about a legislation contradicting natural law. This really was an alarming state of affairs and shows how far things have developed. By some indications coming from Rome, the Bishops, whether rightly or not, even assumed that the Holy Father would accept this solution. In this confused situation Cardinal Meisner took the courageous initiative to ask the Holy Father directly, whether this outcome is in accordance with his intentions. The Holy Father now asked the Cardinals Ratzinger and Sodano to give the clear and carefully substantiated answer, dated September 18, that this outcome is not in accordance with his intentions. The reactions of the German Bishops' Conference were in any case not those for which the Holy Father asked. Some Bishops were obviously ready to accept the will of the Holy Father, which simply expresses the consequences of the entire teaching of the Church. Others were reluctant to accept it, others even opposed it. Those who wanted to argue with the Holy Father once more, received meanwhile, according to press news, the answer from Cardinal Sodano that the Pope's directive is binding. The outcome after that was not yet generally that intended by the Pope in conformity with the teaching of the Church. Lay-organizations, which go under the name "Catholic", opposed vigorously the will of the Holy Father, calling it "centralistic abuse of power", and insisted and still insist on remaining in the system of collaboration with the abortion law. All of this demonstrates indeed the "disturbing state of affairs" of which, as mentioned above, the Pope speaks in Evangelium Vitae 4. Finally, during the "Ad-Limina-Visit" of the German Bishops in November 1999, the Holy Father succeeded in accomplishing the general result, announced by the president of the German Bishops' Conference, that Catholic consultants will no longer give those attestations which give access to abortion without punishment. This gives hope for the future. There are, however, great difficulties in implementing this result. After it became clear that Catholic consultants would no longer be allowed to give those attestations which give access to abortion without punishment, a lay-organization was founded to take over this collaboration with the German abortion system. This lay-organization gave itself the name "Donum vitae". To use the name of an important document of the Church concerning the protection of human life, issued in 1987, for an organization set up for the sole purpose to continue to give the permission to kill the unborn child without punishment, is plainly cynical. Archbishop Dyba has therefore rightly called this organization "Donum mortis". All of this gives an idea of how difficult the situation still is.
III. Conclusions

First of all we can see that natural law was since antiquity always recognized by the natural light of reason and that a still valid law can on these grounds plainly say, as does § 16 of the Austrian Civil Code: "Every man has inborn rights, evident to reason". Therefore also the Holy Father was able to ground the teaching of Evangelium Vitae in the fact that "the sacred value of human life" can be recognized "in the natural law written in the heart". That means that natural law is absolutely fundamental and essential for understanding the human dignity and therefore for the protection of human life.

It was equally seen since antiquity that actual positive laws of states that contradict natural law are unjust. In consequence a state, enacting such laws, would turn its constitution from a legitimate form into its perversion. For democracy this perverse form of constitution is called _at a_, which one could call the tyranny of the mass. And it is still true also for modern democracies, as the Pope justly affirms in Evangelium Vitae 20 and 70. Unjust laws themselves "are completely lacking in authentic juridical validity" and therefore not "true, morally binding civil" laws, "as such ... not valid as a law". It is hard to understand how Bishop Lehmann with other German Bishops can argue exactly for a precedence of such laws over the laws to which the Pope refers, with the sophistic argument, that the Pope does not have the power to effectively cancel the validity of a law of a certain state, even if he thinks it to be unjust. Such an opinion ignores the fact that these laws "are completely lacking authentic juridical validity" as such. And, as the Pope affirms in Evangelium Vitae 20, "what we have here is only the tragic caricature of legality". Such a law is "an act of violence" and the result of "a «tyrannical» decision with regard to the weakest and most defenceless of human beings". To plead for the validity of such a law seems the least appropriate for a Catholic Bishop.

All of this makes clear that natural law is, as _participatio legis aeternae in rationali creatura_, the real fundamental basis for the teaching of Evangelium Vitae. The obstacles of relativism, scientism and scepticism have in our times rendered this fundamental basis almost inaccessible. Therefore one of the most important tasks for the future will be to free it from these obstacles and rediscover it in its full bearing. To achieve that, it is also necessary to remember what role natural law played and still plays in the real development of our legal culture. Here, I think, it is also necessary to remember a most important statement of the Pope in the Encyclical _Fides et ratio_ 72, saying that "the Church cannot abandon what she has gained from her inculturation in the world of Greco-Latin thought. To reject this heritage would be to deny the providential plan of God who guides his Church down the paths of time and history". Therefore it is necessary to take into account what was already seen by the natural light of reason in Greek and Roman antiquity. It would be mere hubris to dispose of these knowledges and experiences. These knowledges and experiences can help very much to overcome the obstacles of relativism, scepticism and scientism. They can free human spirit to really use the natural light of reason. Only in this way natural law can again become a conscience-forming reality also in our times and in future.

Natural law is also to be seen in the whole context of God's creation and loving care for man. It was not possible to present here all the deep and wonderful insights and explanations of the Encyclical which clarify that. One text in the context of the commandment "You shall love your neighbour as yourself" (Lk 10:27) may still be quoted here: "This new law also gives spirit and shape to the commandment «You shall not kill». ... The commandment «You shall not kill», even in its more positive aspects of respecting, loving and promoting human life, is binding on every individual human being. It resounds in the moral conscience of everyone as an irrepresible echo of the original covenant of God the Creator with mankind. It can be recognized by everyone through the light of reason and it can be observed thanks to the mysterious
working of the Spirit who, blowing where he wills (cf. Jn 3:8), comes to and involves every person living in this world.  

There can be no doubt that we are faced with the fact "of a tragic obscuring of the collective conscience". Therefore it will be one of the main tasks for the future to reactivate this "moral conscience", without which a humane future will be impossible. In this perspective I would like to conclude with a passage from the end of the Encyclical: "When the Church declares that unconditional respect for the right to life of every innocent person - from conception to natural death - is one of the pillars on which every civil society stands, she «wants simply to promote a human State. A State which recognizes the defence of the fundamental rights of the human person, especially of the weakest, as its primary duty»  

The Gospel of life is for the whole human society. ... / There can be no true democracy without a recognition of every person's dignity and without respect for his or her rights" (nisi dignitas cuiusque personae agnoscitur eiusque iura vindicantur).  

With the Holy Father I can only hope: "may a new culture of love and solidarity develop for the true good of the whole of human society".  

With this I declare that the enclosed paper Natural Law and the Defence of Life in Evangelium Vitae is written by myself for the Pontifical Academy for Life. Prof. Francesco D'Agostino would like, with the consent of the Pontifical Academy, to publish it also in a periodical for legal philosophy, with reference to the fact that it was written for the Pontifical Academy and will be published in its proceedings.
ALICJA GRZESKOWIAK
POLISH EXPERIENCES IN RIGHT-TO-LIFE LEGISLATION

1. The protection of the life of the child following conception in ancient Polish criminal law

Polish criminal law had protected human life, without dividing this protection on the basis of a level of human development. In this respect, this protection covered human life, as well. The killing of a child, both before birth as well as following it was unequivocally considered an act of infanticide. Under ancient law, there was no doubt that the foetus was a human being and as such deserved the same protection as any human being. However from the XVII century onward, the offence of infanticide was more leniently punished if the perpetrator was the mother of the child. This leniency, however, with respect to the mother’s legal culpability for the killing of her child did not occur because the right of the child to protection was weaker, but due to the unique mental state of the mother as well as the circumstances under which she killed the child. Along with the development of criminal law, there was a reduction of the particular legal-criminal evaluation of the severity of aborting the foetus, which, in the first place, concerned the mother, but the principle of punishment for the death of the child was not questioned. However, from the beginning of the XX century, Polish law showed a tendency to juxtapose the mother and the child in the legal-criminal considerations of this relation. The law began to allow the voicing of these two subjects and juxtaposing the sacredness of the unborn child’s life with the interests of the mother. Initially the regulation of the question of freeing the mother from criminal responsibility for aborting the foetus, on the basis of a higher need, i.e., when the pregnancy endangered the life of the mother, which was later broadened also to include danger to her health. In the criminal code of 1932, which replaced the criminal law of the occupying powers, enforced in Poland for over 150 years, the mother’s criminal culpability in aborting the foetus or allowing such an act to be performed by another person continued to remain in force. The criminal nature of the act, however, was excluded if the operation was necessary for the health of the mother or if the pregnancy was the result of a criminal act. For the first time in its history, Polish criminal law, allowed for the killing of a conceived child due to the way in which it had been conceived. However, the condition allowing for the abortion of the foetus, as this act was referred to at the time, was not considered to be the difficult material position of the mother. This continued to be considered an offence, although at the time, a struggle was being waged to depenalise this act. It was also an offence to kill a conceived child due to so-called, eugenic reasons, which were passed in German acts on hereditary at more or less the same time in which the Polish criminal code came into existence, and which were the basis for negating the life of the conceived child at that time. This was the state of legal affairs in Poland until 1956, but discussion on the legalisation of attempts on the life of the conceived child began almost from the time that communist rule was imposed on Polish society.

2. The Legal System of the Polish PeoplesRepublic

The law from the 27.1V.1956 on the conditions allowing for the termination of a pregnancy (Journal of Laws 12, position 61) removed penalisation of the woman for performing an abortion and legalised the termination of pregnancy in conjunction with the so-called conditions described by law. Apart from danger to the life or health of the woman and matters of a criminal nature, a new basis for allowing the termination of a pregnancy - social conditions, allowing for a liberalisation of legislation prohibiting the termination of a pregnancy, under which the model functioning in Poland became more one of “abortion on demand” than a model of “conditions” that the law had envisioned. The decision to terminate the pregnancy was handed over to the woman, whose will, in the event of a lack of contraindications for conducting such a procedure on the part of the doctor, became binding upon the
doctor. The regulations did not envision a conscientious objection to this act when it was in opposition to the physician’s beliefs. Thus, doctors who refused to participate in the performance of this act, since it was in contradiction with their beliefs or legal and ethical norms were subjected to professional repercussions. Such a state of affairs existed for almost forty years and was enforced by the regulations of the socialist criminal code of 1969. This did not foresee the direct protection of the life of the conceived child, which did not have its own legal status. It was only indirectly protected by health regulations and those protecting the life of the mother herself, and only when the pregnancy was in accord with her own will. This broad legalisation of abortion in Poland led to an unprecedented increase in the number of conceived children thus killed. This figure is estimated at 700 thousand children annually. The behaviour of the mother with relation to her own conceived child ceased to exist in the scope of interest of the criminal code; the mother was always found inculpable for terminating her own pregnancy.

In Poland, however, protest against abortion grew. Movements in defence of life were formed. The role of the Roman Catholic Church and the teachings of John Paul II were invaluable, preaching the unchanging value of human life from conception to a natural death, as well as a need for its legal protection. There was a heightened consciousness of the need to change the law and to introduce a legal-penal protection for the life of the conceived child. The first attempt was the proposal of the Commission for Codification by the “Solidarity” movement contained in the bill for the criminal code of 1981. It narrowed the scope of abortion to a considerable degree - in the event of the need to save the life or protect the health of the woman endangered by a serious threat to the loss of these goods. The termination of pregnancy for other reasons was to be forbidden and the one who performed the abortion was criminally liable for performing an abortion while, at the same time, preserving the mother’s immunity. Work on this bill was broken off after the introduction on the 13.12.1981 of martial law and the imposition by the communists of severe legal restrictions, denying and limiting human rights. The right to life advocates grew in strength, propagating not only knowledge about the beginnings of human life, but of proclaiming the discontinuation of the 1956 legislation and introduction of full legal-penal protection of the conceived child. A subsequent, and this time official attempt at changing the law was the bill for a separate law on the legal protection of the conceived child developed at the turn of 1988-89 by a team of experts from the Polish Episcopate’s Commission on the Family. It was probably the only legal bill in the world intended specifically to protect the life and health of the conceived child. It recognised the conceived child as an autonomous subject of the law, an independent good of itself, subject to direct legal-penal protection. The bill clearly stated that the conceived child has a right to life just as every human being. The protection of its life was a consequence of the law based on this right to life. The bill of this law introduced the concept of “conceived child,” which had functioned in Polish civil law from as early as 1965. This was an extremely important regulation, since it described the legal status of the human being from the time of its conception up to its birth, naming it directly - the conceived child. Without a doubt, it thus treated it as a human being, effectively cutting short all divagations on the legal status of the embryo or foetus. The intentional causing of death of a conceived child was, thus, to be treated as an offence, and the responsibility for the death of such a child was also to be borne by the mother, although the court could abstain from punishment if it so chose. The bill envisioned a full legal-penal protection of the life of the conceived child. It did not legalise any possible breech in this defence, thus, allowing for no termination of pregnancy. Efforts at saving the life of the mother could only be assessed on the basis of the overall regulations on the existence of a higher need. The bill was signed by 74 representatives of the Sejm of the Polish People’s Republic and was officially submitted to the Parliament, however, due to the dissolution of that body, it was not ratified. The bill of the law for the legal protection of the conceived child became the model of later Polish bills for the legal protection of the conceived child.

3. The legal situation of the conceived child in Poland in the period of transformation
In June of 1989, the first completely free elections to the Senate, the second parliamentary chamber, took place after having been banned for over forty years, as well as the partially free elections to the first chamber. The Senate, with a mandate for legislative initiatives, from that very same year began work on the bill for the law for the legal protection of the child from conception, based on the bill prepared by the experts of the Polish Episcopate’s Family Commission. The final bill of the law for the legal protection of the conceived child was passed by the Senate on 29.09.1990 and presented to the Sejm. It confirmed the duty of the state in protecting the child from conception onwards. Causing the death of a conceived child was to be considered an offence, but the mother killing such a child was not to be punished for this act. Abortion, however, was legal when the child had been conceived as the result of a criminal act, when the killing of the child took place to save the health of the mother, for personal reasons or the difficult social situation of the mother. The bill for the law passed by the Senate did not conform with the concept of total protection of the conceived child, although in comparison with the existing law from the 27.04.1956, which broadly legalised abortion, it nevertheless constituted considerable progress. Even in this form, it resulted in the vehement attacks of supporters of abortion and a broadly based political campaign against the creators of the project.

The Senate also introduced into the constitutional bill being prepared by this chamber, the norm, confirming the right of every human being to life from conception as well as the duty of the state to defend it. The Senate’s constitutional bill was not passed, and this regulation, due to the composition of the parliament voting on the new constitution in 1997 did not become one of its legal norms. The Sejm, following long debates and social consultations undertaken by the representatives, in which 1 700 000 persons took part, as many as 1 500 000 of whom took a stand against abortion - decided to break off work on the bill for the law on the legal protection of the conceived child. This matter was returned to only following the elections of 1991. The law was passed on the 07.01.1993, but only as a law on family planning, protection of the foetus and conditions allowing for the termination of pregnancy (Journal of Laws 17, position 78). Just as the title of the law was not satisfying, so also its content did not bring full protection to the conceived child. Abortion was allowed in 4 cases:

- due to mortal danger to the mother,
- the serious illness of the mother,
- when the child was conceived as the result of a criminal act,
- when there is a probability that the child will be born seriously ill.

On the other hand, abortion was forbidden due to social reasons, which was considered a considerable achievement; because this was the reason most often cited. For the first time in Polish criminal law, abortion was legalised due to the illness of conceived child, i.e., eugenic reasons. A law of such content was defeated through the considerable participation of Catholic representatives. In the Senate, despite efforts to do so, it was not possible to change the content of these regulations, thus, the law came into effect in the form ratified by the Sejm. The law from the 07.01.1993 is fundamentally significant insofar as it, expressis verbis, confirmed that every human being has, from the moment of conception, the right to life, and that the life and health of a child, from the moment of its conception, remains under legal protection. It also introduced as law, the civil norm clearly confirming the legal entity of the conceived child, although Polish courts had long taken this position. The most important changes, however, were in criminal law. Into the criminal code were introduced regulations directly protecting the life and health of the conceived child. Causing the death of a child was forbidden under penalty of imprisonment for 2 years, which did not include punishment of the mother of the conceived child. The doctor performing this action in a public health care institution also did not commit an offence in the event that:

- the pregnancy posed a threat to life or a serious danger to the health of the mother, which was confirmed by the statement of two other doctors apart from the one undertaking the procedure;
• when the death of the conceived child occurs as the result of actions undertaken to save the life of the mother or to counteract a serious danger to the health of the mother, whose danger was confirmed by the statement of two other doctors;
• prenatal investigations confirmed by the statements of two other doctors show serious and irreversible damages to the foetus;
• there is justifiable suspicion, confirmed by the statement of a prosecutor, that the pregnancy occurred as the result of a criminal offence.

Such a numerical counting by the lawmakers of the conditions for allowing the termination of a pregnancy meant that abortion had been forbidden due to social reasons. As well, to the criminal code was added a new regulation that envisioned criminal responsibility for causing damage to the body of a conceived child or an impairment to its health endangering its life. The bill also introduced regulations speaking of the duty of providing pregnant women social, medical and legal aid, since, according to the concept of the lawmakers, in conjunction with the legal protection of the conceived child, the mother should also be provided with help, and this help was to be legally guaranteed. Accordingly, the law of 26.IV1956, on the conditions allowed for the termination of pregnancy, together with its liberal vision of abortion was terminated. However, their remained the effects of its action, the most important being an anti-life stance. It was this transformation of the social consciousness that remained one of the most important tasks that faced the pro-life forces as well as the authorities that had passed this law and were to enforce it.

The introduction of the bill and the prohibition of terminating pregnancies due to social reasons caused a significant drop in the number of abortions performed in Poland. Their number was assessed at being 800-500 annually. As well, the pro-life actions in Parliament and actions aimed at increasing the social consciousness on the value of life from conception brought with it other positive effects. Increasing numbers of Poles took a pro-life stance against abortion. However the new elections to the Sejm and Senate brought victory to the post-communists, who proclaimed they would return a broad based legalisation of abortion. Almost immediately following the election, they presented a bill to change the law, thus, broadening the legal basis for the killing of conceived children. They were able to pass a law in the First Chamber of the Parliament, approved by the Senate, also dominated by post-communists. This law, however, was not ratified, since it was vetoed by the current President Lech Wałęsa and the Sejm was unable to overturn this veto. The Parliamentary majority, thus, waited to change the law until after the presidential election were won by a post-communist, who had, already in the electoral campaign, promised legalised abortion, including social reasons, as well. The legislative initiative was once again renewed, passing it without too much difficulty in the Sejm. Only the Senate, thanks to the campaign by the 12 “Solidarity” senators, was able to mount a historic opposition to the bill. A great mobilisation of the pro-life forces in Poland ensued in which some of the Catholic mass-media participated, as well as many Catholic social and political organisations. The Senate received approximately 3 500 000 protests against any changes to the law. It was a new social phenomenon, a new form of direct democracy, in which a large part of the society did not want to approve of the legislative actions of its representatives. Protests were only one of the forms of action in defence of life, the largest of these - a nation-wide one - gathered approximately 100 thousand pro-life demonstrators. This gives an indication of the scale of changes that occurred in the consciousness of Poles and the results of a stubborn and generous work of the pro-life forces, including their parliamentarians. Public opinion polls of those times showed that 50% of Polish society was against abortion for personal and social reasons. All of these social actions were to directly influence the Senate, to reject the bill expanding the scope of abortion allowed under law, which is what occurred. Unfortunately the Sejm rejected the veto of the Senate. The Bill required the signature of the President. He did not, however, want to veto the bill or to direct it to the Constitutional Tribunal. The bill thus became a law and took effect in 04.01.1997, enacting the principle that the right to life is protected, both in the prenatal phase within the bounds described in the law. A common law was, thus, was empowered with the task of
making the decision on giving protection of the right to life. It removed, as well, all regulations confirming the legal status of the conceived child. In order to confirm this, even its name was changed to that of foetus. The law also included regulations guaranteeing the right for everyone to decide about having children and access to means allowing for the fulfilment of that right, which was to signify the universal right to free abortion. The termination of pregnancy up to the twelfth month, under conditions when the pregnant woman finds herself in a difficult social or personal condition, has been legalised, and the remaining conditions allowing for termination of pregnancy were widened. From the criminal code, those regulations directly protecting the life of the conceived child and its health were removed. On the other hand norms were introduced prohibiting the termination of pregnancy in contravention of the law concerning a foetus that had reached the ability for an independent existence apart from the organism of the pregnant woman. The removal of protection from the conceived child and broadening of the scope of legal abortion was clearly connected with the political orientation of the parliamentary majority in the First Chamber of the Polish Parliament. This proves how unjust it can be to leave a decision in legal matters, guaranteeing legal protection for the inalienable right to life, to normal legislation, which may be changed depending on the transitory parliamentary majority. The example of Poland clearly shows how important it is to obtain a guarantee at a higher normative level or in international human rights acts or constitutions or decrees of the Constitutional Tribunal so that a normal legislator would be unable to make transitory changes in regulations concerning the inalienable rights of man.

In such a legal situation, when the legislative process was completed and the law extending the right for killing the conceived child was to come into effect, a group of senators decided to bring the law before the Constitutional Tribunal. The accusation of unconstitutionality was made on the basis of a contradiction between the new regulations and the constitution, particularly the constitutional principles of a democratic state under law, justice, equality, protection of the right to life, maternity and the family.

4. The Verdict of the Constitutional Tribunal
The case before the Constitutional Tribunal took place on the 27.05.1997, its verdict was declared on the 28.05.1997. Of the seven accusations pointing to contradictions in the constitutional regulations contained in the law from the 30.08.1996 indicated by the motion of the senators, as many as five were considered by the Tribunal to be correct, and the regulations to be unconstitutional. The Constitutional Tribunal accepted that making the protection of the right to life in the prenatal phase on the decision of the normal legislator contravenes the constitution, since it contravenes the constitutional guarantee of protecting human life in every phase of its development. The Tribunal found the regulation allowing for the termination of pregnancy in the situation where the pregnant woman finds herself in a difficult social or personal situation to be unconstitutional. It accepted that this regulation legalises termination of pregnancy without sufficient justification of the necessity to protect another value, the law or constitutional freedom or makes use of undefined criteria of this legalisation, thereby contravening constitutional guarantees for human life. Thus, abortion motivated by social and personal reasons was clearly found in contravention of the constitution, which was tantamount to its legal prohibition. The regulation of the law forbidding the child from obtaining from its mother damages sustained before birth was also found to be unconstitutional. The Tribunal found that it deprived the child of the possibility of obtaining its property claims from its mother. Its rights were limited in a way that was contradictory with the principle of a democratic state under law and with the principle of freedom. The Tribunal also found unconstitutional, those changes in the criminal code based on the annulment of two regulations: one - directly protecting the conceived child from research experiments and prenatal testing, allowed by the law within certain bounds as well as the second - the regulation protecting the health of the conceived child. The Tribunal found that this contravened the constitutional guarantee further to the protection of the health of the conceived child.
and its undisturbed development and that it also limited the legal protection of the child’s health to the
degree that the remaining legal means could not fulfil the requirements of sufficient protection of this
constitutional value. The Constitutional Tribunal, in showing the unconstitutionality of the regulations
of the accused law, particularly stressed that if the content of the principle of a state under law is a
number of fundamental directives extracted from the substance of a democratically constituted law, and
guaranteeing a minimum of its justice, then the first such directive must be, in a state under law, the
respect for a value without which no legal entity is possible, i.e., human life from the beginning of its
existence. A democratic state under law has as its primary value the human being and the good most
valuable to him. Such a good is life itself, which in a democratic state under law must remain under
constitutional protection in every stage of its development. Thus to the Constitutional Tribunal, there is
no democracy, no state under law without value, particularly without the protection of human life in all
the phases of its development and existence. It clearly stressed that the value of the constitutionally
protected legal good, which human life is, including life developing in the prenatal phase, cannot be
differentiated. From the moment of its conception, human life becomes a value protected
constitutionally, which concerns its prenatal phase, as well.
The Constitutional Tribunal issued its verdict on 28.05.1997, whereas the statement of the President of
the Constitutional Tribunal was published on 18.12.1997 and concerned the loss of power by the
existing regulations of the law declared to be unconstitutional. It was preceded by voting in the Sejm
for rejecting this declaration. The Sejm, however, was unable to reject it, but neither did it have the
constitutionally foreseen time for improving the laws according to the indications of the Constitutional
Tribunal. Thus, the Tribunal itself declared the loss of legal power by the law of 30.08.1996 in the
amendment of the law on family planning, protection of the human foetus and the conditions allowing
for the termination of pregnancy as well as changes of some other laws (Journal of Laws 139 position
646 from the 04.12.1966). From that moment they ceased to be in force, which meant primarily the
annulment of the legalisation of abortion due to difficult personal or social conditions. In this way, the
termination of pregnancy for these reasons, was, once again, forbidden. Accordingly, in Poland for one
year there existed legal regulations broadly allowing for the termination of pregnancy, in effect, on
demand by the woman, preceded by a consultation. This one year brought with it an increase in the
number of abortions by over 2500, in comparison with the previous year when the law prohibiting
abortions for social reasons was in force. In 1998, the year which saw the prohibition, this figure
dropped to 310, of which 211 included abortions due to the endangering of life and health of the
mother, 11 as the result of prenatal tests, and one due to an illegal act (Report of the Council of
Ministers on the enactment of the 1998 law of January 7, 1993 on family planning, protection of the
human foetus and conditions allowing for the termination of pregnancy, Warsaw 1999). It may thus
clearly be seen what a role in the prevention of abortion was played by the legal regulations, since, at
first, the prohibition of abortion, then its return, caused such a large fluctuation in the number of
abortions. This should be stressed, since in the legislative practice of states, one can rarely find an
example of such subsequently occurring legislative changes. It is also proof of how contemporarily
necessary is the legal protection of the life of the conceived child, as well as the fact that simple
legislative guarantees of the right to life are in themselves insufficient. The law can too easily be
changed according to existing and transient ideologies of the parliamentary majorities imposed in the
body of the laws passed, with no reference to a system of universal values. It may be seen on the
example of Poland how a human being cannot be safe in his values and goods, since it is so easy to
deprive him of his inalienable rights. It is enough that a party should come to power, rejecting values
connected with the inalienable rights of man to life from conception to natural death and having the
parliamentary force sufficient to impose its legislative vision in this question. In order to ensure the
protection of values, guarantees of a higher order must be reached for - beyond the law - international
acts of the rights of man, constitutions, or the verdicts of Constitutional Tribunals obliging the
legislator to given legal documents, since these cannot so easily be changed. This difficult experience
was thus needed by Poland. The verdict of the Constitutional Tribunal has a considerable measure of permanence. The protection of the right to life and the protection of the life and health of the conceived child has thus obtained a higher standard.

5. The present state of legislation concerning the protection of life.
Right to life parliamentarians were unable to introduce into the new constitution of the Polish Republic, a regulation protecting the right of every human being to life and conception. The constitution was being passed by the National Assembly, i.e., the combined chambers of the parliament, still dominated at that time by communists and the left. There was, however, found init a regulation ensuring the legal protection of life to every human being (article 38). Contained in it, as well, were regulations stating that Poland is a democratic country under law, guaranteeing protection of the family, maternity and parenthood (article 18), thus, the norms on which the Constitutional Tribunal had based itself when it gave its historical verdict on the basis of the yet existing constitution. It is, in any case, the basis of recognising this verdict under the rule of the new constitution, as well. The verdict of the Constitutional Tribunal from the 28.05.1997 had the legal consequences of annulling the regulation from the law of the 30.08.1996, those regulations, of which one banned prenatal examinations, unless they were intended to heal the conceived child. They were, on the basis of the decision of the Tribunal, once again, included in the criminal code of 06.06.1997, which began to take effect on the 01.09.1998, no longer foreseeing such regulations, since it too had been passed by the communist and left-wing majority. Accordingly, the criminal code had to be amended so as to fit the law to the verdict of the Constitutional Tribunal. The law about the change of the criminal code was passed on the 06.06.1999. To the criminal code was introduced a regulation forbidding damage to the body of a conceived child or causing a disruption to its health, thereby endangering its life, under the penalty of a fine, of a suspended sentence of imprisonment, or imprisonment of up to two years. The concept of “foetus” was also changed to that of “conceived child,” according to which the terminology used in the criminal code was unified in describing a human being in the prenatal phase of its life. As well, the law describing the medical profession was changed. The possibility of performing experiments on the conceived child was banned, which meant, above all, those research experiments on conceived children intended, to broaden medical knowledge.

Another change in Polish legislation, which strengthened the position of the conceived child should be noted. The constitution of the Polish Republic foresees the need for establishing the position of child’s rights advocate. In accordance with the law on the child right’s advocate from the 21.10.1999, a child is every human being from conception to adulthood. The advocate should act in defence of the rights of the child to upbringing in the family. It is difficult to foresee what actions for the defence of these rights will be taken by the advocate of child’s rights, since this is a new institution and has yet to begin functioning. It should, however, be noted that this expression of the legislators care for the legal protection of the life of the conceived child, because it gives an additional guarantee of the inalienability of its right to life.

What then, at the end of the century is the balance of Polish activity in defence of life?
In Poland at the end of the XX century, there is a ban on abortion due to difficult life conditions or the difficult personal situation of the woman. The law, however, permits abortion in the event of a threat to the life or health of a mother, the great probability of a serious and irreversible degeneration of the foetus, or an incurable disease endangering its life, or justifiable grounds to assume that the pregnancy resulted from a criminal act. In the present Polish legal system, there is no question, whether the embryo or foetus has a legal status, like every human being. Under the law, the foetus is a human being. Expressis verbis, the law describes it as a conceived child, which clearly indicates that it is a child and, thus, a human being. Accordingly, under Polish law, one is a human being from conception, but the extent of the law which protects him is variously enforced.
The legal protection, which the conceived child obtained was introduced after a difficult parliamentary battle, with considerable social support and increasingly growing consciousness as to the value of human life. But also with many life threatening actions on the part of the left, feminist groups and liberal organisations, including international ones, making demands on Poland to legalise universal or broadly extended abortion. Polish experiences, however, show that one cannot cease pro-life activity. Thus it was in Poland, where in just 10 years following the return of freedom, much has been achieved - the law from the 26.04.1956 legalising abortion was annulled, the law from the 07.01.1993, which introduced, although only a partial, although legal protection for the conceived child. Following that, this protection was annulled, and the regulations on abortion were among the most liberal in the world in accord with the law of the 30.08.1996. When the battle in parliament had been lost, social protest methods were employed; when this did not influence the legislators, the law was brought before the Constitutional Tribunal as being unconstitutional, and this body in its verdict returned the legal state before the time of legal changes so inimical to the life of the conceived child, giving a higher than legislative guarantee for the protection of life in the face of abortion due to social reasons. Thus, the previous standard of legal defence of the conceived child was returned to, but this time one with a higher degree of permanence.

These changes were accompanied by the pro-family policies enacted by the state, concerned with providing material support to the pregnant woman finding herself in difficult material conditions initially for a period of 6 months, and then reduced to 4 months following the return of the post-communists to power, in an increase of the amount of paid maternity leave to 26 or 30 months, the introduction of a pro-family tax system and an immediate financial supplement for families with many children for the purchase of their school supplies. At the same time, the pregnant woman was guaranteed legal and health protection. Protective actions for the conceived child should be conducted in conjunction with the protection of maternity and help to the mother so that she not be left alone in a situation so difficult for her. There is a need for a continued raising of the consciousness of the society, particularly that of the families themselves as to the value of life, so that the moral norm protecting that value would be internalised. Accordingly one must constantly build the culture of life anew and that this life be respected and protected by everyone opposing all manner of attacks on life brought on by the development of civilisation.

The Polish experience, however, indicates that in an overall pro-life system from conception, it is necessary to have legal protection. Its introduction helps, in large measure, to prevent abortion. As well, however, are necessary other pro-family actions on the part of the state. It is necessary to build a growing “pro-life” consciousness. All of these actions are complementary - none can be forgotten - if the human being is to be protected.

It may thus be said that Poland has done much on the legal road of protecting life, but much remains to be done. This is the mission of the coming century. The Polish historical legacy in the defence of life from conception shows, however, how in the defence of life, hope must never be lost. How one must proceed and serve life even contra spem.
FRANCESCO D'AGOSTINO

THE ITALIAN EXPERIENCE OF LEGISLATION ON ARTIFICIAL FERTILIZATION

1. The development of the topic I have been assigned to may sound paradoxical, for Italian legislation - as it is well known - does not include any regulation of artificial fertilization. Jurists, at least the German ones, use a technical expression to refer to this situation: rechtsfreier Raum, which literarily means law free space. Within that space everything is legally allowed, or rather everything must - more precisely - be considered legally insignificant, at least by liberal systems. In a word, I can say that, given the lack of any specific regulation, artificial fertilization (AF) has no legal importance at all, with regard to its specific characteristic of being artificial. What have I been invited to talk about, then? I would say I am requested to speak of nothing.

2. Actually, although this is nothing from jus conditum point of view, such is not from jus condendum point of view. Nobody doubts it is necessary to have a law on this subject, in two senses at least: the determination of AF forthcoming babies' legal status and right to health defence. An intense debate concerning what the ideal law about AF can and must be like has been taking place in Italy for years; moreover, there have been several law projects, some of which have also been - partially - evaluated by the Parliament. Nonetheless, this debate still does not come to an end. People say that this standstill situation depends on the contrast between catholic and lay bioethics, which seems to be harsher in Italy than in other countries. However, these two perspectives look paradoxically not too far from each other, when they deal with some fundamental reference categories. As a matter of fact, they both love addressing to the concept of dignity as the fundamental concept for bioethical thought.

3. Dignity is undoubtly a key word that lay people fruitlessly ascribe to themselves as a proper specific term of their ethical world; catholics may certainly use the word to mean the specifically human value of sacrality, which is perceived as heavily connected to something theological by nowadays linguistic perception. This term appears at the very beginning of Evangelium Vitae and in other strongly impressive sentences, like the one in chapter 9, stressing that human dignity is indelible even in murderers. On this subject, with reference to the biblical case of Caino and his stigma, the document notices that God himself answers for dignity: Sua tamen ne homicida quidem dignitate destituitur, cuius rei Deus ipse dat sese vadimonium. The word also appears in the title of the so called European Convention of Bioethics - whose real name is Convention for Human Rights and Human Dignity Defence... - ; its preface reports the term at least three times, so that we can acknowledge it the role of the only possible real foundation of European bioethics. We all have a basic intuition of dignity. Philosophy may reinforce it, but surely does not activate it. Everyone who is blind to the very idea of dignity is not likely to have his eyes opened and be taught by the ideas of moralists and bioethicists - catholic and lay - as well, however excellent they may be. On the contrary, the ones who recognize that human destiny itself essentially depends on human dignity and defence will feel obliged to keep their reflection on this matter open and active. In fact, the issue of dignity, even when shared, always requires to be re-defined, because it is constantly under the risk of imploding, so to speak, therefore of ending in a complete inner emptiness and in a mere empty appearance. Perhaps, it is due to this imploding process that Italian legislative situation finds itself in the conditions mentioned above.

4. Everyone well knows that we appeal to dignity when we are stirred up by the fundamental bioethical issue - by the way, it is a very frequent experience - , which assumes the form of a simple and shifty question. This question, that still preserves its radicality although it has been constantly repeated, is: why is it not right - meaning "it is not good, morally allowed" - to pursue everything science and technology make us increasingly able to do? The common answer to this question always refers, directly or indirectly, to the principle of dignity. It is in the name of human dignity that bioethics can sometimes say "no", even if it does know that its "no" will not be able to change the course of events. Indeed, the more indeterminate, ambiguous and difficult the basic reasons on which this "no" is founded are, the less powerful bioethics is in changing the course of events. In other words: bioethics
apparently does not want, or anyway cannot, speak something different from the language of dignity; however, it apparently knows that this language needs constant, hard - someone says hopeless - reviews.

5. Moreover, where the symbolic code of dignity has been abandoned, there are no other easy ways to be followed. For instance, it is not really possible to defend a kind of bioethics that entrust science with the responsibility of finding the reasons for self-limitation in itself. This idea does not give the criteria that scientists should adopt in order to make its possible self-limitation, on the one hand, and - most of all - inevitably tends to rely on scientists' good will; which means, it adopts - maybe unconsciously - psychological and emotive criteria to treat a strongly objective problem. It is also problematic, because of its ambiguity, the thesis that supporters of a utilitarian perspective commonly use. According to this perspective, the bioethical problems should be computed by considering costs and benefits. Then, the password would become: research must be promoted when useful and restricted when harmful. Now, no matter whether it is generally convenient to adopt utilitarianism in bioethics as the ideal model or not, there is a problem which can be hardly overcome, namely how we can really calculate costs and benefits in our intricate context. Maybe the immediate consequences of some questions can be perceived, but most times the medium- and long-term results cannot be foreseen. As a matter of fact, a consistent adoption of utilitarian thesis may paralyze the whole scientific research, if in the costs we include not only the inevitable risks of the spreading of the most advanced technologies, but also the fears, often the "terrors", they produce - as Luhmann showed.

6. What I said explains why most bioethicists and bio-politicians - dealing with bioethical problems - rather try to refer to gathering ethical values, that are actually summarized by the notion of human dignity. Scientists and bioethics operators in general should recognize the superiority of these values, and utilize them as legitimation criteria of any bioethically relevant activity. Still, this perspective is acceptable only on two conditions, both of them quite hard and not always properly acknowledged: the first is related to the cognitive possibility of determining objectively the material content of these values - and in general of the term dignity itself - ; the second is related to the ethical requests according to which these contents may be universally shared. As a matter of fact, both conditions look very far from their concrete realization, especially within the current Italian situation: we constantly hear people saying that values have a controversial status from a practical point of view, and are miles away from being universally shared, anyway. Following Niklas Luhmann, someone even maintains that every reference to ethics would be dangerous in highly complex societies as ours, since it would activate conflicts about values that ethics itself could not solve and settle. In Italy, to tell the truth, bioethics is a much stronger sign of contradiction and torment than political ideologies. It makes no surprise, therefore, the poverty of Italian bio-law, compared with the undoubtedly rich bioethical reflection.

7. How did Italian bioethics face these problems? With difficulty and, till now, in an unsatisfying way. Generally speaking, it naively tried to develop a "new ethics" which was appropriate to those problems and "equipped" with the following very general characteristics: a) a general distrust towards any doctrine which claims "fundamental values" - in a word, towards any metaphysics of foundation - ; b) a careful attention to the empirical onset of bioethical problems - this explains why Italian bio-legislation always comes too late, when the "cases" have already spread out and caused usually irreversible states of facts (sometimes it does not come at all, as we said before); c) a bent to the elaboration of normative rules in order to solve conflicts and controversial matters which are not substantial, whereas escusively procedural; d) a clear reference to the autonomy and the information of the subjects involved in bioethical questions, with the purpose to give them the responsibility of the definitive judgement about the actions to be performed or avoided.

8. A pragmatic bioethics, then, is taking place in Italy: with its rationalist-individualistic tone, it has evident merits - especially concerning the respect of the ethical pluralism which is typical of any advanced society - but also evident limits. It is a bioethics which deceives itself, thinking it is enough to
refer to general human rights in order to overcome its inability of correctly dealing with the enormous symbolic and cultural problems of our massively technological societies. This inability probably comes from the tendency of this bioethics to put the matters out of their social context, as many factors show: there is the undeniable fact - source of understandable worry - that, beside or in place of a normative general bioethics, several kinds of sub-normative anarchic and mutually conflictual bioethics are multiplying (they sometimes have an ambiguous legitimation, such as the one given by ethical Committees that are created ad hoc, therefore are not very reliable); besides, there is the troubling fact that the more bioethical thought is refined at the merely descriptive level of the variable involved, the more it tends to leave people alone - from the normative point of view - to take and process the final decisions. As a consequence, bioethics' defensive attitude - to which the inventor of the very name of bioethics, Van Rensselaer Potter, continously pays attention - often seems to fade. In summary, the difficulty that nowadays bio-politics faces is that, on the one side, it tries to start from actual social ties free perspectives, and, on the other side, it feels it has to suggest regulation forms that come from the same social system it wants to withdraw from.

9. It is necessary to elaborate a bio-legislation that is able to connect two points (apparently, at least) contradictory: on the one hand people's autonomy and the ethics of scientific research - research must have the widest freedom - must be taken seriously; on the other hand, it must be refused the hurried and epistemologically incorrect conclusion that individual choiches in general and scientists' activity in particular should be absolutely uncriticizable within bioethics. Both individuals as social actors and scientists in particular are and must be absolutely criticizable; however, they are not criticizable in the name of their identity of individuals or scientists - which means, not because it is right to control individual preferences and research activity, maybe on behalf of people who are not scientists - but in the name of their structural membership to social system, that cannot and should not - even in the case it could - assume a pure scientific description of the world as its unique horizon. If people understand this point, and recognize that today nobody can be considered as an isolated subject because we all necessarily belong to a system that absorbs us and has a relational character, then it seems necessary that we submit to all the ties, particularly the symbolic and cultural ones, that social systems must impose - at least implicitly - to guarantee survival. Obviously, this requirement has above all a sociological value, but it also has a bioethical and bio-political value, because the relational quality of the so emerged bioethical links leads us directly into the roots of ethics itself. However we may intend it, ethics always refers to the fact that human subjects as such always are born and live in the context of dynamic relations that cannot be reduce to mere functions.

10. In conclusion, Italian (in particular) and European (in general) bio-politics has a precious ethical ground, that must not be trivialized, minimized, or even worse loosen, namely the wide topic of dignity. This topic, indeed, must be constantly given new meaning, in order to make it adequate to the fast change of symbolic and experiential contexts; this is actually the only reason for general bioethics to exist. Bioethicists must feel they are called to engage themselves in this direction. Yet, beyond bioethicists' hard work and good will, the point is that nowadays it is active a collective consciousness which has a high and legitimate demand towards politics, namely to act for the defence of the person, against his most dangerous risk: the reduction to an object. No social practice is, in this sense, more dangerous for the person than the ones connected to bioethics, and, within those actions, none of them reaches a higher level of danger than artificial fertilization. If being a subject involves an identity which does not admit functional equivalents, then the first duty of bioethics will have to be the respect for the people involved in AF techniques as subjects and not mere products (the baby to be born) or producers (the biological or social parents). The teaching of the Bioethics European Convention are really meaningful only if they are read in this light. This is therefore the work line everyone of us should feel committed to.
Before I start discussing my theme of Culture and Legislation, let me speak about the geographical definition of Asia. The knowledge European people have about Asia when compared with the knowledge the Asian people have about Europe is not quite as wide. My home country, Japan, is the farthest away to the east of Europe. In Japan we call the land that lies east of Europe the Orient. Which lands are exactly the Orient? The Orient consists of East Asia, South-east Asia and South Asia, and these lands cover a large area where diverse religions, culture and political systems are mingled in mosaic patterns. The largest country in the Orient is China, a socialist state, acknowledging no forms of religion. India has Hinduism as its main religion. Pakistan and Indonesia are Islam countries whereas Sri Lanka, Thailand, Korea and Japan are Buddhist. As can be seen the Orient is a collection of lands with different values not only in religion but also in their history. The histories of China and India especially are very complex. Therefore, when speaking about the Orient consisting of so varying countries, I find it quite difficult to summarize their culture and religion as one whole. I do not consider it advisable to look at culture, religion and politics as being western or eastern, or for that matter, European or Asian. Such a categorization is anachronistic.

If we are to really discuss the culture, religion and political systems of modern Asia or the Orient, we should compare them as those of the developed countries and the developing countries. The developed countries in the Orient are Korea, China and Japan. However, as China is a socialist state, although she can be considered a developed country, there are great many differences compared to Korea or Japan. In China there have been two diverse views of human skill-dependent values and naturalistic values. The former is based on Confucianism that tries to govern the state with human wisdom and skills, whereas the latter is based on Taoism that tries to guide people's lives through respect towards the nature. These two views still exist in the life of modern China as the two principal philosophies. The people who had power and played the role of setting up ideologies in the political scene took up Confucianism. The Taoism is deeply rooted in the lives and culture of the plain people. These two philosophical values traveled overseas to Korea and Japan and are still active in the modern societies of the two countries. In the political and social scenes of modern Korea and Japan, the human skill or technology dependent values are dominant. Although the influence of American democracy cannot be denied, the people of Korea and Japan have Confucianism philosophy at the bottom of their souls. The majority of Japanese people belongs to Buddhist sects and at the same time also to Shintoism, an old traditional religion. The two religious values have basic influence on the life of Japanese people and their religion whereas the cultural background is the Confucianism views. Japan has Christian believers but they are a minority, maybe the smallest group in the Christian population in the free countries of the Orient. The reason for the scarcity goes back to the history. Christianity came over to Japan from the European countries in 1549. Japan was nearly the last country in which Christianity was introduced in the Orient. It was some 450 years ago that Father Francisco Xavier of the Jesuit Society brought along Christianity with him. Shortly after this unfortunately the Japanese government (Shogun Hideyoshi Toyotomi) and the Christian leaders had a conflict and Christianity was prohibited. The Christian missionaries were banned out of the country and the believers were persecuted. Even after the Shogunate was passed over to the Tokugawas, the prohibition of Christianity was even more severe. At the same time, Japanese government prohibited any contact with foreign countries except the Netherlands that continued for the next 300 years or so. About 130 years ago with the birth of the new Meiji era the exchange with foreign countries was commenced again. The missionary work of Christianity began again and Jesuit Society was among them. Sophia University was founded some 85 years ago by the Jesuit Society. The history of Christianity in Japan is still short.

Taking Japan as an example with its philosophy being similar to those of Korea and China, and the major belief being Buddhism, I would like to talk about Culture and Legislation with respect to life.
Let us take a look at Japan's Organ Implantation law that rules over life. Japanese culture and religion gave a great influence in the making of this law.

**Organ Implantation Law**

On June 17, 1997, the bill on the Organ Implantation Law passed in the Upper and Lower Houses of the National Diet without, in my opinion, a thorough debate. This enacted the Organ Implantation Law and the first case of organ implantation was carried out in February of 1999. The outstanding element of this law is that it respects the decision of an individual wishing to accept brain death as his own death and agreeing to have his/her organs implanted to someone else and it demands that the wish be expressed in writing. It will not be easy to implement this law widely among the public. However, this law has its merit in that it gives a rare opportunity for the people to think over life and death.

Up till now the Japanese people commonly believed death meant that the heart ceased to beat. It is doubtful whether their understanding the fact that brain death is the human death will allow them to accept it emotionally. Even though the brain of the patient is declared as dead, the organs are still kept alive by artificial respiration apparatus and fluid therapy. In such a state the body of the patient is still warm and the heart beating. The bereaved family finds it difficult to accept the death of the patient.

An unfortunate incident prevented the organ implantation in Japan for over 30 years. In 1968 a surgeon named Dr. Wada performed the first heart implantation in Japan, but the diagnosis of death of the donor and decision on the necessity of implantation of the recipient were not carried out carefully. A lawsuit was filed but never solved. In Japan heart implantation is not permitted without any legal guarantee. This delayed the progress of Organ Implantation in Japan.

**The issues of "Organ Implantation Law"**

There are several issues of "Organ Implantation Law". Although the law is named "Organ Implantation Law" it is limited to cases where the donor is either dead or declared as dead in the brain. It is not a comprehensive law, as it should include cases also where the donor is a living human. The implantation of organs from living human beings, such as kidney, liver, small intestines, bone marrow, skin and others is socially accepted in Japan but is not legally guaranteed. The establishment of the Organ Implantation Law wiped out the Law on Transplantation of Cornea and Kidney. On one hand the Organ Implantation Law allows the implantation of various organs from a patient declared dead but on the other it has made it impossible to accept any implantation from a living human. This goes against the decision of WHO "guide to human organ implantation" made at the 44th World Health Assembly, which permits implantation from a living human. Therefore, the new law established in Japan should be named "Law on Organ Implantation from Dead Donors". The law is still incomplete, but once it passes in the Diet, organ implantation can take place. There are several positive aspects. Firstly, organ implantation saves the lives of others and is carried out by a most respectable cause, namely the love for one's neighbors. Secondly, the patient waiting for organ implantation does not need to travel to other countries such as US to have the operation. Thirdly, it demonstrates the remarkable progress made by modern medical technology.

I think that there are still subjects to be discussed before the law is enacted such as: the protection of the privacy of the donor; the psychological reactions of the recipient and the family on implantation; the high medical cost; scarcity of organs for implantation and the fear that this may lead to commercialism. Since the law has already been enacted, the necessity to discuss such issues is even more demanding. This is typical in the process of law making in Japan.

The law has still various issues to be solved. On Oct. 16, 1997, the Organ Implantation Law was established and about a year later on Feb. 28, 1999, the first case of organ implantation was carried out from a female patient who was inspected twice and declared dead in the brain. The heart, liver, kidney, cornea were transplanted to a number of patients respectively. The good will of one human saved the lives of at least six others. The female patient carried with her a "donor card" expressing her will to
donate all her organs, thus allowing her organs to be transplanted to six other persons. The fact that a social system was set up already when the law was established helped to make this case successful. Japanese people are not good at setting up social systems, but the American model on organ implantation was an excellent sample. The characteristic feature of Japanese culture shows why it took so long to establish a law on organ implantation. The Japanese are willing to pay the cost of importing technology but are not so eager to bear the expenses of developing a social system. The success of the first organ implantation from a patient declared dead in the brain is welcome news. However, we Japanese had to pay a large cost of 30 years delay in organ implantation in return for the cost of developing a social system. Japanese are not so capable of taking the necessary steps to form a social consensus or appointing effective personnel, so we imported the social systems that were successful in the US.

Organ Implantation Law and Culture
I will speak about the cultural dispute in Japan in relation to the organ implantation law. Before establishing this law people discussed whether or not the brain death can be accepted as human death. The issue of brain death and organ implantation has been discussed for almost over thousand years, when Japan's culture began to grow. If one can decide what is to happen to one's corpse after death, it means that the soul still lives on after death. The present form of one's own decision-making and the philosophy of eternal soul that existed over thousand years are mingled. The conclusion to this issue cannot be reached in a matter of few years. The majority of Japanese people is Buddhist and influenced greatly by the teachings that date back to over 1,500 years ago in China. Next I will talk about the burial in Buddhist style. The burial of the dead means that a living human deprived of life turns into a dead man and the burial is held to express the sympathy and give comfort to the dead. The keywords found here such as the "living human, death, dead person, spiritual decision-making by the dead" are common keywords that appear in the present dispute on brain death. "One's will working on one's corpse after death" means that "dead man" and "his spiritual decision-making" are still active in the decision-making scene in modern society.

Before a person dies, he/she makes the final decision of what is to happen to the body or his/her family decides what is to happen. In either case the "decision-making" still proposes a problem to be dealt with. For example, if there is a person who wishes not to have organ implantation because of religious principles and the wish is denied, it would be a breach on the right of decision-making. If the religious principles are not respected, it is obvious that the religionist will strongly object to the establishment of such a law. Among the Buddhist believers in Japan there are some who actively support the establishing of laws prohibiting the organ implantation on brain death because he himself is opposed to the organ implantation on brain death. They would rather depend on the law to make the decision than assert their own decision. This is quite typical of Japanese society.

From "Eugenic Protection Law" to "Protection Law for Motherhood"
When discussing legislation with respect to life I cannot evade the issue that involves the origin of human life, the law on artificial abortion and its history in Japan. Japan underwent a drastic change when the World War II ended on August 15, 1945. The change can be clearly seen in the differences of the constitutions before and after the war. Under great influence of the American democracy, the new Japanese constitution held out a democratic system that stands for keeping peace and bans any kind of warfare. The new constitution came into effect on May 3, 1947. Chapter three of the constitution states on the rights and duties of the people; the fundamental human rights of Japanese nationals are stated. At the same time, however, the government set forth a law under the new constitution that seemed to deny the fundamental human rights, the Eugenic Protection Law. First of all I shall talk about the present state in Japan of artificial abortion, the crime of abortion and population control policy. According to the Japanese criminal law the crime of abortion is applied to cases when the fetus is taken out of the
body of the mother before its natural birth. When the law is broken punishment can be applied respectively to the pregnant woman, persons concerned, the medical doctor, and the midwife. During the Second World War the nation encouraged its people to increase population and the crime of abortion was given severe punishment for opposing this policy. After the Second World War government changed its attitude. The criminal law on abortion remained but a new law was set forth that approved artificial abortion. It was the Eugenic Protection Law approved by the legislature at the instance of House members and enacted on July 13, 1948. This law approved of artificial abortion under restricted conditions. The factors that allowed the establishment of such a law should be dealt with here. After the war Japan faced an immense increase in its population. There were tremendous numbers of Japanese soldiers and civilians who returned from overseas, especially from occupied lands in Manchuria (China), Taiwan, Korea and North Korea. It led to numerous births of new population. Some of the women returning from the continent were pregnant against their own will as result of rape. The Japanese population increased almost by eight (8) million in one year. As the defeated country, however, Japan was suffering from economic poverty and scarcity of food. In this difficult condition people had no other choice but to have illegal abortion or even to abandon their newly born babies, both of which were extremely grave social issues. The Japanese Diet therefore, decided to legalize abortion and birth control in order to control its population. Demands were also made to control the birth of babies with hereditary disease or with mental illness. This led to the establishment of the Eugenic Protection Law aiming at "Population control", "Eugenic policies" and "Protection of motherhood". Chapter One of this law clearly depicts its nature. It states that this law "prevents the birth of unwanted offspring from eugenic standpoint and aims at protecting the life and health of the motherhood". The criminal law of abortion established in 1907 remained unaltered but if the conditions satisfied those stated in the Eugenic Protection Law abortion could be carried out. This meant that artificial abortion became legal. What made matters worse is that although the law was established under the new constitution the basic philosophy behind it is eugenics. The nation needed then to control its population growth by birth control and needed healthy people. This law approves of abortion for "physical and economic reasons" and the number of abortion undertaken increased rapidly. In 1957 the number of babies born in one day was 560,000 and the number of abortion carried out was 120,000 in one day. These numbers appeared in public announcement, however, in reality the number of abortion rises to 3,000,000. The law was reviewed in 1972 but was not revised. Discussions were made on: wiping out the term "economic reasons" from conditions on approved abortion; approving abortions for any handicapped fetus; encouraging mothers to have their first child at a young age. In 1996 the Eugenic Protection Law was revised and re-named Protection Law for Motherhood and the eugenic statements that appeared in these laws were deleted. The issue remained of abortion in the case when the fetus was found to have some handicap. Chapter three stating the protection of motherhood remained intact. Doctors may approve abortions with the consent of the mother and the spouse when the continued pregnancy or the childbirth endangers physically or economically the mother's health. Biomedical researches are making immense progress especially in the genetic field of DNA. The achievements may play a role in "family planning" and a new eugenic philosophy may evolve. I would like to conclude with the words of a friend of mine, a pediatrician. "I have treated many children with down symptoms. All of them are very sweat and obedient children. But if my daughter were to give birth to a baby I cannot deny that I would be praying the baby would be born without any handicap."**Conclusion**

The debate held on the organ implantation law of Japan was based on individual, social and academic scopes. During the process that led to the establishment of the law the three aspects were often mixed up. The law was enacted by the Diet before it could be fully discussed. When confronted with such
issues, Japanese people tend to avoid solving them and clearly sorting out all the details. If the Japanese people feel that the issue in question is for the good of society, they will totally accept the matter without demanding to be informed on details about it. This is exactly what happened about the organ implantation law. Incomplete as it may be, however, this law can save many patients who have been waiting for organ implantation. Fortunately it is a law with a time limit of five years and can be reviewed and amended.

As in the case of the Organ Implantation Law, the Protection Law for Motherhood also needs to be reviewed and modified. The aim of modification is to have the term "economic reason" deleted from the conditions on abortion as this no longer applies to present-day Japan.

The establishment of the Organ Implantation Law and the Protection Law of Motherhood makes us face the question of whether or not Japan, with its high economic power and high standard of culture, has the ability to obtain mutual consensus in the legislative power.
INTRODUCTION

Asia is a vast continent with a multitude of ethnic, cultures, languages, religions, socio-economic backgrounds and political systems. It is the cradle of world's great religions, like Hinduism, Jainism, Buddhism, Islam and Christianity. The ethical values in customs and practices are found in the teaching of the great philosophers of Asia. South East Asia is one of the most fascinating regions in the world for not only its rich and ancient socio-cultural heritage, but also for the scale of its health challenges and how they are being addressed.

HEALTH SCENARIO IN ASIA IN GENERAL

Asia is over-populated. Three-fourths of the world's population lives in Asia. China is the first populous country in the world and the second is India with 16% of the world's population. People in the developing countries carry over 90% of the disease burdens, yet have access to only 10% of the resources used for health. Poverty is the greatest threat to people's health. Ill-health leads to poverty and poverty breeds ill-health. Any programmes for development are swallowed by the rising uncontrolled population. Per capita income is above U.S. $366440 in Japan whereas in Nepal, Vietnam, Bangladesh, Bhutan, Pakistan and India it is between $ 200 to 460. Health and nutrition condition in Asia have improved during the past three and four decades. Infant mortality rates and average life expectancy at birth have undergone changes for the better during the fast forty to fifty years.

As per world Health Report of 1998

Afghanistan has the least life expectancy at birth (45 years). Next in life expectancy falls in countries like Bhutan, Combodia, Bangladesh and Nepal (54-58 years). Countries like China, Korea, Malaysia, Singapore, Sri Lanka and Thailand were able to reduce infant mortality and increase the life expectancy at birth (70-77 years). Japan has lowest infant mortality four for thousand live birth, and highest life expectancy at birth (80 years). Afghanistan and Bangladesh derive very little benefit from their Health Care systems even in this modern technological age. Maternal mortality rate in these countries is 600 to 640 per 100,000 live births. More than 50% of deaths are due to pregnancy and child birth complications. Limited number of affordable Health services, non use of health services by women, malnutrition, heavy burden of daily work, absence of safe drinking water, water shortage, low sanitation, and low literacy among females result in superstitious practice and ignorance of their rights. Abortions are illegal resulting in clandestine procedures that lead to high mortality.

Reported cases of following diseases in Asia (Annexure-B)

The highest cases of leprosy are found in India, Indonesia, Bangladesh, Myanmar and Nepal one-third of the world's leprosy patient are in India alone. HIV/AIDS epidemic is likely to post serious problem in Asia. Although it started in this region later that elsewhere in the world its spread has been specially highest in Thailand, then comes India, Myanmar, Bangladesh, Vietnam, Combodia and Malaysia. Highest cases of tuberculosis are in India, China, Phillipines, Bangladesh, Japan, Thailand, Korea, Nepal and Myanmar.
Malaria is rampant in India, Bangladesh, Indonesia Myanmar, Vietnam, Philippines, Sri Lanka and Pakistan. Measles is high in China, India and Indonesia. Tetanus is still high in China, Pakistan, India, Indonesia and Bangladesh. It is low in other Asian countries.

The health scenario in Asia is characterized by infectious diseases, malnutrition, disabilities resulting from lack of vitamins, minerals and safe drinking water and high infant mortality. Commercialization of drugs by pharmaceutical that make medicines unaffordable to the poor and to public heath care systems that do not have enough funds and which always do not reach the needy poor worsen the situation. (See Annexure A,B for Asian Health Statistics).

In many Asian countries, there is -if not absolute shortage- at least an imbalance between the numbers of doctors, nurses and para-medical staff available and the numbers needed especially in peripheral rural health units. While health reforms are underway, many Governments and NGOs find it increasingly difficult to meet basic health needs of the population. A critical analysis of accountability, affordability and of quality of health care is an important concern.

Outright privatisation that allows commercial enterprises to cover the needs of people has proved to have serious negative effects, especially for the poor.

**South East Asia.** The South East Asia accounts for one quarter of the world's population but only 5% of the world's land area and this region has more than 1.4 billions people living in crowded proximity with an average density of as much as 206 per sq. km. as compared to the world average of only 42. It is no wonder, then, that this ever growing pressure of population on an already strained land mass and infrastructure, allows rapid transmission of communicable diseases like malaria, tuberculosis, leprosy as well as newly emerging diseases like HIV/AIDS.

Malaria threatens more than 1180 millions people of the region while tuberculosis continues to be one of the major health and social problems in the region with 40% out of all the cases reported worldwide. Nearly 70% of the world's known leprosy cases come from South East Asia. This region has a high infant and maternal mortality rates.

**Women.** Very many women in Asian countries are very poor. In all most all spheres of Asian society, women are dominated; they are discriminated against, exploited, harassed, abused and viewed as inferior to men, most of the women in Asia are under-paid.

Most Asian countries have three tier health services, but rural women have no much access to them. Commercialisation of drugs by multinational pharmaceutical and high cost care do not permit rural women to avail themselves of health care. Funds from world bank are used for improving secondary and tertiary services, not the primary health centres which the poor can benefit from. Of the meagre health budget, a large chunk is used for family planning.

Sri Lanka, instead, has improved tremendously after independence. Free health care and free education have led to 83% literacy in women. Minimum gender disparity, equal employment to women, well established health care systems at all three levels are some of their achievements. Birth rate is 18% per 1000. Maternal mortality rate (MMR) is 140 per 100,000 live births. Population is 18,3 millions.

**Children.** Malnutrition among the children is exceptionally high in many of the regions in Asia with a one-fourth to one-third of all children under 5 years-old being underweight even in such countries as Indonesia, Philippines, Thailand. In India half of the children under five are under weight, while in Bangladesh the figure stand twothird.

Seventy-six infants out of 1000, die in infancy in the economically backward Asian countries. Nearly three-and-a-half millions blind persons are in India out of which 40 thousand children go blind due to lack of Vitamin A. Fourth millions suffer from goitre due to lack of lodine in the water. Three children die of diarrhoea every minute.
Vulnerable groups of children: *Pre-school children.* Both husband and wife have to go out for work. Hence the immediate care of the young children is left in the hands of others. A sense of belongingness suffers.

*Girl Child.* The second vulnerable group is the girl child, who is marginalised for a great extent. Ultra sound interventions are used to identify the female girl-child -abortions are followed, in case of girl child.

The devastating consequences of the onslaught of AIDS pandemic and children: The People everywhere in the world are becoming more and more aware of the devastating consequences of the onslaught of AIDS pandemic. According the publication of an article in one of the leading news paper in our State of Andhra Pradesh, *EENADU* on the occasion of the World Aids Day on 1st December '99, during the year 1998, 1400 children died of AIDS in the world everyday. At present 30.8 millions suffer from HIV/AIDS in the world. 8500 children and young people seem to be falling victim to HIV/AIDS everyday in the world. With the wide-spread of HIV/AIDS, India seems to top the list in the world. One of the main causes for the spread of HIV/AIDS is prostitution. In the world about one million children are forced to enter into prostitution every year.

In the absence of a drug for cure and vaccine for prevention, education is the only effective option available with us to contain the further spread of HIV/AIDS. Educational Institutions, Primary Health Care Centres, Police, NGOs, Press, etc. need to work together for the prevention of HIV/AIDS. Good education and employment will prevent children/young people from falling victims to prostitution/sex services. Respect for women is to be promoted more and more.

Challenges to child development: *The four Keys.* Over the fast few decades, four health interventions have transformed India's health scenario: 1. Grow monitoring: malnutrition: weigh the child regularly. Adequate gain in weight becomes a measure of the child's well-being. 2. Rehydration: promote oral rehydration to reduce mental unwholesome morbidity and mortality due to diarrhoeal diseases. 3. Immunisation: universal immunisation has really revolutioned health care in India. 4. Breast-feeding: promote breast-feeding.

*Sex-Services.* The mass media is bombading Asian children and youth with their alluring messages thus attacking the traditional values by their materialistic and consumeristic advertisements. The improvement in global communication and transportation combined with extreme poverty-stricken lives brought another degrading effect. Sex tourism over one million Asians mostly women and children make living by providing sex services to the tourists from all over the world. Thus spreads fast means of the communicable diseses like AIDS etc..

**POVERTY AND HEALTH**

The countries in Asia have a very high concentration of aggregate mass poverty, which can be eradicated by attacking it on all fronts. It is in this context that the interface between poverty and health assumes critical significance.

Ill health imposes a significant economic-burden on the poor. Private health expenses consume about 10-15% of the extremely poor's income. The poor can be forced to borrow money and can easily be caught in a debt trap. Thus poverty cannot be eradicated without simultaneous action on the health front.

*Conditions for successful health interventions: a)* Pro-poor restructuring budgetary allocations for health sector. *b)*Allocation for health sector to the needs of the poor both in rural areas and urban and to the gender.
c) Participation of all sectors of the community. d) The full potential of self-care of the community & family levels should be explored. e) In the present scenario of the Asian countries, equitable education and health systems provide essential foundations to overall socio-economic development.

**Macro-Level:** The processor of structural change and allocation of resources must be guided not only by macro-economic foundations, but also by social foundations.

a) Restructuring of the public sector. b) National commitment for the essential public health functions: preventive health care will improve the health status of the population more rapidly than the emphasis on costly curative care. c) Micro-interventions are necessary... Macro-level should take care of it. d) Build health as a part of integrated programmes.

**GLOBALIZATION: A THREAT TO HEALTH AND HEALTH CARE IN DEVELOPING COUNTRIES IN ASIA**

The economic developing countries have increasingly come under the control of international organizations dominated by the Northern Governments and action in favour of transnational companies and banks. The nefarious implications of SAP (Structural Adjustment Policies) on the health status of the people in the third world has been documented by many scientists. Division Budhoo, an IMF economist who resigned in disgust in 1988 has stated: "It has been estimated that at least six million children under five years of age have died each year since 1982 in Asia, Africa and Latin America, because of the anti-people, even genocidal focus of IMF, World Bank, SAPs".

**Worlds Bank investing in health**

In the market-oriented development paradigm of the World Bank, public health is not a basic human right but health care is seen as an investment and diseases as a disinvestment in human capital formation. Hence illness that affects peoples' productivity becomes more highly prioritized than illness that causes premature death. This concept of public health does not serve people, but the expansion of capitalism. WB, IMF, SAPs policies control Government's spending and giving subsidies in health and education sectors. This is used as a pre-condition for loans. And this situation leads to forceful privatization.

**Why do countries privatise health?**

Developing countries are in the process of privatising health care services for two reasons: a. Impoverished and heavily indebted countries in Asia, Africa and Latin America have been pressurised by WB/IMF to remove subsidies on social sectors such as health and introduce privatization as a pre-condition for further loans. These countries need loans urgently and have no alternative but to introduce privatization. b. More affluent developing countries are privatizing health as a component of a broader Government policy of a greater role for the private sector in national development and to meet the demands of consumers who have more spending money.

The 1993 World Development Report of the WB highlights the following health issues: a. The poor lack access to basic services and receive low-quality care-Government's spending for health goes disproportionately to the affluent in the form, a low cost care in sophisticated public hospitals and subsidies to private and public insurance. b. In the middle income countries, the bulk of the population, especially the poor rely heavily on out-of-pocket payments for health care services. c. Much of the money spent on health is wasted: more importance is given to brand names only. d. Health workers are badly deployed and badly supervised. e. Lack of job opportunities to youth have driven them to criminal activities to make a living.
The dominance of the private health sector

As pointed out in the discussion above the public health infrastructure in the country is very small and grossly inadequate to meet the health care demand. Therefore the private health care sector has taken a dominant position, especially with regard to treatment of routine illnesses. Private general practice is the most commonly used health care service by patients in both rural and urban areas. While this has been known all these years, data in the eighties from small microstudies as well as national level studies by the national sample survey provided the necessary evidence to show the overwhelming dominance of the private health sector in India. These studies show that 60-80% of health care is sought in the private sector for which households contribute out-of-pocket 4% to 6% of their incomes. This means a whooping Rs. 400 to 600 billions at private health care market in the country at today's market prices. This includes the hospital sector where the private sector has about 50% of the market share.

The dominance of the private health sector is not something that has emerged recently or out of specific policies favouring privatisation under the new economic regime of liberalization and globalization. It has always been there, including the state's support for it to grow and flourish. While some policies of the state have actively promoted the private health sector's growth, others have done this through sheer inaction and lack of concern. Some examples are as under:

- Medical education is almost wholly state financed and its major beneficiary is the doctor who sets up private practice after his/her training. More than three-fourths or medical college graduates from state institutions work in the private sector or migrate abroad. Though they are trained at public expense, their contribution to society is very little because they engage in health care as a business activity.

- The government provides concessions and subsidies to private medical professionals and hospitals to set up private practice and hospitals. It provides incentives, tax holidays, and subsidies to private pharmaceutical and medical equipment industry. It manufactures and supplies raw materials (bulk drugs) to private formulation units at subsidised rate/low cost. It allows exempting in taxes &duties in importing medical equipment and drugs, especially the highly expensive new medical technologies.

- The government has allowed the highly profitable private hospital sector to function as trusts which are exempt from taxes. Hence they don't contribute to the state exchequer even when they charge patients exorbitantly.

- The government has been contracting out its programs and health services selectively to NGOs in rural areas where its own services are ineffective. This will further discredit public health services and pave the way for further privatisation.

- The government has pioneered the introduction of modern health care services in remote areas by setting up Primary Health Centres (PHCs). While the latter introduces the local population to modern health care, it also provides the private sector an entry point to set themselves up.

HEALTH CARE PROBLEMS IN RURAL AREAS IN ASIA

Lack of amenities

The basic facilities like food, clothing, shelter, electricity and water are still a big question mark in rural areas of many countries in Asia. Health is not a priority and talking about a healthy life seems to be irrelevant for most people in rural areas. Remote areas where transportation is not available except by foot, bullock carts or scanty public transportation, it is really difficult to reach out to the villages to extend the medical services; they are compounded by the absence of ambulance services, telephones and poor postal services.
Hostile environment

Extreme heat and cold in some places, natural calamities like cyclone and floods, lack of sanitation, hygiene and polluted air, etc. diminish the quality of life of the people as well as people health-care workers.

Social economic and cultural problems

Poverty, illiteracy, caste system in some places and superstitions, customs are sometimes great impediments to efficient health care delivery in rural areas. Working in villages becomes difficult due to high cost of treatment which is beyond the patient's means. Unnecessary investigations and expensive drugs add to the financial woes of the patient. Unwillingness of the people to accept low cost drugs and alternative systems of the medicines and their demand for free medicines and treatment even when they can afford to pay, make it difficult for the health care workers to serve the poor.

URBAN HEALTH PROBLEMS IN THE NEW MILLENNIUM

To examine the problems related to urban health care, we need to understand of what constitutes urban health. The distinction between urban and rural areas goes beyond geographical distinctions-differences are generally observed in the density of the population, presence of non-agricultural workers and social structures.

As we enter the new millennium, such distinctions especially in the centres of health, would become redandant. This would occur for a number of reasons: 1) there would be a much higher degree of interaction in economic matters between urban and rural populations; 2) greater access and availability of rapid transport systems would allow rural population to travel regularly to the cities which would be their sources of employment; 3) the third factor is the establishment of large urban structures that are created to support activities, ports, build dams and irrigation projects. As a result of such activities, urban people come in contact with diseases that existed only in villages or vice-versa. In other cases diseases which were not known earlier made to dramatic appearance following the environmentel changes; 4) finally in terms of life styles and dietary habits, there will be a great communality between rural and urban populations.

As a result of all these factors, there will be only minor differences between urban and rural health issues.

As societies transform from rural to urban communities and there is an accompanying economic growth, health problems will also undergo change. Communicable diseases will give way to non-communicable diseases in the third stage non-comunicable diseases will be supplemented by lifestyle related and degenerative diseases. For an example, urban India continues to suffer from diseases that were eradicated years ago in developed socities. Paradoxically diseases of lifestyle exist in rural communities.

Profile of urban health problems

Mental health problems: pressures of an intensively competitive workplace and absence of a supportive family net-work accentuate mental health problems.

Unrealistic parental expectations: unrealistic parental expectations subject school going children to a tremendous mental stress. This will certainly lead to frustration and occasionally unprovoked violence.

Decline of relevance of religion: to further compound the problems, the declining relevance of religion to the value system of young persons along with the absence of alternative sources to cater to their social and spiritual needs further complicates the situation.
The break-down of the joint family system: the break-down of the joint-family system has also contributed to the mental health problems. Earlier the joint-family used to cater to the economic and social needs of its disabled and handicapped members in the family. Today this responsibility falls on the parents of nuclear families who are often unable to cope up with the physical demands made by such a problem. Single parent families also face similar problems and this contributes to the loneliness and alienation of individuals who grow up in such households.

Claustrophobic flats: living in claustrophobic flats with little privacy only increases the confusion and conflict in an individual mind. Constraints of space prevent children from interacting with members of the extended family.

Mindless TV viewing: the social interaction between elders and children has been replaced by mindless TV viewing, where a multitude of channels allows the children to aimlessly watch television all day long. These factors also contribute to the increasing incidence of mental problems in the young.

Physical ailments: while communicable diseases will continue to dominate the health science, non-communicable diseases will gain the importance especially in urban areas. Problems such as diabetes, hypertension, cardiac diseases cancer and asthma are already on the increase and will become more prevalent.

Stage a come-back of diseases under control/eradicated: there is strong possibility that diseases that were under control or eradicated will make a come back in the next millennium. Evidence of this is already becoming available. There has been a resurgence of malaria and outbreaks of cholera and plague. An ever-increasing urban population coupled with break down in civic services give every reason to believe that these outbreaks will not remain isolated phenomena.

The historical reasons: all urban health problems can be traced to disturbance in the balance between humans, microbes, the climate and environment. The process of urbanization disrupts this balance and disturbs the optimal functioning of the human organism. This process resulted in disease outbreaks and famines caused by disruption of the local ecologies.

Urban problems today

Industrialization and the development process spawned the birth of cities. Today similar forces are driving the process of globalisation. Market forces compel farmers to switch over from food crops to cash crops. The oceans are stripped off their marine riches to feed wealthy first world consumers. Skilled manpower from the third world are drawn way to work as migrant labour in the first world, thus leading to break-tip of families. This contributes to the growth of impoverished urban slums, which are breeding grounds for diseases.

Solutions

Short term interventions: short term interventions consist of strategies to limit the damage and provide quick remedies.

Long term solutions: long term solutions will include policy changes and the creation of inter active primary, secondary and tertiary health care structures. It is also vitally important that financial resources be made available to support these structures.

Social and political education of masses: social and political education of the masses to be done very much. Setting up of public distribution systems and the pursuit of measures to improve food and economic security are required.

The health care infrastructures are to be strengthened, integrating with indigenous systems of medicine. Effective legislative control: finally effective legislative controls to address the issues of pollution and environmental degradation.
WHY HERBAL PROMOTION

Experience has taught the people in Indian villages that simple herbal medicine are quite effective for most of their common ailments. Health care is becoming a big business. The Government policy itself is to hand over curative health care to the private sector. The sufferers are the poor people because the high-tech competitive health care is neither affordable nor accessible to them. They are left helpless. It is here NGOs and social workers have to take up the challenge to enable and empower the poor to manage most of the health problems on their own.

Demystification of medical knowledge and the revival of the traditional practices will accelerate the enabling and empowerment process. Herbal practices is already a part of the cultural ethos of the rural communities. Knowledge and skill to manage most of the primary health care needs is already with the people. All that we need to do is to revive the tradition.

Wholistic approach

One of the most dramatic events that has occurred in this century in the medical world is the emergence of medicine as a science with disciplines which have revolutionised the very outlook of Wholic Medicine. Today, the physician is no longer a friend, philosopher and guide. The ancient divine medical philosopher gave place to the horse and buggy doctor of the middle ages, which have been replaced now by the sleek streamlined electronically oriented gadget-conscious computerised automation. Today medicine has become the second biggest industry in India with greater capital investment and day-to-day cash flow than cement or steel etc.

However, it is well to remember that there is never an illness which affects only one portion of the body or one system and that illness affects the whole person. Health is not just the absence of disease. According to W.H.O., it is a state of positive enjoyment & happiness. Time has come to look at medical science from a wholistic point of view.

Wholistic medicine believes in the existence of soul in the individual body, which unites body and mind. Mental perversions affect physical functions and vice-versa. And environment, weather, time are also could be causative factors of diseases. Learning about a patient's spiritual beliefs simply provides a complete picture, said dr. Dale Mathews, a professor at George Town Medical School in Washington. The National Institute for Health Care Research and John Templeton Fundation have recently announced US $ 25,000 as grant to eight medical schools in the U.S.A. to offer students classes on the role of spirituality and religion in health care.

Wholic medicine has been seen as the science based on a totally different paradigm which looks at the cause of illness as creation of imbalance of mind, body, spirit and of self. A balance between these is considered essential for good health. Furthermore, it looks not only at the balance within self, but also with environment and Creator. Let us look at the nine Commandments given by Vagbhata for good health: 1. Eat the wholesome food moderately and to your satisfaction. 2. Engage in enjoyments in moderation. 3. Be pleasing to all. 4. Be noninduged to sensual pleasures of the world. 5. Be generous in giving. 6. Consider everybody equal (first call for socialism). 7. Be truthful (honest). 8. Be patient. 9. Be of service to your fellow-beings.

CHALLENGES TO HEALTH CARE WORKERS

The above mentioned life situations/systems and health care scenario give rise to various challenges to all those who engage themselves in the health care ministry.

Promoting life: India and some other countries are aggressively advocating family planning through artificial birth control measures. Abortion has become legal in India. Here the health care workers face the challenge of promoting life, which is sacred and engage themselves in promoting natural family
planning and out-right rejection of abortion, euthanasia, selective foeticide and neglect of the health of the girl child.
Sickness opens people towards God. Health Ministry should provide the best means of evangelization, promotion of moral/ethical values, etc.
In Asian countries, women's basic human right like health is trampled upon. The health care workers need very much to educate women about their right and fight against forces to give women their due and empowering them to take responsibilities for themselves.
Health is determined by social, cultural and economic factors. The health care Institutions at themselves are not competent to deal with problems of poverty, ignorance, illiteracy, unemployment and social oppression.
Therefore, the challenge for the health care workers is to involve the community/people, government and NGOs to fight all that destroys health and to claims health as their fundamental right.
Since allopathic system of medicine has become very expensive the challenge is to bring down the cost of the health care by focusing on indigenous alternative systems of medicine like homeo, ayurveda, naturopathy, yoga, etc.
Since health is a state of complete physical, mental, psychological and spiritual well-being and not the absence of disease as per the definition of W.H.O., there is a great need to change the focus from medicine to an integral approach that includes right to just wages, viable agriculture, savings, income generation programmes, holistic approach that go beyond physical caring.
People affected with HIV/AIDS are the most neglected in the society today. It is a challenge and urgent need for the health care workers in creating awareness in the public, removing misconceptions and devoting their attention on taking care of these unwanted and abandoned victims and to prevent the spread of the HIV/AIDS by promoting the necessary methods on moral/ethical grounds.
Ensure legal protection to the children as their basic right from the spread of HIV/AIDS.

RECOMMENDATIONS FOR THE FUTURE

Since it is virtually impossible to separate health from poverty and population related issues, therefore it is imperative to address these issues with a seriousness of purpose. And in order to address these issues, the basic needs of the people like safe drinking water, sanitation, food security, primary education etc., trave to be fulfilled.
Agricultural development, land reforms, functional literacy, female entitlement, infra structural facilities, income generation etc., are also factors that indirectly affect the health status of the people. Therefore, for any health initiative to be need based and people oriented and it should be a composite of these factors.
South East Asia has a rich and varied health culture with several unique traditional systems of medicine. This indigenous health culture can prove to be a vital source for developing alternative health strategies. The region is also the birthplace of several major religions. These religions can provide a spiritual dimension to the greater acceptance of the health initiatives among the people.
Any analytical and broad based approach to health; people's assertion of their health rights; mechanisms to ensure transparency, social and professional accountability equity in terms of gender, caste or creed are also ingredients that can contribute to improving the health service delivery system in South East Asia.
Enhancing the credibility of government health care programmes which have a wide reach, can also ensure better health service delivery. Experience has shown that wherever the government health programmes have managed to establish their credibility, the response to their health agenda has been positive. For example in Tamil Nadu, India, the Government had earned credibility through its mid-day meal scheme. So when it publicized small family norms, the message was accepted by the people.
CONCLUSION

One cannot review the state of health in Asia today without profound concern. The age-old underlying causes for ill-health here such as discrimination, poverty and lack of an appropriate health care approach etc. seem to be as alive and irrepressible as ever. The people centred health initiatives in the region characterized by their community based approach, *malleable* strategies, effective planning, local resource mobilization and need based upscaling of programmes have provided a viable alternative in an otherwise dismal health scenario. Although micro-level in nature, these health initiatives reflect the immense possibilities for health related work in Asia. They also highlight the vast potential of the health system in the region of South East Asia. However, despite upscaling, the reach of these health initiatives has been limited mainly because of the enormity of the population and health problems in Asia. Therefore, in order to address the health needs of those who do not have access to even basic health services, a planned and systematic region wide effort to overcome the imbalances in the health systems, is the need of the hour.
IVAN LUTS

Changes in the post-communist ukranian legislation regarding the respect of life and of human dignity

We live in the time of a united Europe formation, whose aim is to unity different civilized words, although maintaining their originality. All of this was made possible in 1991, when one of the most cruel, brutal empires of evil in the world was disintegrated: the Soviet empire, under the veiled name of U.S.S.R.

The Eastern European States that were formed after the disintegration of U.S.S.R. and became free and independent countries (in different ways, due to the considerable residual economic dependence from Moscow) are seeking their own way in economy, their strength in politics, a way in organizing the State according to moral, democratic and freedom principles.

The Baltic States which are engaged in their own nation development and set apart from Moscow, are tightened to the Church more than the other post-communist republics. The Central Asia countries restore ancient Islamic traditions in different degrees. Bielorussia and Moldavia are facing the post-soviet crossing. Russia, whose myth of being "a third Rome" dissolved, is looking for its own way of development. Ukraine is twisting with convulsions, in trying to come out of the impasse of democratization, to enter the constructive road of christian morality.

Most of the post-communist countries -the old sovietic republics of Eastern Europe- have inherited demographical crisis due to low natality, to sudden deterioration of the population's health conditions and to the growth of mortality, which seems strange in a period of peace, which has no analogies in other parts of the world. The shortness of life (61 years for men and 72.7 for women) and the reduction of the productive population (more than 24% of total mortality) have become a characteristic of these countries. Diseases of blood circulation and tumors are the main causes of mortality. Spiritual decay has also become a characteristic of the post-communist countries. The following factors are an evidence: death penalties, crimes against life through abortions and use of contraceptives, euthanasia; all of these actions are the denial of life's saintliness and untouchability. The spiritual decay is confirmed by the fact that people no longer care so much for their life: they commit suicide, despise their lives by drinking alcohol, smoking tobacco and taking drugs. The distorted concept of liberty by thinking that everything is allowed: crimes, libertinage, insufficient spiritual education, weakening of sensibility towards God and the human being provoke a huge crisis of moral and spiritual values.

Ukraine is a manifest example of the development of these tendencies in the post-communist countries. It is the largest country in Europe by territory extension, and has the fifth place as it concerns the population. During the decades of communist despotism domination, the former authorities succeeded in both destroying the natural, incomparable resources of Ukraine and mining the genetic base of the Ukranian nation, thus exterminating tens of millions of active and endowed youth.

The 40% of the nuclear reactors of the empire were concentrated in the Ukranian territory, that occupied 2.7% of the surface of U.S.S.R. By surface unit, there were ten times more industries in Ukraine than in the remaining Soviet Union.

Up to the present times, one quarter of the industrial residual products of the former U.S.S.R constitute a toxic burden that both the environment and the Ukranian population must endure. 2,400,000 people still live in the territories particularly hit by radioactive nucleons following the Chernobyl catastrophe, not taking into consideration the number of people who were irradiated. New menaces are lying upon human life. This is the reason why there is nothing astonishing in the fact that children's mortality in Ukraine is the highest in Europe. Congenital defects have appeared. Infants with body deformity and mental diseases are now five times more frequent. Natural reproduction in Ukraine is over: mortality overcomes by far birth rate. A deadly menace is lying upon the Ukranian nation.
What is the Ukrainian government doing to improve the situation regarding the respect of human life and dignity?

First of all, they adopted a new Constitution (1996) which international experts define one of the best, of the most democratic in Europe. What is then the difference between the old and the new Constitution? In the old one, human rights and liberty were too vague and had an ideological orientation. The new Ukranian Constitution includes norms of direct action. Human rights and liberty are defined in detail; it also indicates how they must be implemented correctly. The new Ukranian Constitution has also another positive point: it states a judgement on values common to all people. For instance: "man, his life, health, honour, dignity, inviolability and security are recognised as being the greatest social value in Ukraine" (art. 3); "Everyone has the right to have his dignity respected. One cannot inflict torture, a cruel inhuman behaviour or punishment which could damage someone's dignity. Nobody can be submitted to medical, scientific or other experiments without his free approval" (art. 28); "Everyone has the right to receive health protection, medical assistance and medical insurance".

According to the Consititution, the health protection is assured by the State, which finances the appropriate socio-economical, medical and prophylactic programmes so that family, fatherhood and motherhood are protected by the State (art. 49 and 51). At the same time, despite these convincing articles, a part of the Constitution is only pure theory. All that is written is not implemented, or is implemented too slowly. As in the communist empire the implementation of laws was based on lies, frauds and relativity, today it is not so simple that Ukranians come out of that terrible grave of frauds, lies and deceit.

The "Principles of Ukranian legislation regarding public health" are another important document. In particular, article 32 - "Contribution to the population's sound way of life" states that "the State contributes to the establishment of a sound way of life by the diffusion of the cognitions regarding public health, organization of the medical, ecological and physical education". Nevertheless, article 48 of the same document is authorizing artificial fecundation and the transfer of an embryo (art. 49), men and women sterilization. Article 50 authorizes abortion for social and medical reasons. And this favours misunderstanding, as the "medical and social reasons" meaning is not clearly defined. On one hand, by article 57 the State protects and encourages motherhood and, on the other hand, the mother has the right to resolve by herself the problem of motherhood, that is to abort or not. At times, the legislators take paradoxical decisions. Thus, in elaborating the "Law regarding the secondary general instruction", in the article concerning the principles of christian morality, the representatives of the left in Parliament have replaced these principles by "principles having a scientific character". Frequently, the left, which has the majority in Parliament, does not want to understand religious, christian reasons, reacts negatively and rejects these formulas. For instance, the proposal of introducing the study of christian ethics in school was rejected by the Parliament.

Another paradoxial situation arose: the Ministry of National Education has exceptionally authorized to teach the christian ethics only in Western Ukranian schools. But there were some parents who complained with the Parliament. "But, what is happening? Is Cathechism now taught in schools?", they would say. To forbid this, the Parliament ordered to clarify the situation. As a consequence, the Ukranians will have to fight for many years to come before they can educate their children in the christian spirit.

After the publication of Pope John Paul's II Encyclical "Evangelium Vitae", some changes occurred in civil rights concerning the respect of man's dignity and life. It is evident that the publication of the Encyclical was highly appreciated by the Ukranian Church. Scientific and practical conferences of university professors and students were dedicated to the study of this Encyclical. His Eminence Cardinal López Trujillo attended one of these conferences. But, despite the fact that this fundamental work was published for the whole world, in our opinion, our State and
our society do not use extensively the Encyclical in the phase of the elaboration of programmes and laws that regard the respect of life.

After the publication of the Pontifical Encyclical "Evangelium Vitae" in Ukraine, two important legal documents were issued: 1) the Cabinet decision "On the national family planning", and 2) the decree of Ukraine's President on the national programme "Ukrainian Children" (1996).

Yet, the two documents were not based on the Encyclical. There are no articles on the new generations' education according to the principles of the christian morality. Church representatives were not even invited, neither took part in their elaboration. The main scope of both documents was a series of declarative measures, that is: to grant the right of every child to be born in good health, to grant the necessary conditions for an harmonic growth, to protect children and families in a safe manner on the social and psychological plan, to help families to solve their problems concerning procreation, the good state health of parents and children, the family welfare, the education, etc.

These programmes foresee the improvement of the law concerning motherhood and babyhood, the regression of children's death rate, the reduction of infections morbidity and others, and of children's invalidity level. These same programmes provide for measures in view of the creation of economical conditions for the development of the national industries for children nutrition, in view of creating appropriate conditions for orphan children's protection, for handicapped children, in view of the creation of several diagnostic centres for the treatment and the re-adaptation of children and sick mothers, for pregnant women, in view of the organization of medical centres for family planning. At the same time, one of the main aims of these programmes is the constitution of State structures that must take care of family planning, of granting the population's needs as regards contraception means and methods. The fact that, according to article 35 of the Ukrainian Constitution "Church and religious organizations are separated from the State..." must not give to the State the right to despise the Church proposals when elaborating the legislative programmes, because the points concerning the respect of life and human dignity are included in articles 27 and 28 of the Constitution; and, above all, these articles have a social, national, religious aspect and not a political one. Church's teaching regarding contraceptives is diametrically opposite to that of the State, which often explains that the lack of contraceptives in the country is favouring the growth of abortions.

The above mentioned programmes should be gradually implemented between now and the year 2000, but the effect of their implementation is not great. A part of these measures remains on paper. The number of abortions has somewhat lowered but we can see that families using contraceptives have increased, which allows abortions without any social control and responsibility. The rate of mothers' and children's death is still high. More than 60% of children in pre-scholar age suffer from somatic and mental troubles. 10% of children in the first year of elementary school suffer from mental deficiencies. Approximately 500,000 children suffer from neuro-psychiatric disorders and 1,500,000 from disorders of the nervous system. The problem of social orphanhood is deteriorating. More than 100,000 children have no parents. Moreover, tobacco and drugs dependency, alcoholism, venereal diseases and AIDS are spreading among youth.

We notice that the lack of aims in life, the devaluation of human, cultural, natural and spiritual values are present in the spiritual development of youth. Social infantilism is a peculiarity of a considerable number of children. Neither the family, nor the State, nor the society are able to ensure a juridical and social protection to children; these are the conditions required for an harmonious development of the young generation. Contrarily to what is stated by the government programmes, new schools for the education of children of different ages are not established; new large psychological and pedagogical establishments that should make the psychological diagnostic examination of children are not developed, etc. There are no programmes to teach women natural methods for conception regulations. The present social developments are due to the past crimes, particularly to the artificial famines, to the ethnocide (in the twentieth century at least 50 million Ukrainians were killed by different means). But
unfortunately, Western countries do not always understand Ukraine on that plan and their action is not always adequate. They forget that there is a real democracy where order and spirituality reign, where people are educated according to christian principles and they worry about a morale which is based on secular traditions of their own people.

In the meantime, Ukraine is oriented towards the European community, as it concerns the legislative development.

Ukraine's adhesion to the European Council made it possible that its national legislation be similar to the standard law of the European Council, which is composed of conventions, agreements, constitutions, codes of this organization protocols, recommendations, resolutions, declarations of the Ministries' Committee and of the Parliament assembly of the European Council. Ukranian legislation concerning public health is not an exception.

One of the most important documents of the European Council which lead to the regulation of the problema of public health is the Convention on man's protection and of his dignity in the fields of medicine and biology (1997). Despite the fact that, according to the conditions provided by this document, these rules have not yet been implemented, many important dispositions are already taken into consideration in the present national Ukranian legislation on public health. In particular, they are the rules concerning the equal admittance to the public health and medical assistance, the professionalism of all interventions as far as health is concerned, the absolute necessity of a conscious consensus to effect a medical intervention, the confidential character of information on the health conditions of a person, the protection of people submitted to medical-biological experiences, etc.

The recommendations of the European Council's Parliament on AIDS and men's rights trave been introduced to a certain extension in the Ukranian legislation.

However, European Council's standard introduction modes in the Ukranian national legislation on public health cannot be considered satisfactory. Todate, this job was not done systematically and it was purely a formality the fact of taking into consideration the above mentioned dispositions of certain documents of the European Council.

Such a conclusion is confirmed by the fact that Ukraine has so far adhered to none of the 18 documents of the European Council, where human health is a special domain of juridical regulations. In particular, they are the agreement on the exchange of war invalids among countries members of the European Council to favour their medical treatment (1955), the European agreement on the exchange of therapeutical material of human origin (1958), the agreement among the States member of the European Council on the delivery to military and civil invalids of international saving books to pay for the repairs of orthopaedic apparatus and prosthesis (1962), the agreement on the restitution of corpses (1973), the European agreement of exchange of preparations to define the compatibility of tissues (1974), the agreement on the application of the European Agreement of October 17, 1980 on the medical aid to be dispensed to people who are not in their own country (1988) and others.

All the above mentioned European Council documents and their protocols not only have not been ratified by Ukraine, but todate have not been officially translated into the national language, they have not been made known to the deputies of the Ukranian Parliament, to the organizers of public health and to the specialists of public health legislation.

The situation is almost the same as it concerns the other European Council's acts, which, in a certain way, regard the problems of public health. They are so important, as is the European social chart, the European convention on social and medical aids (1953), the European Code of social security.

All of this is not only dimming the Ukranian international political image but is also damaging the quality of its medical-sanitary legislation.

In view of the above, the first task to be accomplished to systematically introduce the European Council standards in the Ukranian legislation on public health is to organize the official translation into the national language and the publication of the acts of this international organization, which attain, in a certain measure, to the publich health problems.
This will allow to make these acts known to the deputies and to the specialists, and to meticulously analyse the huge mass of the above mentioned documents. On the basis of such an analysis, it will be possible to determine the calendar and the urgency of Ukraine's adhesion to these or to other, European Council's acts, which regularize public health programmes, and the ratification of these acts by Ukraine.

The organization of the official translation and publication of these documents, and the fact of making them known to the deputies and to a great number of specialists, will contribute to the utilization of the European Council juridical standards both for the elaboration of the new Ukranian legislative acts on public health and for the study of the appropriate changes to be made to the present legislation. In this connection, we frequently hear people who say: we must go towards Europe! However, those who adverse the opening to Europe forget in conscience that Ukraine has always been in Europe and was the first country to have a Constitution. This Constitution was elaborated by Ukranian Pylyp Orlyk (1710), much earlier than the adoption of the United States Constitution. We lost our independence, which is a different story. but we, the Ukranians, we never lost our independence spirit, our national conscience, our traditional spirituality. In the national development Programme of the Ukranian legislation, several law projects were elaborated for year 2002, and the Parliament should adopt them as a priority. They are: Law regarding "mercy" (i.e. the abolition of death sentence) in Ukraine; Law regarding social rehabilitation of people who have terminated their imprisonment period; Penal Code; Criminal Instruction Code; Civil Code; Law concerning the defense of men's rights; Law regarding the ratification of the Social Chart by the European Council; Law Codes regarding marriage and family.

Todate, Ukraine applies the above mentioned laws published by the ancient regime between 1950 and 1980.

I also have to sadly mention that considerable legislative gaps have not yet been filled up, concerning, for instance, handicapped persons.

It must be pointed out that laws exist in Ukraine, but they are applied too slowly and with difficulties. And this is the reason why neither people, nor the State, nor the Church are satisfied. Difficulties are mainly due to the fact that the majority is represented in Parliament by left forces, who, most frequently, were or still are communists or socialists, and frequently atheists. At one time, they were called "antichrists" in Ukraine. They fight everything is tied to religion, to spirituality and this is the reason why they reject the parts of law projects tied to the christian doctrine. Secondly, difficulties are due to the economical impossibility of securing the implementation of these laws. Todate, Ukraine lacks of money to pay salaries, pensions, even if the amounts to be paid are low. Thirdly, the difficulties are due to the deep spiritual and moral crisis inherited from the past. In the fourth place, these difficulties are connected with the insufficient activity regarding the implementation of the laws and the insufficient control of their execution on the part of the State. If this attitude regarding the implementation of the adopted laws should persist, the same mischance will also impend on the declaration of the national Ukranian politics regarding families and women, adopted in 1999, and even on other future legislative documents.

As time goes by, let us hope that the top government ranks (and, more precisely, the different branches of power, will work more harmoniously). As time goes by, let us hope that the Ukranian population will elect in Parliament people who will defend the values of society, founded on christian principles. We agree that the scientific and christian levels, and the way of broaching birth planning problem, depend on several factors. For the time being, it surely does not make sense to examine the reasons for the present situation only outside Ukraine, as we, ourselves, have not made enough efforts to radically change something in the society.

We believe that we will gradually reach a higher level of spirituality in our society, by eliminating stratified lies and idealized inheritance from the past regime. Truth is the highest ethical ideal. Jesus Christ said to Pilate: "I was born and came in this world only to testify the truth. Whoever is on the side of truth listens to my voice". And Pilate skeptically answered: "What is the truth?"
Let us repeat after Pilate "What is the truth"? In any case, it is not the pragmatism school, where they taught that truth is measured by the revolutionary utility. The world is now doing its utmost to plunge again the river of spirituality. And what should we say, we the Ukrainians, after three centuries of colonization?

A few reflections on the present situation in the Ukrainian prisons. The do not re-educate, do not compel men to reflect on the meaning of life in general, and of man's in particular, of a man who was imprisoned, correctly or incorrectly, but level human life, humiliate man in his dignity, hit the values of human being (a psychical pressure is also exerted both by some administrative representatives, and by some prisoners). And more than that, they contribute to the general failure of society.

Also working conditions need an improvement. The State has no funds to take care of men, of their working conditions, of their rest and health, etc. Every year, in Ukraine, hundreds of people die or are mutilated in their working site. To this, it must be added the Chernobyl catastrophe, that Ukrainians bear with difficulty. This is why Ukraine can hardly stand up without the international aid, under all forms.

I am sure that the will of the nation to create its own Ukrainian State is going to find its expression in the legislation acts which will serve man, will help him to conduct a dignified life and to integrate as an equal partner in rights in the world and European communities.
INTRODUCTION

The consideration of jurisprudence and legislation respecting human life in the United States should begin with the jurisprudence of abortion since that jurisprudence has set the constitutional foundation for consideration of other life issues such as the right to physician-assisted suicide or euthanasia. The rationale supporting the abortion jurisprudence has evolved in recent decades. It has evolved from the articulation by the United States Supreme Court of a new doctrine of privacy in the 1973 case of Roe v. Wade to one centered primarily on personal liberty in the 1992 case of Planned Parenthood v. Casey. Moreover, the Supreme Court's rationale in the Casey case regarding the nature of "liberty" has been suggested as the controlling principle for related questions of physician-assisted suicide and euthanasia although the Court has refused to so expand its doctrine of "liberty" to protect such actions. In Canada, the development of jurisprudence on these questions has been similar. In the 1988 case of Regina v. Morgentaler the Canadian Supreme Court invalidated that nation's liberalized abortion law enacted in 1969 holding that it violated the Canadian Charter of Rights and Freedoms protection of the "security of the person." The Canadian Court, like its counterpart in the United States, has also refused to extend its doctrine of "security of the person" to protect a right to physician assistance in seeking to commit suicide. National legislatures in both the United States and Canada have been unable to secure passage of either an amendment to the national constitution or more limited national legislation to reverse the abortion decisions of their respective supreme courts.

AMERICAN CONSTITUTIONAL RIGHT TO ABORTION IN ROE v. WADE

In Roe v. Wade, the Supreme Court struck down a Texas statute that protected the unborn child from the moment of conception and restricted abortion except when necessary to save the life of the mother. In doing so, the Court held that the right of privacy found in the 14th Amendment's term "liberty" protected the abortion decision and that the State's interest in protecting the developing "potential" human life before birth became compelling only after viability. The Court divided a woman's pregnancy into trimesters. It then measured the State's interest in regulating the abortion procedure on the basis of its interest in the potential human life in the womb - an interest that expands as the unborn child develops before birth. However, the State's limited interest, as recognized by the Court in Roe v. Wade, continues to be balanced against the responsibility to regulate the abortion procedure in order to lessen the health risks of the woman. During the first trimester, therefore, the Court held "the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician." During the second trimester, the State may regulate the abortion procedure but only to the extent that it relates to maternal health. During the third trimester, the Court appeared to give the State greater power to limit the abortion procedure on the basis that the unborn child was viable or nearly so stating that the State may "even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother." This language appeared to grant the State broad power during the third trimester to restrict abortion. However, in the companion case of Doe v. Bolton, in which the Court struck down Georgia's recently liberalized "therapeutic" abortion law, the Court defined maternal health in such a broad fashion as to allow the "health" exception to the State's power of regulation to, in effect, swallow up the general rule. The Court stated that the physician's "medical judgment may be exercised in the light of all factors - physical, emotional, psychological, familial, and the woman's age - relevant to the well-being of the patient."
The Court in *Roe v. Wade* relied in large measure upon contentions that were historically inaccurate or at least doubtful. One such contention was that the primary motivation for the enactment of anti-abortion laws in the United States during the 19th century was that the abortion procedure "was a hazardous one for the woman" and that concern for the life of the unborn child was only a secondary and minor consideration. Another contention was that the term "person" as used in the 14th Amendment could not have application to the child before birth. *Roe v. Wade* failed to gain widespread acceptance as a legitimate exercise of judicial power and its rationale supporting a constitutionally protected right to abortion has remained controversial among American legal scholars. Federal Judge John T. Noonan, Jr. summed up this attitude towards *Roe* when he wrote: "The liberty established by *Roe v. Wade* and *Doe v. Bolton* has no foundation in the Constitution of the United States. It was established by an act of raw judicial power. Its establishment was illegitimate and unprincipled, the imposition of the personal beliefs of seven justices on the women and men of fifty states. The continuation of the liberty is a continuing affront to constitutional government in this country." 3

Other jurists attacked the decision from the standpoint of its own internal logic and the fact that advances in medical technology rendered obsolete the legal approach of *Roe v. Wade*. Supreme Court Justice Sandra Day O'Connor observed: "The *Roe* framework, then, is clearly on a collision course with itself. As the medical risks of various abortion procedures decrease, the point at which the State may regulate for reasons of maternal health is moved further forward to actual childbirth. As medical science becomes better able to provide for the separate existence of the fetus, the point of viability is moved further back toward conception.... Even assuming that there is a fundamental right to terminate pregnancy in some situations, there is no justification in law or logic for the trimester framework adopted in *Roe*. 4

**ROE v. WADE AND AMERICAN LEGAL HISTORY**

The decision to impose upon the fifty states the legalization of abortion with virtually no restrictions throughout pregnancy made in *Roe v. Wade* remains a matter of great public debate within the United States. Even in 1973 when the decision was announced, it was apparent that the effort to gain nationwide legal acceptance of abortion through democratic means had lost momentum. Beginning with Colorado in 1967 and continuing through the popular referendum in Washington State in 1970, a number of states enacted liberalized abortion laws. However, during 1971, not one state repealed or amended its law although 30 legislatures considered legislation to do so. The next year, Connecticut adopted restrictive provisions, and the New York legislature repealed the liberal law it had enacted in 1970 (although the governor vetoed the proposal). Also in 1972, North Dakota and Michigan voters rejected proposals to liberalize their abortion statutes by wide margins in popular referenda. Since 1973, many state legislatures and local communities have sought in a variety of ways to limit the reach of *Roe v. Wade*. At the national level, Congress has moved to restrict government funding of abortion through the national health care program, Medicaid, and other health programs to only those cases where the life of the mother is endangered or the woman's pregnancy resulted from rape or incest. Committees in both the Senate and the House of Representatives have conducted extensive hearings on legislation to overturn *Roe* in 1975, 1976, 1978 and 1981. The decision has been the focus of constant legal criticism and political controversy because of the Court's refusal to consider the evidence of the humanity of the unborn child and because of its repudiation of nearly a century long tradition of laws restricting abortion.

Prior to 1973, the humanity of the unborn child was at the center of state action regarding abortion. Although a comprehensive review of the common law treatment of abortion is not possible here, it is worth noting that significant changes in the law's treatment of abortion occurred as a result of changes in medical knowledge. The first major legal change occurred as a result of the discovery in 1827 of the
nature of conception. The first criminal statute prohibiting abortion in the United States was enacted by the Connecticut legislature in 1821. Prior to that time abortion was considered a serious criminal offense under Anglo-American common law. Under the laws of England, according to common law commentators such as Lord Coke and Matthew Hale, abortion, while not murder, amounted to a "great misprision" and was a "great crime," if the woman "be quick or great with child."Some have argued that the term "quickening," that is, the point during pregnancy when the mother is able to feel the movement of her unborn child, was at common law a substantive distinction. They assert that the common law had made a "policy" decision that it was only at this stage in the development of the unborn child that criminal liability for abortion should be imposed. The Supreme Court in Roe v. Wade adopted this interpretation and it provided a kind of symmetry with the trimester approach developed by the Court. The better view, however, is that "quickening" was utilized at common law not as a substantive test but as a practical test to determine whether the prosecutor in a criminal case could prove there had been an assault upon a live human being in the womb and, if so, whether that assault had caused the child's death. "Quickening" was more likely viewed at common law as an evidentiary test to prove that but for the intervening action of the defendant the unborn child would have continued to live, that is to say, would have remained "quick". This interpretation more satisfactorily explains why it was that the law changed so quickly and abandoned the "quickening" distinction once medical science better understood the reality of human conception and the development of the child before birth. "At all times, the common law disapproved of abortion as malum in se and sought to protect the child in the womb from the moment his living biological existence could be proved."5 Thus, in England, when the common law crime of abortion was codified by statute in 1803, the term "quickening" remained the dividing line, not as the threshold of whether an offense had been committed, but of the severity of the offense. When the woman was "quick with child," the offense was punishable by death; otherwise it was a felony punishable by imprisonment, fine, whipping, pillory, or transportation to a penal colony for up to 14 years.6 Unquestionably, the 1803 English law was consistent with the accepted medical knowledge of the time. Thomas Percival, who in the same year published his work on medical ethics, strongly condemned abortion and argued for protection of the unborn child from "the first spark of life." When in 1827, the nature of conception was more fully understood, the law soon followed the advance of science. Parliament enacted a new law on abortion that deleted the "quickening" distinction and provided for uniform penalties for abortion regardless of the stage of pregnancy. By 1838, an English court interpreted the common law rule prohibiting the execution of a woman "quick with child" to apply to a time prior to when the woman would actually feel the child's movements. The court stated: "'Quick with child' is having conceived." American courts also readily abandoned the "quickening" distinction in their attempt to remain current with scientific progress. The basic American text on medical jurisprudence during the 19th century stated: "the fact is certain, that the fetus enjoys life long before the sensation of quickening is felt by the mother. Indeed, no other doctrine appears to be consonant with reason or physiology, but that which admits the embryo to possess vitality from the very moment of conception."7 The 1859 report of the Committee on Criminal Abortion of the American Medical Association (AMA) described abortion as "the wanton and murderous destruction" of the unborn child. The AMA's unanimous acceptance of the committee's resolution calling for the revision of abortion laws was unquestionably the single most important cause of the transformation of abortion law in 19th century America. Nearly a decade later, the chairman of that AMA committee, Dr. Horatio Storer, summarized the rationale of these new statutes: "Physicians have now arrived at the unanimous opinion, that the fetus is alive from the very moment of conception.... The willful killing of a human being, at any state of its existence, is murder.... Abortion is, in reality, a crime against the infant, its mother, the family circle, and society."8
The action of the AMA produced quick results from state legislatures. For example, one year after the Committee on Criminal Abortion issued its report, Connecticut amended its abortion law to delete the "quickening" limitation. The AMA action also affected the activity of state medical societies as well. For example, in 1867, the New York Medical Society condemned abortion at whatever gestational age as "murder." By the end of the century, virtually every state had enacted legislation substantially restricting the performance of abortion.9

PERSONHOOD, ABORTION AND THE AMERICAN CONSTITUTION

The 19th century reform of abortion law is constitutionally significant because it took place contemporaneously with the adoption by Congress and the ratification by the states of the 14th Amendment to the Constitution with its protection against state violations of a person's right to life, liberty and property without due process of law. An especially significant development during this same time was the enactment of criminal abortion statutes in the Federal Territories of Arizona, Colorado, Idaho, Montana, and Nevada, because territorial legislation was subject to the approval of the Congress. These state and territorial abortion laws were part of a broader development in American jurisprudence to afford legal protection to all those who were recognized as biologically a human being. This history suggests that the congressional drafters of the 14th Amendment "intended to establish a definition or concept of human beings based upon biological reality and common sense or scientific truth. In the view of the drafters of the 14th Amendment, whoever is a human being in fact is a human being or person in law."10 There is no evidence that the framers of the 14th Amendment disagreed with the anti-abortion statutes that were being enacted in the 19th century. On the contrary, as Justice Rehnquist observed in his dissent in Roe v. Wade, "By the time of the adoption of the 14th Amendment in 1868, there were at least 36 laws enacted by state or territorial legislatures limiting abortion. [The] only conclusion possible from this history is that the drafters did not intend to have the 14th Amendment withdraw from the States the power to legislate with respect to this matter."11 If the law's obligation to treat as a human being that which science demonstrates to be a human being was a central concern during enactment of restrictive abortion laws in the 19th century, it remained an issue in the 20th century when states began to relax those restrictions. Perhaps the clearest example can be found in litigation following the revision of New York's law in 1970. The case of Byrn v. New York City Health and Hospital Corporation challenged the 1970 statute permitting abortion within the first 24 weeks of pregnancy as an unconstitutional deprivation of life of the unborn child.12 The Byrn case presented extensive expert testimony regarding the development of the child before birth "in order to present to the court a composite picture of the unborn child as, in all factual respects, a live human being, no different qualitatively from his post-natal sibling." The evidence proved convincing. The New York Court of Appeals held that "It is not effectively contradicted, if it is contradicted at all, that modern biological disciplines accept that upon conception a fetus has an independent genetic 'package'... It is human ... and it is unquestionably alive." The court held, however, that the resolution of that question was not determinative. It posed a further question, "whether a human entity, conceived but not yet born, is and must be recognized as a person in the law." The court then held that "it is a policy determination whether legal personality should attach and not a question of biological or 'natural' correspondence." Citing the legal philosopher Hans Kelsen, the court observed: "What is a legal person is for the law, including, of course, the Constitution, to say, which simply means that upon according legal personality to a thing the law affords it the rights and privileges of a legal person." Apparently the Byrn case presented the question of the humanity of the unborn child and its claim to legal personhood too directly for the U.S. Supreme Court, which refused to hear the case on appeal. Until the early 1970s, American law generally treated the child before birth, as a legal entity with protectable interests whenever doing so would be in the child's interest.13 It was perhaps inevitable that a reversal of that trend would directly raise the question of the obligation of the law to treat as a legal
person that which is recognized biologically as a human being. The New York Court of Appeals in *Byrn* decided that the issue could be resolved as simply a policy determination. That result remains profoundly unconvincing to those committed to a legal order grounded in the recognition of fundamental human rights. Indeed, the 13th and 14th Amendments themselves testify that the rejection of this positivist approach to legal personhood is deeply rooted in American history and tradition. In his dissent in *Thornburgh v. American College ofObstetricians*, Supreme Court Justice Byron White wrote: "the termination of a pregnancy typically involves the destruction of another entity: the fetus. However one answers the metaphysical or theological question whether the fetus is a "human being" or the legal question whether it is a "person" as that term is used in the Constitution, one must at least recognize, first, that the fetus is an entity that bears in its cells all the genetic information that characterizes a member of the species *homo sapiens* and distinguishes an individual member of that species from all others, and second, that there is no non-arbitrary line separating a fetus from a child or, indeed, an adult human being. Given that the continued existence and development that is to say, the life of such an entity are so directly at stake in the woman's decision whether or not to terminate her pregnancy, that decision must be recognized *sui generis.* The difficulty recognized by Justice White is identical to that raised in the *Byrn* case and virtually every abortion case. If we say, "there is no non-arbitrary line separating a fetus from a child or, indeed, an adult human being," then how may we draw an arbitrary line (that is, at birth) in regard to the law's obligation to protect this life? By adding the 14th Amendment to the Constitution after the protracted conflict of civil war, the American people thought that they were doing something to protect the nation from a future tragedy similar to that which they had just experienced—a tragedy resulting from the decision of government to arbitrarily deny a class of human beings the recognition of their humanity and the protection of the law. The drafters of the 14th Amendment used both the terms "person" and "citizen." It is only the latter term that is clearly conditioned on birth in order to automatically claim the privileges and immunities of American citizenship. By use of the broader term "person," the drafters intended to offer a broad protection, including the protection of life, to those individuals who did not meet the requirements of citizenship. There is nothing in the language or history of the 14th Amendment that demands that the right to life guaranteed by its provisions be conditioned upon birth. Indeed, the drafters of the 14th Amendment not only chose the term "person" with care, they were also deliberate in their choice of the word "life." Certainly, they were aware of the discovery by science earlier in the century that the life of each human being begins at conception and continues throughout pregnancy. There is no reason to believe that in employing the term "life" they somehow intended an abbreviated meaning of the term, a meaning that had already been discredited by the scientific discoveries of their time. The text of the Constitution itself does not define the term "person." The Supreme Court, of course, has interpreted the word to include corporations. But to say that a court may expand the term "person" to include inanimate objects within the protections of the Constitution is not to say that it may narrow that term *to exclude* certain human beings from those protections.

**PLANNED PARENTHOOD v. CASEY AND CONSTITUTIONAL HISTORY**

The abortion jurisprudence of the United States has been the result of unique historical elements within the American constitutional tradition as courts have attempted to define with greater precision the term "liberty" in the American Constitution. Unlike many other national constitutions, the original intention of the American Constitution was to structure the external relations of the original thirteen colonies upon their independence from Great Britain. Thus, the Constitution sought to establish the powers of a national government regulating commerce between the 13 former colonies and providing for the national defense and foreign policy of the new nation. The American Constitution respected the domestic jurisdiction of the new 13 states and did not try to impose policies articulated by a national government within the internal jurisdiction of the states. The key principle of the new "federal" system
established by the American Constitution was to recognize the diversity that existed throughout the states.
This federal system began to change following the American Civil War and the adoption of the 14th Amendment to the Constitution. The Amendment, in part, states "[N]or shall any State deprive any person of life, liberty, or property without due process of law." In addition, the Amendment gave the national government the power to enforce the provisions of the Amendment against the states in areas of their domestic jurisdiction. Over time the effect of the Amendment was to give the national government extensive power to reach down into the domestic jurisdiction of the states and review state laws on a variety of subjects that had heretofore been outside of the purview of the national government. The Supreme Court seized upon the fact that it was empowered to define the "liberty" protected by the 14th Amendment as a means by which to extend federal jurisdiction. In other words, the Supreme Court gave substance to the term "liberty" by deciding what activities constituted a "liberty" that was protected by the Amendment. From 1900 to 1936, the Court construed the term "liberty" so as to give broad protection to business interests under the principle of "freedom to contract." For example, in *Lochner v. New York*, the Supreme Court struck down as unconstitutional a New York State law that prohibited bakery workers from working more than 60 hours a week or 10 hours per day. The Court said the law violated the liberty to contract. 16 This *laissez faire* judicial philosophy was increasingly criticized until in 1938 the Supreme Court retreated from this line of decisions. Because of the strong reaction against these cases, the Court, for decades after 1938, refused to use such an analysis of "liberty" in interpreting the 14th Amendment.

In the 1960s, when the Supreme Court began to consider cases in which sexual and procreative conduct was at issue, the Court was therefore reluctant to consider these questions in terms of 14th Amendment "liberty." Instead, the Court looked for another doctrine to protect such conduct without the negative connotation and legal history of an approach that involved giving "substance" to "liberty." In the 1965 case of *Griswold v. Connecticut* regarding the State of Connecticut's ban on the use of contraceptives by married couples, the Court rejected Justice Harlan's proposal to use "liberty" as the basis of its holding. Instead, the Court developed a doctrine of "privacy" to strike down the statutory prohibition of contraceptives. 17 After the *Griswold* case, the Supreme Court continued to develop the doctrine of privacy through a series of cases 18 leading up to its 1973 decision in *Roe v. Wade*. 19 While privacy was discussed in the *Griswold* and *Roe* cases in terms of an expectation of secrecy or confidentiality, this understanding of privacy was only secondary. What was central to the Court's functional understanding of privacy as a constitutional doctrine was that it operated to create a zone of autonomous decision-making free from governmental supervision, regulation or control. In other words, the constitutional doctrine of privacy in the United States was essentially a doctrine related to personal liberty first and confidentiality only second. In the case of *Planned Parenthood v. Casey*, the Supreme Court made clear that this abortion "liberty" was linked to the Court's understanding of the dignity of the person. The Court stated that this liberty "involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the [Constitution]. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State." 20
In 1973, the Supreme Court in *Roe v. Wade* held that "We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer." 21 By enshrining such ambiguity as legal doctrine, the Supreme Court focused the scope of the national abortion debate to a considerable extent upon the biological facts regarding the life of the human person before birth. But as those facts over time overwhelmingly pointed to the autonomy and humanity of the child before birth, the Court attempted to shift the discussion of personhood away from the personhood of the unborn child to the
personhood of the mother. Regardless of the effect of the abortion "liberty" on the human rights and dignity of the child in the womb, the Supreme Court in *Planned Parenthood v. Casey* argued that what was essential was the effect of the abortion "liberty" on the dignity of the woman and how it affected her personhood. Thus, in *Casey*, the Supreme Court attempted to shift the question of personhood and human dignity away from the child before birth to the woman as the principal, if not exclusive focus. In *Planned Parenthood v. Casey*, the Supreme Court recognized both the legal criticism and the political controversy surrounding *Roe v. Wade*. While the Court's decision in *Casey* abandoned the trimester approach of *Roe v. Wade*, it left undisturbed the premise of the decision in *Roe v. Wade*: the contention that "We need not resolve the difficult question of when life begins." *Roe v. Wade* had destroyed the nexus between biological humanity and legal personhood. *Planned Parenthood v. Casey* decided that "the essential holding of *Roe v. Wade* should be retained and once again reaffirmed." This reaffirmation included a new and somewhat ambiguous right to abortion: "the right of the woman to choose to have an abortion before viability and to obtain it without undue interference from the State." Before viability," the Court continued, "the State's interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to the woman's effective right to elect the procedure." In its opinion, the Court provided little explanation of what it meant by the terms "undue interference," "substantial obstacle," and "effective" right. *Casey* marks a clear return to the earlier methodology of the Supreme Court in attempting to add "substance" to the term "liberty" in the 14th Amendment. In doing so, it has provided rich ground for future criticism of the Supreme Court's abortion jurisprudence.

*Casey* involved a challenge to a Pennsylvania law that made numerous procedural restrictions on the woman's abortion decision while not attempting substantive prohibitions. For example, the law required that the woman give her informed consent to the abortion procedure after receiving certain specified information and that there be a 24-hour waiting period following her consent before the abortion may be performed. The Supreme Court upheld these procedural restrictions on the basis that they did not constitute an "undue influence" or "substantial obstacle" to the woman's "effective" right to abortion. The Court's ruling encouraged a number of states to enact similar laws requiring that physicians and others provide women seeking an abortion with information concerning the risks of abortion, the development of the unborn child and alternatives to abortion available to them. Moreover, in light of the Supreme Court's greater tolerance of procedural regulation of abortion, state legislatures are enacting a variety of such laws, the majority of which concern government funding prohibitions on abortion, counseling and referral requirements, parental involvement mandates, and abortion clinic regulations.

**PARTIAL-BIRTH ABORTION BAN ACT**

Suction curettage, induction, and dilation and evacuation are the principal methods of abortion in the United States. Since 1995, Congress has repeatedly passed legislation to prohibit late-term abortions through a less frequently used procedure known in the medical community as intact dilation and extraction and to the general public as partial-birth abortion. The congressional legislation defines this method of abortion as "an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing delivery." On both occasions the president has prevented enactment of the legislation by use of his veto. Although the American Medical Association continues to support access to legal abortion as mandated by *Roe v. Wade* and *Planned Parenthood v. Casey*, the association supports legislation that would prohibit the partial-birth abortion procedure. In 1996, the American College of Obstetricians and Gynecologists convened a special committee to review the partial-birth abortion procedure. It defined the procedure as consisting of five steps: (1) dilation of the cervix; (2) manipulation of the fetus to a footling breech position; (3) breech extraction of the fetus, except for the head; (4) forcibly incising the cranium with a
scissors and then evacuation of the inter-cranial contents of the fetus while alive; (5) vaginal delivery of a dead but otherwise intact fetus. An important consideration in this form of abortion is the pain experienced by unborn children during the procedure since the physiological centers necessary for the perception of pain develop early in the second trimester. Although there is dispute whether pain can be measured in the fetus, when unborn children of the same gestational ages are delivered, pain management during delivery is an important part of their customary medical care. It should also be emphasized that this later term abortion procedure is usually performed on unborn children between 20 and 24 weeks gestational age. In the United States the survival rate outside the womb for the unborn child at 24 weeks gestational age is approximately 83 percent. In 1998, an article in the *Journal of the American Medical Association* suggested the rationale for the AMA's support of legislation to prohibit the procedure. It stated that partial-birth abortion "should not be performed because it is needlessly risky, inhumane, and ethically unacceptable. This procedure is closer to infanticide than it is to abortion." Although Congress has been unable to over-ride the president's vetoes of the Partial-Birth Abortion Ban Act, as of 1998 a majority of states have enacted laws to ban the procedure. Virtually all these state laws have been challenged in the federal courts and many remain subject to litigation or have been declared unconstitutional. However as of 1998, eight of the laws were in effect: Indiana, Mississippi, Oklahoma, South Carolina, South Dakota, Tennessee, Utah and Virginia. In 1999, federal circuit courts of appeals reached contrary decisions regarding the constitutionality of partial-birth abortion laws. The Eighth Circuit Court of Appeals struck down as unconstitutional the laws enacted in Iowa, Nebraska and Arkansas. However, the Seventh Circuit Court of Appeals rejected challenges to the partial-birth abortion laws in Illinois and Wisconsin, allowing these laws to go into effect. These state laws were patterned after the federal legislation to ban the procedure. The laws in Illinois and Wisconsin permitted exceptions to the prohibition when necessary to save the live of the mother or when her health was endangered and no other medical procedure would suffice. The federal appellant court held that both laws could be applied in a constitutional manner and that neither law was unconstitutionally vague or unduly burdensome of a woman's right to abortion. Particularly interesting is the dissenting opinion of Chief Judge Posner who argued that the Illinois and Wisconsin laws were unconstitutional because there is no substantive difference between partial-birth abortion procedure that they prohibit and other late term abortion procedures. He wrote: "The uniformed thought the [partial-birth abortion] procedure gratuitously cruel, akin to infanticide; they didn't realize that the only difference between it and the methods of late-term abortion that are conceded all around to be constitutionally privileged is which way the fetus's feet are pointing." He concluded that: "there is no meaningful difference between the forbidden and the privileged practice. No reason of policy or morality that would allow the one would forbid the other. Most telling, however, is the judge's argument that: "Line drawing is inescapable but the line between feticide and infanticide is birth. Once the baby emerges from the mother's body, no possible concern for the mother's life or health justifies killing the baby. But as long as the baby remains within the mother's body, it poses a potential threat to her life or health and this threat presents a compelling case (or so at least the Supreme Court believes) for a right to abortion." Gone from Chief Judge Posner's argument is the legal fiction of "potential human life" fashioned by the Supreme Court in the *Roe v. Wade*. Early in 2000 the Supreme Court agreed to review the decision of the Eight Circuit Court of Appeals in *Carhart v. Stenberg*, which struck down the Nebraska partial-birth abortion law as unconstitutional.

**FEDERAL BAN ON FUNDING EMBRYO RESEARCH**

In 1995, Congress enacted legislation to prohibit the use of national government funds for research in which human embryos are harmed or destroyed. The law prohibits the use of government funds for "(1) creation of a human embryo or embryos for research purposes; or (2) research in which a human
embryo or embryos are destroyed, discarded, or knowingly subjected to risk or injury or death greater than that allowed for research on fetuses" where the research is undertaken for therapeutic purposes related to the fetus who is subjected to the research. The law defines "human embryo" as "any organism... derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells."34

In 1999, the United States Department of Health and Human Services asserted that the law does not prohibit research on cells derived from human embryos, even though the process through which the cells are obtained directly kills the embryo. The government maintained that once the cells are obtained that they "are not a human embryo within the statutory definition."35 Stem cells that are at issue in this research come not from the outer cells, but from the embryoblast itself and are therefore the actual cells of the developing human being. These cells can only be obtained by destroying the human embryo at the blastocyst stage and removing them.36 Because embryonic stem cells are pluripotent and have the potential to become many, if not all, the tissues of the human body they are thought to have unprecedented therapeutic potential. Stem cell research offers the possibility that a patient's own cells could be used repair tissue in his own body or even grow new organs. Early reports suggest that human embryonic stem cells can be used to produce all 250-cell types of the human body.37 In 1999, the Department of Health and Human Services announced plans to begin government funding of such research.38 The National Bioethics Advisory Commission established by the president in 1995 supported that decision. The Commission urged Congress to amend current law to permit the funding and proceed to appropriate funds for that purpose. As of this writing Congress has refused to do so.

PHYSICIAN-ASSISTED SUICIDE AND THE RIGHT TO DIE

In 1996, two cases recognizing physician-assisted suicide as a procedure protected by the United States Constitution were decided by federal courts: Compassion in Dying v. State of Washington39 and Quill v. Vacco.40 The United States Supreme Court later overturned both decisions ruling that the Constitution did not mandate the recognition of physician-assisted suicide as a right, but that states were free to adopt such laws as a policy determination.41 Thus, the reasoning of these federal courts continues to raise key issues as the question of physician-assisted suicide has shifted from the courts to the state legislatures for consideration.

Compassion in Dying v. State of Washington involved a challenge to the WashingtonState law that makes assisting suicide a crime punishable by imprisonment of up to five years and a fine of up to $10,000. The law provides, "a person is guilty of promoting a suicide attempt when he knowingly causes or aids another person to attempt suicide." The circuit court concluded, "There is a constitutionally-protected liberty interest in determining the time and manner of one's own death." Moreover, the court ruled that insofar as a state law "prohibits physicians from prescribing life-ending medication for use by terminally ill, competent adults who wish to hasten their own deaths" such a statute violates the United States Constitution and is therefore invalid.

In beginning its analysis, the court observed: "In examining whether a liberty interest exists in determining the time and manner of one's death, we begin with the compelling similarities between right-to-die cases and abortion cases. In the former as in the latter, the relative strength of the competing interests changes as physical, medical, or related circumstances vary. In right-to-die cases the outcome of the balancing test may differ at different points along the life cycle as a person's physical or medical condition deteriorates, just as in abortion cases the permissibility of restrictive state legislation may vary with the progression of the pregnancy. Equally important, both types of cases raise issues of life and death, and both arouse similar religious and moral concerns. Both also present basic questions about an individual's right of choice." After noting the similarities between the "right-to-die" and abortion, the court stated that "in deciding right-to-die cases, we are guided by the [U.S. Supreme] Court's approach
to the abortion cases" and in particular, the reasoning of the Supreme Court in its most recent abortion case, Planned Parenthood v. Casey.42

However, before the court began its analysis of the "right-to-die" in light of the abortion jurisprudence of the Supreme Court, it first defended its formulation of the legal issue to be resolved. The court stated, "While some people refer to the liberty interest implicated in right-to-die cases as a liberty interest in committing suicide, we do not describe it that way. We use the broader and more accurate terms, 'the right to die,' 'determining the time and manner of one's death,' and 'hastening one's death' for an important reason. The liberty interest we examine encompasses a whole range of acts that are generally not considered to constitute 'suicide.' Included within the liberty interest we examine, is for example, the act of refusing or terminating unwanted medical treatment."

The recurring issue confronting the United States Supreme Court and all lower federal courts is what standard to apply in determining whether a particular activity is protected within the scope of the liberty specified by the 14th Amendment. In attempting to ascertain whether an activity should be classified as a "fundamental liberty" and therefore protected from state prohibition or infringement, the Supreme Court has stated that the interest to be protected must be (1) "implicit in the concept of ordered liberty such that neither liberty nor justice would exist if [such liberties] were sacrificed" and (2) "deeply rooted in this Nation's history and tradition." Like the "right to abortion," the "right to die" is nowhere to be found in the United States Constitution. To the contrary, for most of the constitutional history of the United States, states not only refused to recognize such activity as a "right," but the states imposed criminal penalties for such activity. Thus, if the conduct is narrowly defined so as to limit the so-called "liberty" interest to the specific conduct at issue, that is, assisting suicide, and to no other more generally accepted conduct, then it is very difficult to characterize the conduct as a "liberty" since it historically has been criminalized.

In Planned Parenthood v. Casey, the Supreme Court rejected such a close historical context for the definition of the liberty interest at issue. The Supreme Court stated, "It is...tempting...to suppose that the [Constitution] protects only those practices, defined at the most specific level, that were protected against government interference by other rules of law when the Fourteenth Amendment was ratified... But such a view would be inconsistent with our law. It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter." The circuit court quoted this language with approval in Compassion in Dying and went on to observe that the Supreme Court had not taken such a broad view of what constitutes liberty, "it would not have held that women have a right to have an abortion [since] as the dissent pointed out in Roe v. Wade, more than three-quarters of the existing states (at least 28 out of 37 states); as well as eight territorial legislatures restricted or prohibited abortions in 1868 when the 14th Amendment was adopted."

Moreover, the Supreme Court's abortion jurisprudence was found to be persuasive in another important aspect. The Supreme Court in Planned Parenthood v. Casey re-affirmed the constitutional right to abortion. It did so by replacing the notion of "privacy" as the constitutional principle that encompassed a "right" to abortion with a broad, seemingly open-ended concept of liberty. After reviewing its decisions related to marriage, contraception, abortion, family relationships and childrearing, the Supreme Court stated, "These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State."

The circuit court found this analysis broad enough to extend beyond the issue of abortion and include the "right to die." According to the circuit court, "the decision how and when to die is one of the most intimate and personal choices a person may make in a lifetime," a choice 'central to personal dignity and autonomy.' A competent terminally ill adult, having lived nearly the full measure of his life, has a strong liberty interest in choosing a dignified and humane death rather than being reduced at the end of his
existence to a childlike state of helplessness, diapered, sedated, incontinent. How a person dies not only
determines the nature of the final period of his existence, but in many cases, the enduring memories
held by those who love him."
In holding that a "right to die" is protected by the Constitution, the circuit court relied upon the decision
of the Supreme Court in the case of Cruzan v. Director, Missouri Department of Health43 which
involved the constitutional standard to be applied in cases in which a legal guardian seeks to
discontinue nutrition and hydration of a patient with the knowledge that death will result. In Cruzan, the
parents of a young woman in a persistent vegetative state sought a court order permitting them to
terminate the artificial nutrition and hydration procedures the hospital was providing their daughter. The
Supreme Court observed that while "a competent person has a constitutionally protected liberty interest
in refusing unwanted medical treatment," and that therefore "the United States Constitution would
grant a competent person a constitutionally protected right to refuse lifesaving hydration and
nutrition." The Court also stated that the question was not automatically resolved in favor of the parents'
request to terminate hydration and nutrition. It noted, "An incompetent person is not able to make an
informed and voluntary choice to exercise a hypothetical right to refuse treatment or any other
right. Such a 'right' must be exercised for her, if at all, by some sort of surrogate." The State of Missouri
had recognized in its law that a surrogate may act on behalf of a patient to refuse or terminate life-
prolonging hydration and nutrition, but the state required that the surrogate's action must conform to
the wishes of the patient. In addition, the law required that the surrogate show by "clear and convincing"
evidence that such was the wish of the patient. In Cruzan, the Supreme Court limited its ruling to the
question of whether such a procedural requirement by a state was an infringement upon the patient's
constitutionally protected right to refuse lifesaving treatment. The Court held that a high evidentiary
standard requiring "clear and convincing evidence" did not violate the Constitution. The Quill v.
Vacco case involved a challenge to a New York State statute which provides that a person is guilty of
manslaughter when "he intentionally ... aids another person to commit suicide." The lower court ruled
that state laws that deny mentally competent patients, who seek to end their lives during the final stages
of a terminal illness the assistance of a physician, deny these patients the equal protection of the laws in
violation of the Constitution. It stated that the guarantee of the 14th Amendment "requires the State to
treat in a similar manner all individuals who are similarly situated." The court arrived at this conclusion
by a tenuous process of generalization that ignored distinctions in the medical circumstances among
various terminally ill patients. Instead, the court simply considered all terminally ill patients who sought
to "hasten" their death to be "similarly situated." The court dismissed any significant difference between
the two types of decisions that the law has always recognized as profoundly different; that is, the
difference between the decision to refuse or withdraw medical treatment and the decision to administer
death-causing drugs with the intention to thereby cause the death of the patient. In doing so, the court
ignored important distinctions that both medicine and law have traditionally recognized. Instead, it
simply pulled together all such decisions into a single category of "decisions to hasten death."
The court placed great emphasis upon the fact that the New York legislature in 1990 enacted a new law
to allow a person to sign a "health care proxy" to appoint an agent with "authority to make any and all
health care decisions" on the person's behalf including "those relating to the administration of artificial
nutrition and hydration." As a result, the court contended "New York does not treat similarly
circumstanced persons alike: those in the final stages of terminal illness who are on life-support
systems are allowed to hasten their deaths by directing the removal of such systems' but those who are
similarly situated, except for the previous attachment of life-sustaining equipment, are not allowed to
hasten death by self-administering prescribed drugs. " The court held that there is no legally relevant
distinction between assisted suicide and the withdrawal or withholding of life-sustaining medical
treatment. Finally, the circuit court dismissed the state's interest in protecting human life in these circumstances. It
stated, "the state's contention has been that its primary interest is in preserving the life of all its citizens
at all times and under all conditions. But what interest can the state possibly have in requiring the prolongation of a life that is all but ended? Surely, the state's interest lessens as the potential for life diminishes.... What concern prompts the state to interfere with a mentally competent patient's 'right to define [his] own concept of existence, of meaning, of the universe, and of the mystery of human life.' Yet, the court's premise, that "the state's interest lessens as the potential for life diminishes," is surely one that cannot logically be limited to the situation of terminal illness or to the mentally competent patient. Certainly, the mentally handicapped, the physically disabled and the elderly who are not terminally ill all experience in significant ways a "diminishing" ability to "define [their] own concept of existence, of meaning, of the universe, and of the mystery of human life." To recognize in the law a sliding scale"lessening" the state's interest in protecting such life, as the court does, is an exceedingly dangerous precedent not only in regard to the situation of the terminally ill, but also because it cannot be limited to the terminally ill.

The Supreme Court reversed both of these lower court rulings in unanimous decisions. In Washington v. Glucksberg, the Court "conclude[d] that the asserted 'right' to assistance in committing suicide is not a fundamental liberty interest" protected by the Constitution. In upholding the Washington law the Court further held that the State "has an 'unqualified interest in the preservation of human life.'" Significantly, the Court also noted, "the State may fear that permitting assisted suicide will start it down the path to voluntary and perhaps even involuntary euthanasia." The Court acknowledged that the practice of euthanasia in the Netherlands was an important precedent quoting the Dutch government study that found 400 cases of assisted suicide and more than 1,000 cases of euthanasia without an explicit request as well as 4,941 cases in which physicians administered legal doses of drugs without their patients' explicit consent. The Court also noted that the prohibition of assisted suicide was longstanding with the State of New York enacting the first statute outlawing the activity in 1828. This statutory formulation was consistent with the common law practice. For example, an early 19th century commentary on the law of the State of Connecticut summarized the law as follows, "if one counsels another to commit suicide, and the other by reason of the advice kills himself, the advisor is guilty of murder as principal." Moreover, it cannot be said that the rationale behind the early prohibition of assisted suicide was substantively different than that presented today. While perhaps the number of cases was not as numerous, there is no reason to suppose that those suffering from painful terminal illnesses in the early 19th century were any less vulnerable to the suggestion of suicide than are terminally ill patients today.

In Vacco v. Quill, the Supreme Court also reversed the lower court and rejected its contention that there is no significant difference between refusing life-saving treatment and assisting a suicide. The Court held that there was a significant legal difference between "letting a patient die and making that patient die." It continued, "Logic and contemporary practice support New York's judgment that the two acts are different.... By permitting everyone to refuse unwanted medical treatment while prohibiting anyone from assisting a suicide, New York law follows a longstanding and rational distinction."

Although the Supreme Court forcefully upheld the authority of the state to prohibit physician-assisted suicide by means of the criminal law, it was unwilling to rule that a state law permitting physician-assisted suicide violated constitutional safeguards of the person. The Court for the present has reserved the issue of the legality of physician-assisted suicide as a policy determination to be made by state governments. In 1994, the State of Oregon by popular referendum enacted the "Death with Dignity Act" to legalize physician-assisted suicide. That law was challenged in federal court on the grounds that it violated the equal protection of the laws as guaranteed by the 14th Amendment. The lower federal courts rejected the challenge. By refusing to hear an appeal from that decision the Supreme Court allowed the Oregon law permitting physician-assisted suicide to remain in effect. Following the conclusion of litigation over the Oregon law it was reconsidered by popular referendum in Oregon and again reaffirmed. However, voters in Michigan, Washington and California have rejected physician-assisted suicide laws in popular referenda.
Early in 1999, the Oregon Health Division released a report on the "Death with Dignity Act" at the conclusion of its first year of operation. The report found that 15 patients had been killed under the law. The report also found that the most common reason given by patients who requested assisted suicide was not pain or even the seriousness of the illness, but the fear of "loss of autonomy" or "loss of control of bodily functions." Only four of the 15 patients received a psychological assessment before ending their lives, yet Oregon health officials admitted that in a majority of cases suicide advocacy groups were involved in the patient's decision. The report has been criticized as inadequate since it was unable to support the conclusion that the provisions of the law are being carried out safely including whether patients were adequately counseled so as to make an informed decision. Perhaps the most disturbing development is the announcement by the state attorney general's office that the law may violate constitutional guarantees of equal protection and federal laws that protect the rights of disabled persons since it may not permit physicians to directly kill patients whose physical disability prevents them from self-administering lethal drugs.

At the national level, Congress has responded to the situation in Oregon by consideration of legislation that would promote aggressive pain management and palliative care while providing that lethal drugs regulated by the national Controlled Substances Act could not be used to carry out physician-assisted suicide even where that procedure has become legal under state law. The legislation, if enacted, would establish a new "Program for Palliative Care Research and Quality" within the national Agency for Health Care Policy and Research to develop and advance scientific understanding of palliative care and pain management for health professionals specializing in care of the terminally ill as well as the general public. At the same time the bill would undermine the ability to carry out physician-assisted suicide by depriving physicians of the use of substances controlled by the federal government, such as morphine.

CANADA

Although Canadian law on abortion and related issues has been greatly influenced by constitutional jurisprudence in the United States, Canadian jurists have sought to retain autonomy in their approach to these issues and important differences exist between the two juridical systems. Like the United States, Canada inherited the British common law on abortion. Upon independence Canada retained the British Offenses Against the Person Act of 1861, which provided that abortion was a form of homicide. This provision was later incorporated into the Canadian Criminal Act. The Act contained a general prohibition of abortion before and after quickening and provided for a maximum criminal penalty of life imprisonment. In 1969 the law was substantially amended to provide for the legalization of "therapeutic" abortion when authorized by a medical committee and performed in a designated hospital. In Regina v. Morgentaler the Supreme Court of Canada invalidated section 251 of the Canadian Criminal Code that permitted the performance of abortion only in designated hospitals upon the approval by a therapeutic abortion committee. Section 251 permitted the performance of abortion when a majority of the therapeutic abortion committee concluded the pregnancy "would or would be likely to endanger the mother's life or health." A majority of the Court found that this statutory approach violated Section 7 of the Canadian Charter of Rights and Freedoms. The Charter provides that "everyone has the right to life liberty and the security of the person and the right not to be deprived thereof except in accordance with principles fundamental justice." Chief Justice Dickson maintained that the abortion law was, on its face, a violation of the guarantee of Section 7 of the Charter. He wrote: "Forcing a woman, by threat of criminal sanction, to carry a fetus to term unless she meets certain criteria unrelated to her own priorities and aspirations, is a profound interference with the woman's body and thus a violation of the person." He also asserted that, as applied, Section 251 violated the Charter: "the system regulating access to therapeutic abortions is manifestly unfair. It contains so many potential barriers to its own operation that the defense it creates will in many
circumstances be practically unavailable. Chief Justice Dickson's conclusion was supported by the fact that many hospitals had not established therapeutic abortion committees thereby making it impossible to comply with the law and therefore also impossible to obtain an abortion at that hospital. Also, Section 251 did not define "health" thereby permitting both narrow and broad interpretation of the term by differing hospital committees. This uneven application of Canada's abortion law gave rise to the contention that it was both arbitrary and unfair.

Four of the five justices in the Court's majority agreed that the Charter's protection of security of the person was the constitutional principle that governed the question of abortion. Justice Wilson, however, argued that Section 7 of the Charter was "inextricably tied to the concept of human dignity" and "an aspect of the respect for human dignity on which the Charter is founded is the right to make fundamental personal decisions without interference from the state. This right is a critical component of the right to liberty [that] grants the individual a degree of autonomy in making decisions of fundamental personal importance." The language of Justice Wilson's opinion more closely resembled the language of the United States Supreme Court's abortion opinions than did that of her colleagues. Yet, there is a significant nexus between her concept of "autonomy" and her colleagues' concept of "security of the person." One suspects that the real difference between Justice Wilson and her colleagues in the majority is basically one of emphasis.

While striking down Section 251, the Supreme Court of Canada, unlike its counterpart in the United States, did not take the additional step of writing in effect a new national abortion statute. Nor did the Canadian Court establish abortion as a fundamental constitutional right. Instead, it considered only the application of the constitutional principle of "security of the person" as it affected the abortion law challenged by Morgentaler. Ironically, while the majority opinions in the Morgentaler case seem to accept in principle that the state has the power to regulate the abortion decision, the actual effect of the decision is that until Parliament enacts new legislation, "abortion in any circumstance is no longer a statutory criminal offence" in Canada. In effect, the Canadian Court decriminalized abortion in Canada.

In applying the Charter to the question of abortion, the Canadian Court was dealing with a constitutional principle - Section 7 - with significantly less historical development than the equivalent American constitutional provision. The Fourteenth Amendment to the United States Constitution had undergone nearly a century of juridical interpretation by the time Roe v. Wade was decided. However, the Canadian Charter of Rights and Freedoms was only incorporated by the Constitution Act of 1982. Moreover, the Canadian Supreme Court, in the historical context of parliamentary supremacy, exercises a different and more limited power of judicial review in relation to the national legislature than does the United States Supreme Court. In the United States it is clearly established that the Supreme Court has authority to declare acts of Congress unconstitutional.

Following the Canadian Supreme Court's decision in the Morgentaler case, the Court considered Borowski v. Attorney General of Canada. While Morgentaler had challenged Section 251 as a violation of the woman's rights under Section 7 of the Charter, Borowski argued that the exception clause contained in Section 251 permitting the performance of abortion amounted to a violation of the unborn child's rights under Section 7 of the Charter. Specifically, Borowski maintained that the unborn child should be included within the meaning of the term "everyone" where the Charter provides that "everyone has the right to life." Borowski presented the Court with substantial evidence of the biological humanity of the child before birth. However, following arguments in the case, the Supreme Court ruled that the case was moot and that Borowski lacked standing to bring the case. Moreover, Judge Sopinka maintained that following the Court's action in Morgentaler, Borowski was asking the Court to "pre-empt a possible decision of Parliament by dictating the form of legislation it should enact. To do so would be a marked departure from the traditional role of the Court." Thus, the Supreme Court of Canada, like the United States Supreme Court before it, resolved the constitutional questions regarding the legalization of abortion by means of cases that lacked an
adequate trial record regarding the biological humanity of the unborn child. The United States Supreme Court could have heard the Byrne case with its more complete trial record regarding the unborn child and the Canadian Supreme Court could have heard the Morgentaler case along with the Borowski case. To have proceeded in this fashion would have provided a more complete analysis of the issues present in the abortion decision.

More recently, the Canadian Supreme Court has considered the legal status of the unborn child in Trembley v. Daigle, a case involving the attempt by Jean-Guy Trembley to enjoin his pregnant girlfriend, Chantal Daigle, from obtaining an abortion. Trembley argued that the unborn child was entitled to protection under the Canadian Charter of Rights and Freedoms, at common law and under the civil law of Quebec. The Supreme Court rejected Trembley's claim for protection of the unborn child under the Canadian Charter on the basis that the protections of the Charter do not apply to controversies between private parties. The Court also considered Trembley's contention that the Quebec Charter of Human Rights and Freedoms, which essentially followed the language of the national Charter to provide that, "every human being possesses intrinsic rights and freedoms", should protect the unborn child. The Court held that there was no reason why the term "human being" as used in the Quebec Charter should have a meaning different than the term "person." The Court gave great weight to the fact that it could not find evidence of the legislature intending to specifically include the unborn child in the meaning of the term "human being". It stated: "The meaning of the term 'human being' is a highly controversial issue to say the least, and it cannot be settled by linguistic fiat." While this may be true, it is not immediately apparent why a class of unquestionably "human" beings would be excluded from the ordinary meaning of the term "human being" absent a specific intent to do so by the legislature. Especially is this the case when the law has historically provided criminal sanctions to protect the right to life of this class of "human" beings. Nonetheless the Court stated, "The Court is not required to enter the philosophical and theological debates about whether or not a fetus is a person, but, rather to answer the legal question of whether the Quebec legislature has accorded the fetus personhood. Metaphysical arguments may be relevant but they are not the primary focus of inquiry.... The task of properly classifying a fetus in law and science are different pursuits. Ascribing personhood to a fetus in law is a fundamentally normative task."

Trembley also argued that the civil law maxim that the unborn child "will be considered born wherever this is in its interest" should control the issue of abortion. The Court rejected this argument as well stating that the principle, to the extent that is existed, was a "legal fiction" and that, in any event, it was only given application when the unborn child was actually born alive. Otherwise the Court stated, "if he dies before birth he is deemed never to have existed." While the Court's interpretation of the rule may be accurate in regard to economic interests such as the transference of property, it is not clear why it should apply to the issue of abortion where the act being considered is the intentional destruction of the child before birth in order to prevent it from enjoying specific rights, such as that of life. In other words, would the rule protect a third party's intentional killing of an unborn child to prevent the effectiveness of such a conveyance since not being born alive, it can be said in defense of the perpetrator that the child never existed? To say, as the Court did, that "a fetus is treated as a person only where it is necessary to do so in order to protect its interests after it is born," should suggest, in the very least, that what is being treated as a "person" in these cases is from its beginning a "human" being.

In 1988 the Canadian Parliament opened a wide-ranging debate on various proposals to regulate or prohibit abortion subsequent to the Supreme Court's decision in the Morgentaler case. No one statutory proposal received a majority vote during this consideration and the Parliament has failed since that time to enact legislation to restrict abortion in Canada with the result that the performance of abortion has been, as a practical matter, decriminalized in Canada.
PHYSICIAN ASSISTED SUICIDE

In Rodriguez v. British Columbia (Attorney-General)67 the Canadian Supreme Court, in a 5-4 decision rejected the claim of 42-year-old Sue Rodriguez that Section 7 of the Charter protected her right to physician assistance in self-administering a lethal drug. Section 241 of the Canadian Criminal Code provides that "every one who (a) counsels a person to commit suicide, or (b) aids or abets a person to commit suicide [is] liable to imprisonment for a term not to exceed fourteen years." Nine months after losing her appeal before the Supreme Court, Rodriguez, who suffered from amyotrophic lateral sclerosis, committed suicide with the assistance of an unidentified physician. The Court found that the statutory ban on physician-assisted suicide violated the "security of the person" protection of Section 7 of the Charter. The Court stated: "There is no question that personal autonomy, at least with respect to the right to make choices concerning one's own body, control over one's physical and psychological integrity, and basic human dignity, are encompassed within security of the person, at least to the extent of freedom from criminal prohibitions which interfere with these."68 Nonetheless the Court held that Section 241 of the Criminal Code did not violate the Charter because its "deprivation" of the "guarantee" of "security of the person" was accomplished pursuant to the exception clause of Section 7, that is, "in accordance with the principles of fundamental justice."

Significantly, the Court's majority opinion rejected not only the interpretation of the Charter put forward by Rodriguez, but also her characterization of the act of suicide. Writing for the majority, Judge Sopinka stated, Rodriguez "suggests that for the terminally ill, the choice is one of time and manner of death rather than death itself since the latter is inevitable. I disagree. Rather it is one of choosing death instead of allowing natural forces to run their course.... Death is, for all mortals, inevitable. Even when death appears imminent, seeking to control the manner and timing of one's death constitutes a conscious choice of death over life. It follows that life as a value is engaged even in the case of the terminally ill who seek to choose death over life."69 The majority also found that Section 241 was appropriate to safeguard the potential for abuse implicit in any legal scheme to permit physician-assisted suicide. Yet even when "abuse" in a legal sense may be lacking there are nonetheless real and substantial pressures that may arise to influence a terminally ill patient's decision to end his life. "Patients who are enfeebled by disease and devoid of hope may choose assisted suicide not because they are really tired of life but because they think others are tired of them. Some patients, moreover, may feel an obligation to choose death to spare their families the emotional and financial burden of their care. Other patients may succumb to the repeated signals from society that it would prefer to spend its limited resources on other compelling needs."70 To maintain that patients acting under constraints such as these are nonetheless exercising autonomous decision-making is to champion a cramped and simplistic understanding of autonomy.

The dissenting judges all found that equal protection of the law was an important consideration in their view that Rodriguez had a right to physician assistance in committing suicide. Justice McLachlin dissent agreed with the majority's view that Section 7 protected a right of bodily autonomy. She dissented, however, from the majority's conclusion that the statutory prohibition of assisted-suicide was consistent with principles of fundamental justice and therefore fell within the exception clause of Section 7. She maintained that since the law did not prohibit the physically able person from committing suicide it was discriminatory to prohibit the physically disabled person from obtaining assistance to accomplish the same result. Justice McLachlin argued that security of the person was the foremost constitutional issue presented in the Rodriguez case. While she disagreed with her three dissenting colleagues who focused primarily on an equal protection argument, Justice McLachlin's position nonetheless relies on equal protection analysis on the critical issue of whether Section 241 is consistent with principles of fundamental justice.

Chief Justice Lamer relied upon equal protection analysis and refused to join in a "security of the person" or bodily autonomy analysis. He maintained the central issue was discrimination against the
disabled. Section 15 (1) of the Charter provides: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or physical disability." He applying Section 15, Lamer stated, "repeal of the offence of attempted suicide demonstrates that Parliament will no longer preserve human life at the cost of depriving physically able individuals of their right to self-determination. The question to which I must now turn is whether, given the importance of the legislative objective, Parliament is justified in depriving persons with disabilities of their right to an equal measure of self-determination.... Regardless of the safeguards Parliament may wish to adopt, however, I find that an absolute prohibition that is indifferent to the individual or the circumstances in question cannot satisfy the constitutional duty on the government to impair the rights of persons with physical disabilities as little as reasonably possible." 71 Justice Cory essentially found a constitutionally protected right to die; writing, "the life of an individual must include dying. Dying is the final act in the drama of life. If, as I believe, dying is an integral part of living, then as a part of life it is entitled to the constitutional protection provided by Section 7. It follows that the right to die with dignity should be as well protected as is any other aspect of the right to life." 72

The majority opinion may be criticized for a superficial understanding of personal autonomy that led to the conclusion that criminal prohibitions of suicide assistance violate the constitutional principle of security of the person. It may be commended, however, for its strong endorsement of the sanctity of human life, which the Court's majority said was "fundamental" in Canadian law and society. Unfortunately, the Court's earlier analysis of abortion in the Morgentaler case, while developing a broad meaning for the term "liberty" as used in the Charter seized upon a narrow and inadequate understanding of the term "life." 73

In 1995, the Special Committee on Euthanasia and Assisted Suicide of the Canadian Senate issued its final report entitled, Of Life and Death. Among its recommendations were that both non-voluntary and voluntary euthanasia remain criminal offenses and that no revision be made to the criminal prohibition of assisted suicide contained in Section 241 of the Canadian Criminal Code. The Canadian Parliament has followed the recommendations of the Special Committee and has made no revisions to these laws.

CONCLUSION

The laws of the United States and Canada in regard to respect for human life as indicated by their treatment of abortion and physician-assisted suicide while retaining important differences, nonetheless seem to have reached a point of convergence. The supreme courts of both nations have established constitutional protection for a very broad decision-making power on the part of the woman seeking an abortion. Both juridical approaches struck down liberalized abortion statutes, which had sought to reach a type of compromise in the abortion controversy by granting access to "therapeutic" abortions under close medical regulation. In the United States, the abortion choice has been protected as a constitutional right first under the doctrine of "privacy" and later of "liberty" with the result that abortion throughout pregnancy has been virtually decriminalized in the United States. In Canada, the Supreme Court achieved a similar decriminalization by invalidating the national criminal abortion law as a violation of the "security of the person" safeguards of the Canadian Charter. Both the United States and Canadian courts have achieved these results through the adoption of a rather simplistic understanding of personal autonomy and by largely ignoring the biological humanity of the unborn child. Both courts have achieved constitutional protection for abortion by severing the connection between biological humanity and legal personhood through a method that can only raise important questions of continued legal protection of other classes of possibly marginalized human beings in the future. However, in a significant test of the willingness of these courts to extend their doctrines of personal autonomy, the courts have refused to do so in the question of physician-assisted suicide. This suggests that in the
United States, at least, the board but shallow doctrine of autonomy used by the Supreme Court in the *Casey* case to justify continued legal access to abortion may not be easily transferable to other life and death decisions. That in turn may suggest that the Court's doctrine of abortion "liberty" may yet be isolated and some day be reserved in much the same way the earlier doctrine of economic "liberty" was abandoned. The treatment by both courts of the question of physician-assisted suicide suggests that there remains a strong yet by no means universal commitment by society to the preservation and sanctity of human life. Moreover, this is readily apparent in the emphasis both courts placed on society's historical abhorrence of the intentional killing of the innocent. These cases point to why it was important in both the landmark American and Canadian cases establishing broad legal protection of abortion that the biological reality of the unborn child be understated. They also point to why legislation such as that to prohibit "partial-birth" abortion that focuses attention on the biological humanity of the unborn child is also important. Once the victim of the abortion procedure is understood to be fully a human being, there is virtually no precedent in the Anglo-American legal tradition for the legal justification of intentional killing of the innocent. Thus, recent jurisprudence in the United States and Canada call for the articulation not only of a more complete understanding of human autonomy, but also of a more adequate understanding of human anthropology.

6Ibidem, 816.
9Byrn, *op.cit.*, 827.
11410 U.S. 113 (1973).
23Ibidem.
24In addition to Pennsylvania, states that have enacted such laws include Mississippi, Alabama, Louisiana, Minnesota, Ohio, Utah and Wisconsin.


30 See, for example, Women’s Medical Professional Corp. v. Voinovich, 130 F.3d 326 (4th Cir. 1997).

31 See, for example, Richmond Medical Center for Women v. Gilmore, 144 F.3d 326 (4th Cir. 1997).

32 Carhart v. Stenberg, 192 F.3d 1142 (8th Cir. 1999).

33 Public Law 105-277.

34 See Memorandum to Harold Varmus, Director, National Institutes of Health, From Harriet S. Rabb, General Counsel, Department of Health and Human Services, Jan. 15, 1999.

35 J. Furton-M. Mathews-Roth, Stem Cell Research and the Human Embryo, Ethics and Medics, August 1999.


4080 F. 3d 716 (CA2 1996).


46 See v. Oregon, 107 F. 3d 1382 (CA9 1997).


48 Life at Risk, 9/1999, 3 (Feb./Mar. 1999).


51* The author wishes to thank Stephen G. Margeton, Director of Law Library, Columbus School of Law at The Catholic University of America in Washington, D.C. for research assistance regarding Canadian law and court decisions.

53 Ibidim, at pp. 56-57.

54 Ibidim, at p. 53.

55 Ibidim, at p. 164.

56 Ibidim, p. 166.


61 The material presented included statements by Dr. Jerome Lejeune and Dr. Albert Liley before the United States Senate Sub-committee on Constitutional Amendments of the Committee on the Judiciary, 94th Congress, 1st Session.

62 249 (D.L.R.).


64 Ibidim at S.C.R. 553.

65 Ibidim at S.C.R. 552-553.

66 Ibidim.


68 Ibidim at 391 (Sopinka, J., writing for the majority).

69 Ibidim.


72 Ibidim, at 413 (Cory, J., dissenting).

In the Pontifical Council for Pastoral Assistance to Health Care Workers, we are essentially concerned with the problems regarding life. I say essentially because health and life are identical in the final analysis. By health we mean a tension toward physical, psychological, social and spiritual harmony—and not just the absence of illness—which enables man to carry out the mission God has entrusted to him according to the stage in life in which he finds himself. Health is thus the concrete way of living, of carrying out life, and so it is logical for us to be especially concerned with life and for this to be one of the themes that we are always interested in deepening.

I would like to do this by reflecting on the basis of the conceptual richness that John Paul II has given us in the Encyclical Evangelium Vitae, dated March 26, 1995. It presents to us in a very profound way the real situation of the life we are living.

Current Situation
I think it is not difficult to see that we are in a world marked by a Malthusian mentality. It is feared, especially by the First World, that the consumer goods will not be enough for all, and so they thought of suppressing the new table companions at the banquet of life, especially if they come from the Third World, because they will seriously threaten the advantages that the First World thinks they have in their area of privilege. And so campaigns to suppress births have been unleashed everywhere: through contraceptives, sterilization, legitimization of abortion through laws imposed within States, killing in the context of organized crime and corruption or even by the State, such as the killing of girls in China (there the State allows couples to have only one child and so if the first child is female, they kill her after birth so that they can have a chance for the next one to be male), through wars that are never lacking, and through the more and more widespread practice of euthanasia.

The treatment of embryos for scientific purposes is another way of eliminating life by using them as mere experimental material and, in general, all kinds of manipulations in genetic engineering that is carried out with no respect for life as such.

I. The Culture of Death
With these facts before us, we will now begin to reflect on their raison d'être, and we will find this in the Culture of Death that originated in turn in Secularism. In the Encyclical Evangelium Vitae, Pope John Paul II speaks to us about its roots in anger, avarice, irresponsibility, untruthfulness and materialism. In the recent Encyclical Fides et Ratio, the Pope speaks to us about a disregard for metaphysics, relativism and avoiding the truth. I will now try to carry out my reflection along these lines.

- Cartesianism and Secularism
It seems to me that we can say that Secularism - as a form of Western culture that later influenced the whole world - has one of its major origins in the thinking of the French philosopher Rene Descartes. In order to solve his problem of doubt and arrive at an irrefutable certainty, he thought that he could only accept what was a clear and distinct certainty. He thus affirmed that there are only three realities about which it was possible to have such certainty: namely, God, man and the world, with God described as such, man as a "res cogitans" and the world as a "res extensa". However, for these three realities to be accessible as clear and distinct ideas, it was necessary for them to exist in such a way that they did not need any other reality in order to exist, and he called this independence 'substance'. He defined substance as that which exists with no need for anything or anyone else in order to exist. From this
viewpoint, what gives clarity and distinction to thought and thus certainty is independence: something that exists by itself.1

Various problems arose: first of all, how to relate these three entities; second, if one of the three needs the other in order to exist, the thinker readily eliminates God because he does not need him; subsequently, the thinker judges that what is clearest is what is 'extensa'. On the one hand, he is amalgamated with what is 'extensa' and, on the other, he affirms that only what he thinks exists. Before Descartes, reality was conceived of as what exists; subsequently it was conceived of as what is thought and would thus exist to the extent that it is thought. As a result, two philosophical, cultural tendencies developed: materialism and idealism, with various repercussions and inter-relations.

- **Secularism and Evolutionism**
  
  Secularism soon became established because it did without God. Man is understood as closed in himself and in his own creations as an extension of self. In this understanding, as we said, sometimes man is reduced to thought and sometimes to matter, and so different conceptions came about of what man means in his cultural creations. After being reduced to the 'res extensa' in one of the currents of thought, in Positivism and later in Neo-positivism, man asked himself about his origins and thus turned to Evolutionism in which one fundamental element is the "struggle for life".

  Man is understood as a survivor of the higher species over the lower ones. In this conception it is important to note that life appears as a result of a struggle, a struggle to the death, which means the spirit of destruction of the opponent, or hate, which is the same thing, if we can speak about this. When the struggle comes to man, life is meant to be lived within this frame of reference; life is a conquest and it came to this through the hate that meant destruction of the opponent. In this battle field of life, everything goes because the intention is to live and to continue living. This "everything", as the Pope says in *Evangelium Vitae*, stands for anger, avarice, irresponsibility, untruthfulness and total materialism. Life comes to man and is extended in man as a fruit of hate and destruction. This is how we live: life is for the mighty and this means the destruction of the weak, both as individuals and as collectivities. This is the way the culture of death is forged.

- **Secularism, Individualism and Idols**

  In this culture of conquest, the situation that comes about is one of extreme individualism; man is closed in himself and in what is useful to him in order to continue living. This closed individualism, a result of the conquest, is projected on man's appetites which we usually call idols. They are his own convenience which now appears in the form of the idols of possession, power and pleasure: he lives in order to possess; the more he has, the better. For this reason, man needs power to conquer others and subject them. He feels like and struggles to be the despotic owner of everything he finds. He finds great pleasure in this, especially in the area of everything he can experience in the sensual sphere.

  Therefore, the rest of the world is something to be dominated. The value of everything is conditioned by him in his "extension" or materialness. He does not consider nature as something sacred that he must respect and bring to its own end. On the contrary, he considers nature's ultimate end as being man who manipulates it without any limits and takes the elements from it for his own convenience. Matter seems capable of being manipulated to him, with no exceptions, and so he also considers other people and even the vital elements in this way. For this reason, he treats the origin of life as elements that can be totally manipulated according to the whims of the one who is using them. In the area of genetic engineering, there is no limitation other than the convenience and the opinion of the manipulator. Therefore, technology seems to have only one law: what is possible. Its end is excluded, unless this is the finality set not by man as such, but by this concrete man, the technician, the scientist, the politician, etc., who manipulates nature according to his fancy, because this is the limit and the law.

  When dealing with sex, the same law prevails. Everything is taken from the viewpoint of pleasure, the yardstick of pleasure is adopted, and anything that may cause any pain is avoided. When shared life
comes across sex, since shared life is not important if it is not in agreement with the needs of this concrete individual who dominates technology or the economy, life will only be shared to the extent that it is profitable for this individual. The Malthusian mentality originates in this way and arrives at all the positions that limit or even suppress birth when it is not completely in tune with the selfish whims of this concrete man.

Who is this concrete man? Is he the one who has conquered the world through technology, politics and the economy and who, from his conquest, dictates the laws for those who were not able to do as much, who remain on the scale of inferior beings and who, in any case, are not winners? This man, as we have said, lives in collectivities, yes, but in collectivities of selfish individuals that only see their own interests and reject the well-being of those who have not reached the top and do not appear to be winners. This is the culture of death.

II. The Culture of Life

• Faith in God the Creator and Redeemer
In absolute opposition to this position of death the Culture of Life is found. The Culture of Life springs from faith in God, the source of all life, the giver of existence, the Creator, the Word Incarnate, the dead and arisen Christ. It is faith as full openness to God who reveals the mystery of his existence to us and whom we approach reverently before the mystery of his Transcendence that became intimacy for man in the Incarnation of the Word. This is a position contradictorily opposed to the former one, just as life is opposed to death. Life has a model and this model is God, Our Lord, whom we approach through the Incarnation of the Word and through his redeeming death and resurrection. This is the true model of life.

Man's life thus opens up to one fundamental relationship: he is a creature; he was created by God. Life is not obtained by conquering it, like a right to be enjoyed, but by receiving it freely, like an indescribable gift that means creation. However, from the Word Incarnate, life takes on new, unending horizons projected toward everlasting life: God became man so that man will become God, as the Holy Fathers say. Specifically human life has a path to follow that will never end. It is an ever growing quality because its horizon is infinite life: God. And infinite life became history in Christ, the Word Incarnate. Life is thus born from God's love and is love itself. This is a gratuitous relationship between God and man and it thus has an end: namely, to resemble this gratuitous relationship and then to spend oneself in service to others, not as conquest of others, but as sharing, especially with those who have nothing, for human life comes through creation, from nothing. Therefore, it is essentially gratuitousness.

• Sharing in the Life of the Blessed Trinity
The fullness of human life has an eternal end; it is received gratuitously, surpasses man's state as a creature and elevates him to being a child of God. Its contingency, as an existence limited by time, will be overcome by eternity, by eternal life. This is a sharing in God, One and Triune, whose Life consists in an infinite self-giving of the Father to the Son and of the Son to the Father, a giving which in full love is the Holy Spirit. Therefore, human life ought to be an unlimited self-giving for the sake of others, far from a closing in on oneself or individualism; it should be an ever greater opening to and living for others. Man is always a relational being, just as God is the Relational Being. From the relationship with God, in man the relationship is shared with other men and with the other created beings.
Dominion over Creation

Man will dominate over all the other beings of Creation provided that he leads them to the end for which they were created. Therefore, the horizon of Technology and Science is not only what is possible, but the end. Nature has to be manipulated, it is true, but according to its own laws which the Creator has put in it and which converge in man's own good. In the depths of every created being, an end shines which God put there and for which he gave the key to man, the only created being who was wanted for himself and for whom the other created beings serve as a means.

The Origin of Human Life

If we are now concerned with the origin of life and we consider sex, this must be taken as authentic, self-giving love as a deep, vital sign of the love relationship from which life arises in the image of the self-giving love that is life itself in God. Since it is a love of total self-giving, sex appears to be the word comprehensive of love that is only given in the total personal relationship of marriage and the family.

Genetic engineering applied to human generation must have an end: that of facilitating and perfecting this total, personal self-giving and never of impeding or destroying it. When the whole field of genetic engineering enters human life it is not dealing with something that can be manipulated freely but rather with something that it must respect, according to the full quality of life which means the human and divine life of each person.

Human life thus has an ethic; it has an "ethos", a tendency that brings with it the opening up to its own end. This end is received from its effective model which is the divine life of the Word Incarnate and is realized in history in the death and resurrection of Christ. Consequently, human life is a life of total self-giving until death. This is its Ethic: rather than closing oneself into a total individualism, it opens up in fullness and is given to others until death, as a way to their divinization which is the resurrection. Therefore, self-giving does not exclude suffering and pain; it includes them in the cross of Christ. Life is a full life, it is true, but not without difficulties, suffering and death, but a transitory death which in the loving surrender of the Spirit of Love into the hands of the heavenly Father, germinates into an unending life which is the true life yet to come. Life thus enters into the terrain of the divinity and rather than something to be dominated and manipulated, it is enveloped in the Christian mystery that is adored and contemplated.

The Quality of Life

This is the authentic quality of life. The quality of life is the reason for respect for life in any field and so it is obvious that the quality of human life cannot be measured solely by economic coefficients or even merely social or ecological ones. On the contrary, its quality has its essential constituent in the paschal eternity that marks and specifies human life. Contemplation of this quality of life is the proper attitude for approaching it and giving a real foundation to the culture of life. The basis is the relationship of this life with the life of the Word Incarnate, a relationship that is not merely external but projected on the very essence of human life since man is elevated to the dignity of a child of God in the Son of God. There is something inherent in human life itself, not just a mere reference, but something profound which in itself qualifies life, and its quality lets us approach the mystery of life in total adoration of God himself.

For this reason it is obvious that life is not the result of a conquest but the grateful reception of a gift. This gift is absolutely gratuitous and is given to us as a foundation of a new order which is the order of gratuitousness.
• **Evolution**
By saying that life is not a conquest, we are not contradicting the possibility of evolution as the origin of life. With the teaching of the Church, we hold that in the case of the evolution of life on an ascending scale, when we come to man, we do not find a mere development of what was taking place in the lower spheres where the selection of the species is not denied nor the survival of individuals through the selection brought about by the struggle and the predominance of the strongest. When we come to man, however, it is not just a matter of man being just the result of the struggle or the strongest primate. When this culminating stage of life is reached, there is a particular action by God which is repeated permanently in every man, and this is the creation of his soul, or his vital principle which is divine-human through its sharing in the life of the Word Incarnate in his death and resurrection.

• **Triumph of the Culture of Life**
As we said in the beginning, today's world finds itself up against the culture of death, but the culture of life will always prevail, as we said in the previous chapter. In the Encyclical *Evangelium Vitae*, the Pope uses three examples to indicate this certainty of hope to us and it seems very good to repeat them here: the example of the Pharaoh who had all the newborn Hebrew boys killed; the example of Herod who killed all the small boys of Bethlehem, and the example of the mysterious woman of the Apocalypse who gave birth to a son as a dragon was waiting to devour him. The woman was given two wings and flew to the desert where she found safety. Therefore, in today's world we find threats to human life in its origins everywhere. Nonetheless, just as neither the Pharaoh, nor Herod, nor the dragon were successful in their mission of death, so too these threats will not be successful. Life will continue and we will continue to be grateful for it as the great gift that God gives us and leads us to the heights of divine filiation.

The truth about life consists in self-giving, in true love that is built in this self-giving through the exercise of freedom, the freedom that builds life and the personality. Therefore, life, love and freedom are related so deeply that one cannot exist without the others and together they fashion the authentic culture of life.

The Blessed Virgin Mary is our model in the culture of life. Christ came so that we would have life and abundantly. Christ comes to us through Mary. Mary is the source of life; through the Holy Spirit Christ is born of Mary, true God and true man, the only one who gives us real life. In our struggle against the culture of death, it is Mary, the woman of the Apocalypse, who will preserve life and make the culture of life reign in our world definitively. May She intercede for the life of the world so that our world that is so afflicted by many consequences of the culture of death, will have life and abundantly.

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1 Cf. Rene Descartes, Meditation, III, 4; Discourses IV, 5; Principes, I 13 and ss., 51.
ROBERT SPAEMANN
On the Anthropology of
the Encyclical «Evangelium Vitae»

1. That Christ revealed man to man himself, is one of those memorable formulations, which run like a red thread through the magisterial statements of John Paul II. The formulation summarizes in a pointed way what the pastoral constitution, Gaudium et Spes, of the Second Vatican Council put in these words: "The Truth is that only in the mystery of the incarnate Word does the mystery of man take on light. For Adam, the first man, was a figure of Him who was to come, namely, Christ the Lord. Christ the final Adam, by the revelation of the mystery of the Father and His love, fully reveals man to man himself and makes his supreme calling clear" (22).

This formulation implies an axiom which in the encyclical, Evangelium Vitae, likewise catches the reader's attention already in the first sections, for example, in the sentence: "Man is called to a fullness of life which far exceeds the dimensions of his earthly existence, because it consists in the sharing of the very life of God. The loftiness of this supernatural vocation reveals the greatness and the inestimable value of human life even in its temporal phase" (2). It is a teleological axiom. It means: we know fully what something is, only when we know what it is in its final perfection. This is true at least for human beings. We know fully what a human being is, only when we know what he is called to be. This axiom is diametrically opposed to the axiom which dominates our scientific culture and which says: what something is, and therefore also what the human being is, we understand when we know what it is made of and how it came to be. Already Plato's "Phaidon" discusses the difference between these two approaches and works out the primacy of the teleological approach over the genetic one.

2. When talking about human beings, a special problem emerges. We can easily know what a perfect blackbird is. We know what a grown-up blackbird normally looks like, and how it usually sings; we can easily distinguish perfect specimens from less perfect ones. This is more difficult in the case of human beings. It is already difficult to answer the question, Who is a good singer? because singing, like language, is a product of culture, and there are various ideals of bel canto. Likewise, there are, in the different cultures and epochs, various ideals of human perfection; yet the differences are less profound than usually depicted nowadays. It is true, the ideals of beauty are very different; but with respect to the fundamental human moral virtues there is widespread agreement. Wherever the deed of Maximilian Kolbe or the life of Mother Teresa is told, one can meet with almost unanimous approval; and, of course, one can find examples of this in non-Christian cultures as well.

With regard to the two examples just mentioned, it is true, however, that in both cases they had an idea of the ultimate destination and call of the human being, from which their actions followed, and that this idea will not meet with the same universal approval; rather, it has the character of a mystery. Their orientation was not based on the normal and average understanding of what a human being is or on the accepted typology of personal existence characteristic of their civilizations, but rather on the word of Jesus: "Be perfect as your Father in heaven is perfect." And their understanding of what man is called to be was formed by Christian revelation; that is to say: they saw as their call and destiny eternal life with God. It is this call, from which the encyclical takes its starting point without further ado, in order to answer the question as to what the human being is and what his duties are with regard to life, i.e. with regard to the being of man.

3. Against this there are two possible objections. First, one could claim that, by saying this, the pope cut's away the ground from underneath any philosophical anthropology independent of Christian faith. Someone who does not have the Christian faith could therefore not know what the human being is, and therefore would be also ignorant of his duties of man toward his fellow-man. He remains dependent upon the ideas which dominate his culture. The other objection says the reverse: in this way, the pope
would invalidate the difference between nature and the supernatural. If the graced end of the human being, the vision of God, is constitutive for his essence, then this end defines his nature and therefore loses the character of a free gift and becomes something “owed”, ceasing to be gratuitous.

3.1. The answer to the first objection is implied in the encyclical, *Fides et Ratio*. This encyclical takes up for the first time that challenge to the philosophical knowledge of God - and thus to the self-knowledge of humanity - which came about as a result of F. Nietzsche's denial of what had been the unquestioned presuppositions of the classical theology of God: the intelligibility of reality and the possibility of truth. Nietzsche made visible the hidden theological implication of this presupposition. It is true that the First Vatican Council had elevated the possibility of a natural knowledge of God to the status of a dogma. But it is precisely this fact which shows the paradox of the situation: it now becomes a matter of faith that God is not only the object of faith but also of rational knowledge.

*Fides et Ratio* takes up the challenge of this situation. Against the theory of the two tiers [the so-called “Zweistockwerklehre" of grace just added on as a new story atop the previously finished ground floor of nature] on the one hand, and against fideism on the other hand, the encyclical speaks of the mutual grounding of faith and reason. Only through reason does faith become a *rationabile obsequium*. Only when human beings are by nature rational beings and therefore beings capable of truth, can the reality of God become accessible to them. But on the other hand, it is divine revelation and the grace of faith which in turn protect human reason from self-destruction. The reality of God and the possibility of truth are grasped *uno actu* by reason empowered by faith.

This is true for anthropology as well. Contrary to a now widespread prejudice, the existence of God, the immortality of the human soul and the divine judgment which determines our eternal destiny are not merely dogmas of Christian faith or of religions of biblical origins, but they are age-old insights of philosophy. Only in modern civilization have these insights come to be obscured, so that faith is needed in order to restore to reason that courage which was taken away from it already by a D. Hume, when he said: "We never advance one step beyond ourselves". Speaking from the midst of the faith of revelation, the encyclical, *Evangelium Vitae*, does so with the confidence that revelation does not tell humanity something foreign or strange about itself, but something which it can experience immediately as its own truth. "Revelation progressively allows the first notion of immortal life planted by the Creator in the human heart to be grasped with ever greater clarity" (31).

3.2. What do we have to say in response to that second objection, which said that the foundation of the essence of man upon his revealed supernatural destination and calling deprives this destination of its character as a supernatural and freely bestowed grace? This objection was already made in the 16th century against the reformers, who taught that, with its loss of sanctifying grace, humanity was also corrupted entirely in its nature and became incapable of any good action. Catholic theologians at that time developed the fiction of a *natura pura* and a merely natural perfection of humanity, which man would have been able to reach by his own powers. The reason is given for example by Sylvester of Ferrara, when he says: "Nature by itself has inclinations only within the limits of nature"; and: "Nature cannot order something to an end without giving at the same time also the means to achieve this end" (Sylvester of Ferrara, *Opera*, Venice 1535, vol. I, 39-41). Henri de Lubac, hold in high esteem by John Paul II, has dedicated thorough studies to the development of the notion of the supernatural. Saint Thomas did not see the task of a philosophy within the horizons of Christianity chiefly as trying to imagine merely possible worlds, including those in which there would be human beings which are not situated within salvation history. Philosophy and theology are rather concerned with the real world, in which there is no "pure nature". Concerning the relation between grace and nature, Thomas writes in his commentary on Boethius: "Even though man is by nature inclined towards the ultimate end, he cannot achieve it by nature, but only by grace ... and this because of the loftiness of this end."

Ultimately it is the same Creator God who also calls the human being to friendship with himself. Thomas finds the solution of the aforementioned problem in this notion of friendship with God: "What we are capable of by divine help is not entirely impossible for us, according to the words of Aristotle:
What we are capable of through friends, we are somehow capable of by ourselves" (Sth. Ia IIae, qu. 109 art. 4 ad 2). After all, we also say that man by nature is a talking being. But nevertheless he does not start to talk just on his own, but he learns to speak only through the freely given care and attention of other human beings, especially through the solicitude of the mother. The dependence on freely given care belongs to the very notion of man.

4. This interconnection, which might seem so self-evident, first became obscured by the Cartesian call for a "clear and distinct" definition of "substance". Substance was declared to be only that which was capable of being defined without recourse to something else - a claim which can be only fulfilled ultimately by Spinoza's "Deus sive natura". Descartes tried to fulfill this claim by his strict separation of res cogitans and res extensa, of within and without, of subject and object. What gets lost in this separation, what cannot be thought anymore, is: life. Life is essentially withinness and withoutness, both interiority and exteriority, at once being-for-itself and being-in-relation-to-another. In a word: it does not correspond to a this divisive clara et distincta perceptio. Our civilization is still marked today by this separation; indeed, it is governed by it more than ever. The mark of this separation is an unending dialectic of naturalism and spiritualism. There is the worldless subject of knowledge, called "science", and then there is the world of what gets objectified, which has its being only in being made an object of this anonymous science. Life as such is something that does not even exist for science in this sense. What exists are amino-acids on the one hand, and mental states, states of consciousness and emotions on the other hand. The goal of this naturalistic reductionism is to reduce all such states to objects of psychology, to material processes, as if to their true and proper reality.

It is not my task to articulate in this context critical objections to this reductionist program or its Cartesian roots. But it is necessary to at least note this context, in which the anthropology of Evangelium vitae has to be read, because the center of its attention is focused on the phenomenon of life as something unreducible, something that can neither be eliminated nor deduced from something else still more basic. Life is not an object. It is, as Aristotle puts it, "the being of what lives"; and precisely as such, it is essentially invisible. It is impossible to see our seeing, to hear our hearing, or to smell our smelling; and it is impossible to deduce it from something visible. The encyclical takes seriously the statement that life is divine: "All that came to be had life in him, and that life was the light of men, a light that shines in the dark, a light that darkness could not overpower". In the prologue of St. John's Gospel, the notion of divine or supernatural life does not have a merely metaphorical sense. This would be the case if earthly life would be explained from below, from its genesis and its material past. In this case what we receive from above and from below, bios and zoë, would stand in opposition to each other. But as enlightening as the distinction of these two Greek concepts is, it is as meaningful that in the Latin, Romance, Germanic and Slavic languages both are signified by the same term. One of the most beautiful quotes in the encyclical is the celebration of continuum of life emerging from the divine life, formulated by Dionysius, the Pseudo-Areopagite, as follows:
"We must celebrate Eternal Life, from which every other life proceeds. From this, in proportion to its capacities, every being which in any way participates in life receives life. This Divine Life, which is above every other life, gives and preserves life. Every life, every living movement, proceeds from this Life which transcends all life and every principle of life. It is to this that the souls owe their incorruptibility. It is because of this that there live all animals and plants, which receive only the faintest glimmer of life. To men, beings of spirit and matter, Life grants life. Even if we should abandon Life, it converts us and calls us back to itself, because it is overflowing love for man. Not only this: it promises to bring us, soul and body, to perfect life, to immortality. It is too little to say that this Life is alive; rather, it is the Principle of life, the Cause and sole Wellspring of life. Every living thing must contemplate it and give it praise: it is Life which overflows with life" (84).
The divine life is not called "life" in a metaphorical sense; rather, it is the first in a descending line of analogates. The life of plants is the "weakest echo" and, therefore, the least accessible to us. In contrast to the present scientific view, according to which we understand the lowest forms of life the most and ourselves the least, it is rather as Heidegger describes in Being and Time: we can understand the life which is not conscious of itself only in analogy to conscious life and therefore as something which somehow remotely resembles our own life. It is less known to us, what it is to be a bat than what it is to be a human being. Spirit, consciousness are not opposed to life, as a certain philosophy of life maintained, but rather they are the highest expression of life. Life in its fullest sense is conscious life. As St. Thomas writes: "Qui non intelligit, non perfecte vivit, sed habet dimidium vitaeae". "Light" is the life of man, as it says in the prologue of St. John's Gospel. And only God is light, he alone is life totally transparent to itself.

5. Life is the being of human beings, not one of his states. We commonly speak of life as a gift; and the encyclical, too, uses this language of the gift of life repeatedly. But we do not receive this gift as someone might who already exists prior to receiving a gift. For life, the same must be said as is said for being: it is, as Kant puts it, not a "real predicate", i.e. not some property which further characterizes an independently existing being, as if adding in this case that content we term "life". Life is not a state or condition but rather the very being of a being which exists partly in changing and partly in permanent states, in states which one has or whose coming about one produces. The encyclical stresses the priority of being both over having and over producing in this context. The preciousness of human life is not primarily a function of some "quality of life" but first and foremost the preciousness of life itself. Thus it is a perversion, if allowing a human being to live or not is made dependent upon certain states, especially upon the state of being without pain. As far as I know, it was Kant who for the first time developed this argument in the context of a discussion of suicide. In suicide, the human being has come to understand his life, i.e. himself, only as a means to an end, namely for the end of experiencing pleasant states of mind. He thus wishes to terminate his life, when it no longer fulfills this end; in doing so, he violates the ethical commandment to treat human beings always as an end in and for themselves. All "having" has to serve the "being" of the living person, and not vice versa. And so it is with "producing". Life is the basis of all producing, but life is a gift from above, and both the form or pattern of its beginning as well as the form or pattern of its earthly ending are distorted and perverted, if human life itself becomes the aim of merely instrumental reason and activity, the object of production. This, however, is just what happens, wherever the fruitfulness of the generative acts is manipulated or where children are assembled in vitro. It is true: even these children receive their being from God, because, even if man is able to manipulate the conditions of our origin, he will never be the creator of human life. Nevertheless, it remains an injustice to pervert the human form and pattern of the origin of life. Genitum, non factum: this holds true for every image of God. And it is the same with our death. The end of earthly life is part and parcel of life's temporal form and pattern. Since we do not have the gift of life but are this gift, it is not up to us, to destroy this gift instead of giving it back to our creator at the time he wants to change it into immortal life. It is of the essence of death that we endure it. The transformation of suffering into a properly human act (an actus humanus) is the ultimate form of the maturing of a person. We must not "make" death, no more than we may make life. "I am the one who kills and who makes alive": this passage from the book of Deuteronomy is one of the key passages of the papal writing. And besides, here it holds true again: each human being receives his death just as his life from the hand of God. This is true for a victim of murder, as well as for somebody killed in an accident or for those dying of old age. Nothing that happens escapes the divine will. In the Our Father, we ask not simply that his will is done, but that it is be done on earth as it is in heaven, i.e. through a harmony of the human will with the will of God. It is this harmony or conformity which the Church is most concerned about. The Church is thus concerned more about the perpetrators who are in danger of eternal damnation than about the victims who are in God's hand.
6. This is the primary anthropological message of *Evangelia Vitae*: conscious life, i.e. the life of human beings, is the place where it becomes clear what life as such is; for it is here that life becomes transparent with respect to its divine origins. It is "a manifestation of God in the world, a sign of his presence, a trace of his glory" (34). As such it participates in the holiness of God. It is an object of unconditional respect for human beings and thus it is a respect which cannot be made dependent on the existence of certain pleasurable states of mind. It is the pre-condition of human freedom and therefore is not at the disposition of this freedom. It is not a legitimate object of production, but the being which is presupposed by every form of producing and of having; as such, it is "a gift by which God shares something of himself with his creature" (34). To reject this gift is therefore to reject God himself. And similarly it is to misunderstand the nature of this gift, if man is not willing anymore to receive it, but tries to obtain it by force as something to which he has a claim.

The same spirit of violent and violating manipulation is also at the root of the extreme forms of prolonging human life at any cost. To forego the extraordinary and disproportionate means of exaggerated therapy is seen by the encyclical as the expression of the "acceptance of the human condition in the face of death" (65). Exaggerated zeal of this kind often has as its sole purpose the aim of keeping the human body alive until its organs can be used for a transplantation. Today, it is precisely this exaggerated postponement of the moment of death which is depriving death of its dignity and which makes dying as an *actus humanus* and therefore as a part of life an ever rarer event.

7. Having a temporal form and temporal pattern, human life is violated whenever this pattern or form is violated. Cartesian subjectivity, with its *cogito*, restricts itself to the horizon of the instantaneous present. Everything anticipated as well as everything remembered is considered a most uncertain part of objectivity. Even one's own body belongs to this world; it could be an illusion. Its reality is a function not of its resilience to human manipulation but of its plasticity for productive intent. This is different with the person as understood by *Evangelia Vitae*. The being of this person is not consciousness but life, potentially conscious life. Persons are potentially conscious of themselves, but there are no potential persons (121). As soon as persons live, they are real. Human life "will never be made human, if it were not human already" (60). The correlation of personhood and life is the *crux* of this encyclical. Human beings are not living beings in one half and persons in the other, so that being a person could be considered just one of many possible states of these living beings, but it is as persons that they are living beings; and as living beings, they are persons. Life is neither pure subjectivity, nor is it pure objectivity. It is an inseparable unity of inside and outside, of interiority and exteriority; it is an inseparable unity of being-for-itself and being-for-others. As a living being, the human being is part of the community of all that is living, including animals and plants as well. As person the human being is the peak and the end of the entire evolution of life. "Everything in creation is ordered to man and everything is made subject to him" (34). The encyclical combines here two perspectives which in our civilization are often considered to be opposed to each other but which in this abstract isolation from each other both become wrong. On the one hand there is the modern idea of a despotic rule over nature which is expanding itself continuously and which is understood as a battle against nature. Nature is not of itself ordered towards man, but man subdues nature for his purposes without respect or regard for the proper being of other natural beings. On the other hand, and as a reaction to the fateful consequences of this despotic rule over nature there is an enthusiastic movement which recommends that man see himself not as having a certain dominium over nature but as being a mere part of it. But this recommendation or demand is self-contradictory, because no living being of a non-human kind sees itself as a mere part of nature. All living beings see themselves as the center and try to subdue everything else to their ends. They feel no responsibility whatsoever for the whole of nature. It is only that, as non-rational beings, they are not able to transgress certain limits of destructiveness. The ideologists of a limitless rule over nature are therefore following closely something similar to what
their adversary's demand of them from the other side. By seeing themselves as the center of the world, they do nothing specifically human, but they are acting as all other living beings on earth do; but only they by means of reason can expand their rule beyond any limits. That same reason has yet to teach them that they, as the summit of creation and as personal beings have a responsibility unlike that of any other living being. Not because human beings are living beings, but because they are something higher than the other beings living on the earth, are they alone forbidden, as the encyclical says, "to dispose of things simply as they please" (42). Their actions are subject to the commandment of truth.

8. To be capable of truth constitutes the dignity of the human person. Only truth liberates man from being trapped in himself, from the inverted centeredness in oneself characteristic of all non-personal living beings. By their actions, human beings are able to do justice to the things as they are; i.e. they are able to transcend themselves. Self-surrender, self-transcendence, and that is to say: love, is the highest form of life. In this, human beings realize themselves as persons. Because Christ has set an example of this love which surrenders its life for its friends - and this, even "when we were still enemies" (Rom 5: 8), Christ is also the one who revealed man to himself. To love God more than oneself: according to St. Thomas, this belongs to the essence or nature of human beings. An anthropology which is based only on empirical knowledge can never lead to this insight, because what the nature of something is, we know, according to Aristotle, from the way something behaves \textit{ut in plurimis}, that is to say: most of the time. But most of the time human beings do \textit{not} seem to love God more than themselves. Only revelation shows us that the behavior of man \textit{ut in plurimis} does not yet reveal to us his original nature, but that this behavior follows upon fallen nature as a consequence of original sin. "That there is sin": according to the Gospel of John, this is therefore the first thing which is taught to the world by the Spirit of God (John 16: 9). Only in light of this teaching are we able to understand the saying of Jesus with regard to empirical human behavior: "In the beginning it was not like this". "In the beginning..." that is: in truth. As an abiding and exclusive point of departure, empirical knowledge is misleading in this regard. The result would be the sentence of David Hume quoted above: "We never advance one step beyond ourselves." But revelation teaches us that life in its origins is not self-assertion of the fittest, but love; and that human beings are the image of this original life. In this perspective, man does not come to his truth by negation of his life and his vital instincts, as in Buddhism, but through the ultimate intensification of life, i.e. through love; thus, not by the negation but by the affirmation of life. Truly, this affirmation implies also a radical negation, namely the negation of sin; and yet it is not sin, but love which reveals to us what life in its essence truly is. Consciousness and self-consciousness are indeed the distinguishing marks of persons; and yet, not consciousness itself, but life is the \textit{being} of persons.

9. All of this has several far-reaching consequences. One of these consequences concerns the community of persons. Persons are not monadic subjects. They exist only in the plural, starting with God himself, who is not one person but a community of persons. Persons are \textit{a priori} correlated to all other persons in a community of persons. But the community that connects human beings with each other is a community of persons of a special kind; for it is at the same time a relation and relatedness of kinship, a kinship of flesh and blood as well as a spiritual kinship (8). This is of such kind that the biological relations are at the same time personal relations, as it is for the relations between husband and wife, the relations between parents and children, and the relations between siblings. Because they are personal relations, these relationships of kinship are life-long, in contrast to the merely biological relations of kinship most common in the realm of animals. The relationship of kinship between human persons means that it is not only a relation of mutual respect, so that each person would form for the other the limit and border of the unfolding of his freedom. This is the position of individualistic liberalism. Ultimately, this would mean that the other is basically my enemy, because he limits my freedom. "Thus", writes the pope, "society becomes a mass of individuals placed side by side, but
without any mutual bonds. Each one wishes to assert himself independently of the other..." (20). As a consequence of the individualistic view, every unwanted pregnancy, for example, would be some kind of aggression, against which we might well claim a right of self-defense. In the view of the encyclical, however, the other is not primarily a threat to one's own freedom, but rather its pre-condition. The other first provides meaning and content to freedom. The relation between human beings is a relation of kinship: from this follows that this relation is not only one of respect but one of solidarity and mutual responsibility. This is expressed in the account of Cain and Abel, to which the encyclical at its very beginning dedicates a very meticulous meditation. After the fratricide God does not ask: "Did you respect your brother?" but: "Where is your brother?"

God demands from Cain that he know where his brother is. And it is precisely this, which Cain denies: "Am I my brother's keeper?" At the root of this denial of responsibility for the brother lies hidden the mind of the murderer. Because respect for the person is concretized in the respect for life, it has to be concretized as an active readiness to help; and this, because every earthly life is weak and needy of help, dependent on the solidarity of others. It is impossible to respect the weak and needy person without helping him. In this view of humanity as a family and in view of the call for a public order in which family in the narrower sense is placed at the core of our concern, the profound disagreement is clear between the view of the Church and that of modern liberalism - of which socialism is only one sub-species.

10. If the being of a person constitutes his dignity, then this has consequences also for the understanding of the relation between generation and our becoming persons. It is the traditional Catholic teaching that each human soul is created immediately by God and that therefore all human beings are "immediate to God". The relation between the generation and the creation of the soul, however, has in the past been depicted too externally and, so to speak, in occasionalistic fashion: the parents first generate the body, and God has obliged himself to create a fitting soul, whenever such a body emerges. This depiction creates more problems than it solves. It fails to recognize especially that human beings have only one soul and that the rational soul is at the same time that what makes the human body a human body in the first place, i.e. that it is the forma corporis. Parents cannot generate a soul-less body; for it is also true that every substantial being is, in a certain sense, created immediately by God.

Once something has come to exist in itself, it has emancipated itself from the contingent conditions, which once conditioned its becoming. Human beings cannot make substances but can only produce changes in natural substances; and generation is more than production. The generated being is not the "creature" of its generators, but it exists independently of them. It comes from the same origins as they. Precisely because of this, each human being has his own right of place in human society not as an elected or co-opted, but as a born member. Generation, therefore, is an act in which man transcends himself. In doing what he does, something emerges totally different from what he himself immediately intended: the embrace of his wife. Thus it is not the attitude of producing, but that of receiving which is appropriate in this case. Instead of the occasionalistic view in which the parents generate merely the human body, the encyclical, Evangelium Vitae, - quoting an earlier letter of John Paul II to the families - says: "The genealogy of the person is inscribed in the very biology of generation" (43). And: "God himself is present in human fatherhood and motherhood quite differently than he is present in all other instances of begetting 'on earth'. Indeed, God alone is the source of that 'image and likeness' which is proper to the human being, as it was received at Creation. Begetting is the continuation of Creation" (43). In other words: by generating a human being, the parents generate a person, because the living being, man, is person. But since generation is not production, the new human being is nevertheless made not by man, but directly by God. Generation is an act, which by nature (and in contrast to production) is open for the emergence of a new being, a being that those who generated it cannot but behold with awe, confronted with a direct creation of God. I cannot unfold in the context of these
11. Another consequence of this thesis concerns personal communication. It is, as we have seen, constitutive of a person to stand in relation to other persons. From this insight, however, some followers of "pro choice" today want to conclude that human beings begin to be persons only when they have entered into the context of personal communication. For them, however, personal communication is the communication by conscious symbols. This view is rejected by *Evangelium Vitae* (19). Since the being of a person does not consist in consciousness but in life, and since consciousness is only an intensified form of life, personal communication, too, precedes consciousness. The encyclical speaks about communication "through the silent language of a profound sharing of affection." We find this non-verbal form of communication at the beginning and at the end of human life; it is the pre-condition for the emergence of the verbal forms of communication. It does not have any decision to thank for its existence, but it emerges, as it were, "by nature", whenever a new human being announces his presence. As the central message of *Evangelium Vitae* underscores, the person does not begin, where nature ends; nor spirit begin, where biology ends. With this, the encyclical is here- in contrast to liberalistic theories of subjectivity - in full accordance with the insights of modern biological anthropology, which shows us that there is a strict continuum in the evolution from the embryo to the adult human being, that man is man from the beginning and that being a human being does not begin where animal life ends. Similarly culture does not first begin, where nature ends. In fact, the word "cultura" originally means agriculture or wine growing, and therefore the refinement, not the annihilation of nature. Generation, birth, sexuality, eating, drinking, dying - all these are biological processes. But what is human about them does not begin on the other side of these processes, rather it realizes itself in them. Even life with God is presented to us by the Church as a banquet on the occasion of a wedding! The modern dialectic of naturalism versus spiritualism, by naturalizing and de-humanizing the concept of life, destroys at the same time the core of every human culture. In his encyclical the pope speaks, as he did repeatedly before, about the "culture of death". The "culture of death" has the paradoxical, the self-contradictory character of an oxymoron. There is no culture if not a culture of life. By defending this culture, *Evangelium Vitae* also defends the basis of all human culture. Against materialistic naturalism, it defends the human being as a person and as a being of culture precisely by defending him as a living being. The being of persons is: life.

12. Finally: one last consideration. Responsibility for man as a living being can be understood in two different ways: as responsibility for human beings who are entrusted to us and in some way have become our "neighbors", or as responsibility for an abstract number of human beings or living beings whose well-being we are obliged to maximize. It is the conflict between these two points of view, which is at bottom of the tragic debate about the problem of pregnancy counseling. The consequentialist imperative reads: "Act in such a way that you contribute by your action as much as possible to the protection of human life as a whole, even if, for this purpose, it is necessary to collaborate in the killing of individual innocent people." The traditional Christian imperative, which at the same time is the imperative of the whole tradition of European philosophy, concurs with the consequentialist imperative in the aim to save as many lives as possible; but it is not ready to pursue this aim at any cost. It excludes the killing of a certain number of people for the purpose of saving an uncertain number of people. The encyclical *Veritatis Splendor* has, in defense of the classical ethics of Christianity and the tradition of natural law, thoroughly criticized consequentialism and clearly
condemned it. *Evangelium Vitae* applies this condemnation to the theme of the preservation of human life and declares that it is never permitted to collaborate in the killing of innocent people, if this collaboration "either by its nature or by the form it takes in a concrete situation, can be defined as a direct participation in an act against innocent human life or a participation in the immoral intention of the person committing it" (74). Such an action, it says further on, would be "intrinsically incompatible with human dignity".

I do not want to repeat here all the reasons, which speak against consequentialism. I only want to point to the close relationship between the rejection of consequentialism and the understanding of human persons as living beings. Consequentialism, also called "teleological ethics" by its proponents, makes manifest in an exemplary way the dialectic of spiritualism and naturalism, about which I spoke earlier. In this type of ethics, the object of moral actions is not the individual person or even many individual persons, but an indefinite number of living beings, whose well being is to be maximized. Subject of this ethics is an abstract subject with universal responsibility. As moral beings, we are - in this approach - not men among fellow-men, embedded in relations of closeness and distance, and embedded in an *ordo amoris* which emerges from such relations, situated in one's respective concrete responsibilities. Quite to the contrary: for an author like Peter Singer, it is outright immoral to take into account such creaturely relationships. In his view, parents do not have any right to save their own children first, if many children are endangered. And Singer disqualifies it as "speciesism", if human beings feel higher responsibility for a human infant than for a full-grown pig. Christian theologians would not agree with this consequence. But they often do agree with the principles from which it is drawn, when they claim the necessity of a divine viewpoint: a viewpoint beyond any concrete relations of solidarity. Saint Thomas explicitly rejected this claim, when he wrote that it is not only impossible but not even permitted for human beings to want what God wants, i.e. to assume the viewpoint of God. One reason for this is: we do not know God's viewpoint. Rather we are called to take our orientation from what God wants us to want. What this is, we are taught by the commandments and by practical reason. In other words: the human person is not God and is not supposed to try to play God. As living beings, we are embedded in earthly contexts of life. We are living beings and, as such, creatures. We do not have a total responsibility, for which, acting on behalf of everything, everything would be allowed to us. Lenin, by contrast, was an adherent of such a teleological ethic: "For us everything is permitted", namely: because we know what is the best for mankind. But in fact: only God knows this. It is precisely as finite beings that we are subject to divine prohibitions, and no aim, however sublime, can dispense us from the fulfillment of such prohibitions. It is true, the will "to keep oneself unstained by this world", as the Apostle put it, is slandered in my country, even by bishops, as moral egoism. But in fact it is only the expression of creaturely humility. In teaching that persons are living beings and living beings are persons, the encyclical teaches this basic humility, without which no human being can abide in the truth.
JACQUES SIMPORÉ
In the aftermath of «Évangélum vitæ»:
the protection and promotion of life in Burkina Faso

Burkina Faso, the former Upper Volta, situated in the heart of West Africa, is a country covering
274,200 square kilometres. It is bordered by six countries: Ivory Coast, Ghana, Mali, Togo, Benin and Niger. At the present time it has a population of some ten million, divided between some sixty different
ethnic groups. Each ethnic group has its own language, culture, customs and traditions. In spite of this
diversity, all these peoples have in the past held in common a pro-birth mentality; for the simple reason
that infantile mortality was very high. The couple who gave birth to seven children had the statistical
probability of ending up with only four adult children alive; so that those families who had only three
children risked losing them all due to the many epidemics, endemic diseases and famine from which
the country suffered. Moreover, farming was largely unmechanized, and many hands were needed to
ensure good harvests. All these factors help to explain the maxim of those who affirm that "Africa has a
great hunger for fertility".

For these peoples life is a gift of God, and as a consequence it is sacred. So we may begin by posing
two legitimate questions:
- If human life is sacred, as advocated by these peoples, why then did they practice human sacrifice
and, in particular situations, abortion?
- What is the impact of the ideological repercussions on life and its protection following the encounter
with Western civilization?

To conclude, we will discuss what steps the Episcopal Conference of Burkina Niger is taking to
promote life in Burkina Faso today.

The promotion of life in the traditional societies of Burkina Faso
As we have just emphasized, human life was sacred and still remains sacred for the Bobo, the
Boussancé, the Gourounsi, the Lobi, the Mandé, the Mossi, the Nyonyose, the Peuls, the Poeese, the
Sénoufo, ... and for all the ethnic groups of Burkina Faso.

So why was human sacrifice practised and why were there cases of abortion in the past? For these
peoples, a grievous sin committed by an individual against God, against the ancestors or against society
results in a cosmic imbalance. Incest, sexual deviations such as homosexuality, sodomy and zoophilia
were regarded as great profanations of mother earth. When such aberrations took place, a great
reparation was called for, a heavy sacrifice to reconcile heaven and earth. If this did not happen, the
heavens would dry up and untold cosmic scourges would fall on society. Just as a surgeon amputates a
gangrenous leg to prevent an infection from spreading and to restore health to the rest of the body, so
these peoples ejected by poisoning, by capital punishment, or by sacrifice all those who had a deviant
sexual conduct. This desire for social purification, far from being an expression of personal egoism,
would explain human sacrifices and abortions in the case of rape, incest and grave genetic
malformations.

How did these traditional peoples strive to defend life?
In traditional Burkina society, virginity had an honoured place. It was imperative that all girls should
reach marriageable age with their virginity intact. Among certain "tribes", the young husband, on the
morning following the wedding night, had to show to his family and his wife's family the blood-stained
sheet as proof that his bride had kept her virginity intact until their first nuptial union. In the absence of
this blood-stained sheet, the family of the in-laws was covered with shame and blamed for having
failed to bring up their daughter in the right way. All families did their best to ensure that no such
shame was visited on them and, consequently, there were no unmarried mothers and "unwanted"
children in these societies.
What might one say of the violent reaction of the 97-year-old woman, who saw her great-grand-daughter return home exhausted because she had just had an abortion! Indignant, the old lady burst into sobs, and amid her tears the following words could be made out: "You treat me as an old woman. You say I'm out of date and out of touch; that I no longer know anything about the times or the world we are living in. This year, I and my husband are celebrating eighty years of our marriage. I have known no other man but him and it's a certainty, look at my physique, that I shan't know any other man before my death. You young people, you always have the word love on your lips. But you don't know how to love; you promise fidelity to each other, but so often you only try to deceive each other in an underhand way. You get married at dawn and already by dusk you are before the law court to apply for a divorce. Often, selfishness prompts you to repudiate the fruit of your womb. My grand-daughter, what has your unborn child done to you that you should kill it by abortion? What is the nature of its fault, tell me! For pity's sake, learn to love, learn to defend life, learn to live in dignity and life will make you noble". This cri de coeur of an old lady close to celebrating her centenary marks the collision between two cultures: traditional culture and so-called modern culture, badly assimilated. But what does the law of Burkina Faso actually say about human life?

The right to life: a right variously understood and variously protected

Nowhere in the laws of Burkina Faso does one find a clear definition of human life. The Constitution of 11 June 1991, at the end of paragraph one of article 2, guarantees its protection, but does not spell out exactly what is meant by this. Life is more a notion defined and discussed in philosophy, in theology and in biology than in law. Nonetheless the State of Burkina Faso has fully subscribed to the Universal Declaration of Human Rights of 1948 and adheres without quibble to the African Charter of the Rights of Man and of Peoples of 1981. Under the law of Burkina Faso, the child, if its interest requires it, may acquire rights from the very moment of its conception, so long as it is born alive: "Infans conceptus pro jam nato habetur quoties de commodis ejus agitur". This principle inspired article 2, paragraph 3 of the Code des personnes et de la famille: "[Juridical] personality begins with the actual birth of the living child; it ends with death". In the view of Prof. Filiga Michel Sawadogo, on the other hand, "the right to life only has content and significance in relation to the juridical nature accorded to the embryo". In brief, the delicacy of the debate around the nature of the embryo has not permitted the legislators of Burkina Faso to resolve it in one way or another. But what is certain, as far as the legal system of Faso is concerned, is that the birth of the living child is the real point of departure of juridical personality. Until 1996 procured abortion in Burkina was categorically prohibited. The Penal Code now in force prohibits in general all voluntary interruption of pregnancy (VIP) or attempted VIP, with the exception of certain well-defined circumstances:
- If the prolongation of pregnancy places the woman's health in peril;
- If there exists a strong probability that the child to be born will be affected by a disease of a particular gravity recognized to be incurable at the time of diagnosis;
- In the event of rape or incest.

With the exception of these cases, abortion is regarded as a crime, and contraventions are severely punished. The Penal Code punishes the woman who has an abortion, her accomplices and those who help her to carry it out. The punishment is imprisonment from one to five years and a fine of from 300,000 to 1,500,000 CFA francs. If abortion results in the woman's death, the term of imprisonment is from ten to twenty years. And in the case where the culprit regularly commits such acts, the imprisonment is from five to ten years or for life. The Penal Code also punishes those who incite abortion by any means of diffusion or publicity with imprisonment of from two months to two years and a fine of from 50,000 to 600,000 CFA francs, or one of these two punishments only. Unfortunately, when one examines the various forms of legislation relating to VIP, one notes that even those that are less permissive with regard to it do not turn the right to life into an absolute principle. In
Burkina Faso, the very repressive character of the legislation on VIP might lead one to assume that it would totally guarantee the right to life. In fact it does not. In our time, the field of therapeutic abortion has been expanded due to the prenatal diagnosis which had not been foreseen by the Burkina legislator prior to 1996. In this context, the legislator seems to place the decision whether to abort or not totally in the sphere of the mother's private life. Even if she is receiving medical advice, she still retains the right to decide for herself whether to proceed to VIP if she considers herself to be placed in a situation of distress.14 This decision, in the view of Prof. Sawadongo, "falls under the woman's right to dispose of her own body as she thinks fit".15 This right was reiterated by the Council of State, which ruled that, though article L 162-4 of the Code Santé publique (Code of Public Health) makes provision, as an optional, for the couple to participate in the consultation and in the decision to take, this text "neither has as its object nor its effect that of depriving the woman, who has attained her majority, of the right to evaluate for herself whether her situation justifies the interruption of pregnancy".16

As far as the termination of juridical personality is concerned, it is fixed at the moment of death. The juridical status of the corpse is not exactly that of an inanimate thing, since the law continues to guarantee it some protection. Article 193 of the Penal Code thus punishes the profanation and mutilation of corpses.

One may say, therefore, that the law of Burkina Faso does grant protection to the human being from conception to inhumation (and even after burial the dead are protected!), but that it distinguishes the period in which, according to the law, a human person exists, i.e. has juridical personality (from the birth of the living child to death), from the two other periods in which it respects the potential human being (the embryo) or the past human being (the dead).

**How does the Catholic Church campaign for the promotion of life in Burkina Faso?**

Faced by an Africa threatened by every kind of evil, Ecclesia in Africa unites itself with *Humanae vitae* and *Evangelium vitae* and proclaims the need to safeguard the African family: "Do not allow the African family to be ridiculed on its own soil!".17 According to this document, life is threatened in Africa by:
- "fratricidal wars which are decimating peoples and destroying their natural and cultural resources";
- "tribalism, nepotism, racism, religious intolerance and the thirst for power taken to the extreme by totalitarian regimes which trample with impunity the rights and dignity of the person";18 all these factors do not favour the birth and development of human life.

That is why, in the wake of *Humanae vitae, Evangelium vitae* and *Ecclesia in Africa*, the Episcopal Conference of Burkina Niger is campaigning for the promotion of human life. In its teaching it urges "responsible paternity";19 condemns abortion,20 euthanasia,21 capital punishment;22 combats illicit means of birth control23 and the prostitution of young girls; appeals to Christian spouses to be faithful to the teaching of the Universal Church;24 and helps to train health-care personnel25 through conferences, meditations, courses, congresses of bioethics and seminars.

The various institutes of consecrated life, through their specific charism, act on behalf of the Church and in the name of the Church in favour of the Gospel of life.

In this perspective:
- the young are educated and formed in respect for life by religious in their formation houses: seminaries, junior and senior high schools and colleges;
- premature babies, orphans, the handicapped, widows, the elderly living alone, lepers, victims of AIDS and other vulnerable groups are helped without distinction of ethnic group, sex, culture or religion is the 95 Catholic health-care structures of the country.

What can we say by way of conclusion?

The peoples of traditional Burkina Faso prescribed terrific punishments, including interdictions, sacrifices and capital punishment, in order to keep their society purified and intact. This was their way
of preventing deviations and promoting the birth and development of human life. Today, the time-honoured values such as virginity, chastity, fidelity, conjugal, parental and filial love are tending to dissolve in the sulphuric acid produced by unhealthy commercialism, social disintegration, individual and social selfishness.

Lay Christians, like the leaven of the Gospel, are trying systematically, in this earthly city, to stem the damage by limiting the permissive cases of abortion by restrictive laws. The Church's hierarchy, for its part, faithful to *Evangelium vitae*, is striving, in its teaching, ruling and sanctifying role, to present life as a gift of God. And consequently: from the moment of the fertilization of the egg by the sperm to the suffering of the terminally-ill patient, to the person's very last breath, the life we have been given as a gift of God is inviolable: it is a life to be protected, a life to be promoted in all its integrity, a life to be respected.

At the dawn of the Redemption, the birth of a child was proclaimed as the good news of salvation, a gospel of life: "I bring you news of a great joy which will come to all the people; for to you is born this day in the city of David a Saviour, who is Christ the Lord". What shall we do at the dawn of this third millennium to keep ever lit, without complacency, this torch of the gospel of life which has been handed down to us from generation to generation? As a proverb from Burkina Faso says:

"if you share your grief, it diminishes;
if you share your roof, it rests the same;
but if you share your joy, it increases and spreads".

May we, in this time of globalization, of solidarity between peoples, and of concert between nations, increasingly proclaim the good news of life! May we share our experiences on the defence of life and so banish for ever the ego, the "I" that fetters us to our own self-interest! May we join together in dancing for ever to the symphony of love, to the beat of the tam-tam of the germination of life!
2 Constitution of the 4th Republic of Burkina, adopted by referendum on 2 June and promulgated on 11 June 1991; article n° 2.
3 "The conceived child is to be considered born whenever its interest is at stake".
7 Code pénal du Burkina Faso, article 386.
8 ibidem, article 387, para one.
9 ibidem, article 387, para two.
10 ibidem, article 383, para two.
11 ibidem, article 383.
12 ibidem, article 383, para one.
13 ibidem, article 383, para two.
17 Ecclesia in Africa, n° 84.
18 Ibidem, n°. 117.
19 Humanae Vitae, n° 7; 10.
20 Evangelium vitae, nos. 58-3.
21 ibidem, nos. 40; 57; 64-67.
22 ibidem, nos. 27, 56.
23 Humanae Vitae, no. 14.
24 Ibidem, no. 25.
25 Ibidem, no. 27.
26 Lk 2:10-11.

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JOSEPH SANTAMARIA
RECENT LEGISLATIVE AND JUDICIAL TENDENCIES
REGARDING RESPECT FOR LIFE IN NORTH AMERICA AND AUSTRALIA

PART ONE
PROCURED ABORTION

1. Introduction - Historical

The pro-life struggle has been an unrelenting one during the last 40 years of the 20th. century. In the English speaking countries of the first world, most jurisdictions have in place decisions of their legislatures or of their courts which effectively allow abortion on demand. This is true of the North American continent and the continent of Australia. In Australia, we have the Crimes' Acts which limit induced abortion to saving the life of the mother. However, abortion is also a state matter. Three of the states and territories have liberalised abortion by statute and the others have established its legitimacy by Common Law decisions.

The origin of this evolution can be traced to an English Court decision in 1938. It is known as the Bourne case. Bourne was a gynaecologist who decided to test the law in England when a 15 year old girl was reputed to have become pregnant after a pack rape. He carried out an induced abortion and was promptly charged but was acquitted when the judge decided that the patient's mental well-being was at risk if the pregnancy had not been terminated. This decision was based on the provisions of a statute law known as The Infant Life Preservation Act of 1929. The presiding Judge Macnaghten based his opinion on an interpretation of the meaning of the word "unlawful." He extended the concept of saving the life of the mother to include "the prevention of rendering the mother a physical or mental wreck."

It is interesting that Dr. Bourne was an early member of the Abortion Law Reform Association (ALRA), the foremost pro-abortion lobby in the United Kingdom, which was formed in 1936. However, by 1967, he had abandoned this association and became a member of the opposing camp, the Society for the Protection of the Unborn Child (SPUC).

ALRA gathered strength and realised that liberalised abortion would only occur through political action. From 1952 to 1967, it managed to foster 8 Abortion Bills - the last was the successful David Steel Abortion Bill introduced into the House of Commons in 1967. Whilst the organization's membership was not large, its operatives were energetic and had acquired skills during the long political haul. They developed the techniques that became the model for similar organizations in the United States, Canada, Australia and New Zealand. They positioned themselves in the medical profession, the women's organizations, the birth control groups, para-political bodies, the civil libertarians, the humanist society and of course the media. They won strong financial support from Charitable Foundations and were backed by the International Planned Parenthood Federation. They organised demonstrations, using emotive language (see Comments) and fabricated statistics about the death rates for backyard abortions. They conducted "skillfully manipulated " opinion polls based on hard cases, biased interpretations and the respectability of supporting professionals. They learned how to project these as "majority community opinions" which had a telling effect on the voting behaviour of elected members of Parliament. It is interesting also that about three quarters of their active membership declared themselves to be either atheist or agnostic. They spent a great deal of money on the media and promoted a high profile as a disadvantaged group, or, in the language of today, of a group subject to social discrimination. (see Duffy P.) The Macnaghten decision had its repercussions in Australia when Justice Menhennit of the Supreme Court of the state of Victoria gave a momentous decision in 1969, similar to the Bourne case in Britain, defining abortion as lawful to preserve the
physical and mental health of the mother. In South Australia, in 1969, the state legislature passed an
Abortion Act somewhat more restrictive than the British Act as it excluded socioeconomic conditions
as indications for a legal abortion. Similar legislation was passed in various jurisdictions in the United
States before they were superseded by the *Roe v Wade* decision of the Supreme Court of the United

Up until that 1973 decision in the United States, the battle over Abortion Law Reform had oscillated
around such issues as Hard Cases, Uncertain Laws, Illegal Abortions and Backyard Deaths, Women's
Rights, the Status of the Fetus and Population Control. A pattern had emerged which progressed in
three stages:

Stage 1. The legitimisation of induced abortion for a small number of cases which appealed to the
politicians and judges as reasonable humanitarian responses, such as danger to the life of the mother,
pregnancy after rape and even severe fetal abnormality.

Stage 2. The indications were expanded to deal with other hard cases but now the field opened up to
psychosocial indications such as deserted wives, unmarried teenagers, large families, career
commitments. Once these factors were accepted, it was plain sailing to

Stage 3 which is abortion on demand. This was mostly achieved without further specific legislation as
easy abortion was normalised and the police found it difficult to mount any sustainable charge. Even if
they did bring a charge of an illegal abortion, it was perceived that the law would be expanded to
accommodate the situation as presented to the court.

**The Supreme Court of the U.S.A. - A Watershed Decision - 1973**

The decision of the Supreme Court of the United States was precipitated by an appeal to the highest
court in the nation which was asked the question:

**Does the Constitution of the United States embrace the right of a woman to obtain an abortion,
nullifying the prohibition of abortion in the state of Texas?**

The plaintiff Roe was Norma McCorvey who never did have an induced abortion and who eventually
wrote a book about how she was manipulated by radical feminists. (The book is called *Won by Love*).
The Supreme Court ruled that a woman's right to an abortion fell within the right of Privacy
(recognised in *Griswold v Connecticut* - 1965) protected by the Fourteenth Amendment (Anderson,
C). The decision gave a woman a right to abortion during the entire pregnancy and defined different
levels of state interest for regulating abortion in the second and third trimesters.

As a result, the laws of 46 states were affected by the Court's ruling. The annual rate of induced
abortions in the United States is stated to be between 1.0 and 1.5 million.

*Roe v Wade* must be considered in conjunction with a companion judgment of the Supreme Court
known as *Doe v Bolton* 1973. Those two decisions effectively allowed any woman to have an abortion
on request throughout the whole of pregnancy.

In Canada, the Supreme Court of that nation made a similar decision in 1988, in the case of Regina v
Morgentaler which changed the long standing prohibition of induced abortion found in the Canadian
Criminal Code. The judges of the Canadian Supreme Court have based their decisions on
interpretations of the Charter of Human Rights and Freedom which was promulgated in 1982. The
judges have adopted the approach of their American counterparts which is to disenfranchise the unborn
child who is not accepted as a person protected by the Charter.

**Division in the Supreme Court of the U.S.A.**

Interestingly, in a Judgment of the Supreme Court in 1992, four of the judges were reported as saying:
They claimed that the Roe Court (in 1973) had overreached itself in establishing a right to abort a fetus

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from a study of other decisions..."None of these decisions endorsed an all encompassing 'right to privacy', as Roe claimed.

"Because abortion involves the purposeful termination of potential life, the abortion decision must be recognised as *sui generis*, different in kind from the rights protected in the earlier cases under the rubric of personal or family privacy and autonomy. And the historical traditions of the American people - as evidenced by the English Common Law and by the American abortion statutes in existence both at the time of the Fourteenth Amendment adoption and Roe's issuance - do not support the view that the right to terminate one's pregnancy is 'fundamental'." (see Attachment 1).

Also interesting were the remarks of the other five judges:
Overruling *Roe's* central holding would not only reach an unjustifiable result under *stare decisis* principles, but would seriously weaken the Court's capacity to exercise the judicial power and to function as the Supreme Court of a Nation dedicated to the rule of law...........A decision to overrule *Roe's* essential holding under the existing circumstances would address error, if error there was, at the cost of both profound and unnecessary damage to the Court's legitimacy and to the Nation's commitment to the rule of law. ...
pp 22 -27. (see attachment 1).

It is apparent that the Supreme Court of the United States, when it made its decision on Abortion, did so on evidence that was inaccurate on biological grounds and was suspect on legal grounds. In the two cases, the plaintiffs were manipulated by their legal counsels. In 1995, Jane Roe (McCorvey) claimed that Abortion in the United States was 'founded on lies and deception from the very beginning." Jane Doe (Cano) claimed that Doe v Bolton "is based on deceit and fraud."
(See http://www.roewvade.org/roedoe3.html December 21,1999)

It is incomprehensible to me that such a far reaching Law can be formulated in this manner and create a Precedent for the interpretation of a national constitution and for other disputed issues. It is even more disturbing when one notes the purpose of the Fourteenth Amendment of the American Constitution which was formulated in 1868, three years after the end of the Civil War (1861 - 1865). That amendment sought to be all-embracing, so that no human being could be exploited nor treated unjustly. The only explanation that I can give is that the Law has become a system *sui generis*, with no relevance to the truth of human anthropology nor to the concepts of human flourishing and the Common Good. (see later - An Analogy )

**Partial Birth Abortion**

**a. The United States of America**

Partial Birth Abortion (PBA) has come under strong challenge in various jurisdictions in the United States and in the State of Victoria in Australia. Although the US President has consistently vetoed the Congress which has twice passed legislation to ban partial birth abortions (but without sufficient numbers to overrule the presidential veto), the states have some powers after the unborn child is viable (24 - 28 weeks). Several states have passed legislation, banning PBA - 28 according to an internet source but 19 have been blocked by Federal courts. The main petitioner against these bans is Planned Parenthood which runs many of the Abortion Services in the United States and it is obvious that the abortion providers are prepared to chase the issue to the Supreme Court of the United States. In Missouri, the state legislature passed their ban in September 99 with more than the two thirds majority needed to override the veto of the Governor. However, several judges of the Supreme Court have postulated that the 1973 decision granted women a
"fundamental right" to abortion and states should not impose "undue burdens" on their freedom of choice. The other judges dispute this interpretation, and the upshot is a deeply divided court.

b. Australia.

In Australia, the question of Partial Birth Abortion was referred by the Government of Victoria to the Medical Practitioners' Board which, in 1998, after a long inquiry, issued an equivocal response, due to disagreement among the Board members. The Government did not ban the procedure but stipulated that such abortions could only be performed in a small number of public hospitals. No other state or court has been involved in this issue.

c. A Side Issue.

In the United States, a gruesome situation seems to have arisen with the claim that the abortion industry has a commercial interest in sustaining late term abortions, insofar as the aborted, viable fetuses are used as a source of fetal parts. These are harvested and then sold to "tissue researchers, pharmaceutical companies and universities."

(see Life Dynamics Interview, September 29, 1999: http://justice.oct.net/national.html). There is no report of any legal response to this claim.

Other Matters.

Three other matters have attracted the intervention of the Courts in the United States.

a. Pro-life groups have sought to limit the incidence of procured abortion by seeking amendments to existing legislation, so that women receive full information about the nature of the procedure and the nature of the fetus at the gestational age of the proposed abortion (the so-called Heartbeat Rule). Moreover they have sought to extend state provisions about parental consent in the case of pregnant minors and a Bill is before the House of Representatives that will prohibit transportation of pregnant minors out of those states where parental approval is required for the abortion to be done. (Child Custody Protection Bill S.661, HR 1218).

This use of the law is contested by the pro-abortionists, usually on the grounds that it seeks to frustrate the free choice of a pregnant woman to exercise a "fundamental human right" protected by the principle of privacy within the constitution. This approach of the pro-life groups also seems to be in accord with the principle enunciated in Section 73 of Evangelium Vitae.

b. The second matter is the legal harassment of demonstrating pro-life groups outside abortion facilities. An important order was recently issued by a Federal Court judge which prohibited Joseph Scheidler and other Operation Rescue associates from impeding the activities of Abortion Clinics for the next 12 years. This was in addition to a massive damages payment. This is a devastating blow to such pro-life engagements. This judgment invoked an Act which was originally designed to deal with the criminal behaviour of the Mafia (the RICO Act). The pro-abortion lobby is well served by an accomplished group of attorneys who are geared to deliver these counter blows through the judicial system.

c. A third issue has emerged in recent times, mainly in the North American continent. It is known as Protection of Conscience Laws to ensure that health workers are not forced to assist in procedures against which they have a conscientious objection, such as abortion, sterilisation, contraception, artificial reproduction, euthanasia and assisted suicide. This has become an issue with the system of managed care and the amalgamation of hospitals in certain regions. Several cases have arisen in Canada, and concern has been raised, as the Chief Justice of Canada has expressed support for assisted suicide and the position of other justices in Canada seems to be finely balanced.

An Important Australian Experience

I turn my attention now to Australia to discuss an important episode that occurred in 1998. An event occurred early in that year that ultimately resulted in the passage through the Western Australian State
Parliament of the most liberal Abortion Law in the whole of Australia. Until that time, the state of Western Australia had no abortion legislation other than what existed in the Crimes Act which allowed induced abortion if the mother's life was at risk. Most abortions carried out in that state were illegal under the Crimes Act but were tolerated on the strength of Common Law judgments in two other states which allowed for the physical and mental health of the mother to be considered in the decision to terminate a pregnancy. The trigger which fired off the new legislation in Western Australia was the decision of the State's Director of Public Prosecutions to charge two doctors with procuring an illegal abortion. Two Bills were rapidly presented to the Parliament (the Foss and Davenport Bills) that would exonerate the doctors in question. Ultimately the more liberal Bill prevailed and was passed by the two houses of the Parliament. The whole episode demonstrated how well the pro-abortion faction had prepared their strategy. It also revealed how the pro-life forces were outmanoeuvred and in some disarray. The saga is set out in the Spring 1998 issue of Human Life Review. As a response to this debacle, moves were made to achieve a cohesion of pro-life activity and to develop a strategy to bring about Abortion Law Reform. At the same time, apparently unbeknown to those engaged in these discussions, a Catholic member of the Parliament of the Australian Capital Territory decided to introduce a Private Member's Bill into the local legislature. It was to be called the Health Regulations (Abortions) Bill 1998. When it was introduced into the A.C.T. Parliament in August 1998, it caused a furore in the Pro-life circles which threatened to lead to an acrimonious disintegration of the anti-abortion forces. Much of the argument revolved around the interpretation of Section 73 of Evangelium Vitae, interspersed with considerable legal opinion about the persuasive force of Common Law decisions in other jurisdictions which surrounded the Australian Capital Territory. It was a matter which involved members of the Catholic Hierarchy, prominent lawyers and moral theologians and its repercussions are still reverberating. In the end that Bill was withdrawn and replaced by an apparently more innocuous Bill which in the end left the pro-life situation worse than before any Bill was introduced (see Santamaria, J & Neville, W).

It is an experience that should exercise the minds of the three dicastries meeting here today. I am sure that the details of the episode have been presented to the Holy See by the various protagonists. It is reminiscent of the deliberations of the Papal Commission on Birth Control before the promulgation of the Encyclical Humanae Vitae. (see On Human Life).

**Part Two**

**Euthanasia & Assisted Suicide**

With the passage of the British Abortion Act in 1967, the pro-life movement immediately realised that a move would be launched to set off the debate about Euthanasia. The tactics would be the same and the liberal elite had moved into positions of power in government bodies, in the universities and the media. In Australia, most of the initial activity occurred in the State of Victoria. In 1985, the State Government asked its Social Development Committee to inquire into the concept of a right to die, the meaning of dying with dignity, certain 'hard cases" in other jurisdictions and the management of the terminally ill. The Voluntary Euthanasia Society was supported by the Monash Bioethics Centre, headed by Professor Peter Singer and Dr. Helga Kuhse whilst a significant contributor was St. Vincent's Bioethics Centre. The Committee eventually issued its final Report and the Government responded with the passage of the Medical Treatment Act in 1988 and 1990. This did not meet the hopes of the pro-euthanasia forces. It encouraged the development of the palliative care and hospice services...
and established the principle of a patient's right to refuse medical treatment. It also excluded the provision of food and water as being a form of medical treatment which could be refused by the patient or by his/her guardian. Other states have since introduced similar legislation.

It is interesting to note that the 1997 decision of the Supreme Court of the United States had stated that there is a constitutional right of all American citizens to receive palliative care services.

Two decisions were handed down in Britain which had an impact on the Euthanasia debate in Australia and no doubt in North America. The first was the High Court's decision in the well known Bland case which was confirmed by the Court of Appeal and the British Law Lords in 1993. This decision seemed to confuse the distinction between the concepts of a life not being meaningful and treatment which is futile, quite apart from a clear understanding of the ethical dimensions of the dilemma. It did however highlight a moral principle called the duty to care. (see Keown )

The second decision was not made by a court but by a Select Committee in 1993 - the House of Lord's Select Committee on Medical Ethics. It had concluded that it was unwise and contrary to the common good to legalise Voluntary Euthanasia.

The situation in Australia changed in 1995 when the Chief Minister of the Northern Territory (Marshall Perron) Introduced a Private Member's Bill into the Territory's legislature. It was called The Rights of the Terminally Ill Bill (February 22, 1995). The Northern Territory has the smallest population of all the states and territories of Australia, with a population of 170,000 people and a small parliament of about 40 members. The population is smaller than in some electorates of the major metropolises.

The debate in the parliament was protracted into the small hours of the morning and eventually the Bill was passed with a majority of one. The legislation was referred to a Select Committee and after more than 50 amendments, the Act was again passed, this time by 15 votes to 10.

However, Northern Territory (N.T.) legislation is subject to its acceptance by the Federal Parliament of Australia. Consequently, a Private Member's Bill was introduced into the Federal Parliament by Mr. Kevin Andrews to rescind the N.T. Act. All parties in the Federal Parliament agreed to a "conscience vote" by its members. The Bill easily passed in the Lower House (House of Representatives) but only passed by a margin of 5 votes in the Senate. The effect was to nullify the N.T legislation. ( see J. Fleming ).

Attempts were then made to introduce legislation in some states which are not subject to the veto of the Federal Parliament - Tasmania, South Australia, Western Australia and Victoria. For a variety of reasons, these attempts were deflected by such tactics as referral to committees of inquiry or deferred for lack of sitting time.

In the United States, with its fifty states of the Union, and its system of state referenda, the situation has been more dynamic. (see Uhlmann). In November 1994, the State of Oregon approved by referendum Ballot Measure 16, by a vote of 51% to 49%. This allowed for assisted suicide. Following an injunction against the implementation of the measure, it was resubmitted to a November referendum in 1997. This won 61% of the vote which approved physician assisted suicide.

In 1996, a Circuit Court of Appeals in Washington State declared unconstitutional a State Law which criminalises physician assisted suicide and that decision extended to 11 western states and territories. Also in 1996, a similar judgment was passed by a Circuit Court of Appeals in New York State and this decision affected 3 states. This ruling was suspended as New York State appealed against the decision to the Supreme Court of the United States. The Supreme Court rendered its decision in June 1997. The Court unanimously found (9 - 0) that the average American has no constitutional right to physician assisted suicide but asserted that the decision did not bar individual states from allowing such a procedure.

This decision was a major blow to the Oregon based Compassion in Dying Federation. Its legal director, nil desperandum, turned her attention to the State of Alaska, after failed attempts in Florida and California. The Alaskan Superior Court Judge ruled that the State's law banning assisted suicide does not violate the liberty, equal protection, and right to privacy clauses in Alaska's Constitution.
Moreover, he found that the state's obligation to "the preservation of human life and the protection of vulnerable individuals" far outways any person's decision to end his or her life, (Sampson & Doe v State of Alaska Sept. 9, 1999.

In the meantime, in March 1999, Kevorkian was convicted of second degree murder in a county court. This case was extraordinary in many ways but it did reveal that the judge, jury, and later the community were unwilling to accept the direct killing of a person, even if the killing was done with the consent of the patient. It is easier to defend assisted suicide than it is to defend active euthanasia.

The struggle to legalise assisted suicide will continue in much the same way as abortion became legal. The same methods will be used as worked so successfully for the pro-abortionists. There will be the hard cases, especially patients in a persistent vegetative state, there will be the demand to die with dignity, there will be the claim to a right to die, and there will be attempts for incremental changes to the common law. There will be Private Members' Bills and there will be carefully constructed opinion polls.

But the situation is not quite the same in North America and Australia as pertained at the time of the abortion debates. The medical professions in both continents are against such procedures. The growth of Palliative Care and the Hospice Movement has bred a faculty of doctors and allied health professionals who are deeply involved in educating the public as well as delivering highly skilled services. Virtually all jurisdictions outlaw the behaviour to assist another to commit suicide.

**Americans United for Life**

An interesting and apparently important organization was formed in the United States in 1971. It is a non sectarian, non political and charitable organization which focusses on legislative and judicial interventions in the United States, to limit and turn around the devastating abortion rate which has been the consequence of the 1973 Supreme Court decision in Roe v Wade. It proceeds by a process of **Incremental Legislation** at the level of the States and its Newsletter for the Fall of 1999 addresses the question of the morality of this approach. (AUL FORUM Fall 1999) Its web site is well worth a visit to gain some idea of the scope of its legal interventions.

What has happened since the 1960s and 1970s is that the anti-life forces have placed great emphasis on the freedom to choose. Personal autonomy has been the major argument and it rests on the belief that people have a right to make personal decisions about their actions, especially if they have a fundamental constitutional right to do so. In Planned Parenthood v Casey (1992), the Supreme Court of the United States linked personal autonomy with human dignity, as if the freedom to choose to have an abortion is a mark of such dignity. This is a field however where many of the suppositions can be challenged and the principle of the common good needs to be re-articulated in a persuasive and intelligible manner.

**Part Three**

**Reproductive Technology**

The birth of Louise Brown in 1978 astounded the world of medicine and opened up a Pandora's box of ethical problems that resulted in the formation of many bioethical centres around the world. In Australia, The Monash Bioethics Centre was established under Professor Peter Singer and this was followed by the formation of the St.Vincent's Bioethics Centre, both in Melbourne where the leading figures in the field of In Vitro Fertilisation had embarked on these new adventures. Both the legislatures and the Courts were not initially involved but as opposition mounted against the use of the new technology and procedures, governments responded with the establishment of Select Committees to advise the politicians. The fundamental questions now being addressed were:
1. When did human life begin? 
2. What was the moral status of the human embryo? 
Eventually in the State of Victoria, two Acts were passed, one in 1984 and the other in 1995, which sought to place some restraints on the ambitions of the scientists. 
After more than 20 years, despite the findings of a Federal Royal Commission on the matter of Embryo Experimentation, the embryo is accorded a moral status of sorts - it must be treated with respect, but it can be stored and frozen; it can be thawed and discarded if unclaimed; it can be subjected to 'presyngamous' experimentation due to semantic gymnastics; and multiple fetuses can be reduced by selective abortions. 
The scientists have dominated the committees, certainly in Australia, with their interpretation of embryological development and semantic inventions. They have been aided and abetted by some ethicists, such as in the United Kingdom (Warnoch Committee Report) and certainly in Australia (Singer and Kuhse). Their position has been favourably viewed by many media reporters who, like the scientists, are consequentialists. 
A whole range of new ethical problems have arisen. Many of these are poorly viewed by the community, such as surrogacy, the implantation of multiple embryos, the eligibility of some clients, such as homosexuals or those in a defacto relationship, the use of donor gametes and even the use of the internet to advertise their programmes. The whole field has become a big commercial operation and many feminists have challenged the whole question of reproductive technology, not because of the moral status of the embryo, but because they believe that women are being exploited by the scientists who need their bodies and physiological systems to advance their personal wealth and reputations. 
(Rowland) 
The latest in this saga of manipulating human life is the issue of cloning. Whilst some governments have declared strongly that the cloning of human beings will not be permitted, other nations have referred the matter to Select Ethical Committees as has happened in Australia. There are powerful private commercial interests that are forging ahead and where there are restrictions in place in some states of Australia, as there are in Victoria, private laboratories purchase such genetic material in the marketplace to pursue programmes of so-called therapeutic cloning. An Advisory Committee in the United Kingdom has recently produced a report, advocating the legalisation of therapeutic cloning (Human Concern). In Australia, the matter was referred to The Australian Health Ethics Committee (AHEC) which released a Report for public comment in late 1998 (see TMC Bulletin).

Part Four
Commentary
Introduction
The development of the pro-abortion movement is a phenomenon of the twentieth century. Abortion was practised with relative impunity in the pre-Christian civilisations of Greece and Rome, despite the formulation of the Hippocratic Code of Medical Conduct in the sixth century before Christ. (see Noonan & Daniel-Rops). 
When Christianity filled the moral void created by the collapsing Roman Empire in the early centuries following the death of Christ, the ethic of the Sanctity of Human Life became the linchpin of the new moral and legal order that spread throughout the Universal Church and the emerging national structures of the later years of the first millennium A.D. Based on the teaching of the New Testament, which flowed from the central doctrine of the Old Testament, namely that man was created in the image and likeness of God, the Good News of the Gospels was that of Redemption and the Dignity of the Human Person who is destined for eternal happiness in the kingdom of God. 
This concept established the principle of an inalienable right to life as the basis of all human rights, a principle believed to be self-evident, a proposition which is defensible within natural law theory
(Finnis). Linked to it is the principle of the Common Good which underlines much of the justification for the formulation of secular laws. Both concepts have been used to help formulate the constitutions of many nations, including those of the United States and of the Commonwealth of Australia.

A New Ethic

So what has happened over the last 50 years of these nations?

It is well described in an article which appeared in an American medical journal in 1970. The process of eroding of the old ethic and substituting the new has already begun. It may be seen more clearly in changing attitudes towards human abortion. In defiance of the long held Western ethic of intrinsic and equal value for every human life regardless of its stage, condition, or status, abortion is becoming accepted by society as moral, right, and even necessary. It is worth noting that this shift in public attitude has affected the churches, the laws and public policy rather than the reverse. Since the old ethic has not been fully displaced, it has been necessary to separate the idea of abortion from the idea of killing, which continues to be socially abhorrent. The result has been a curious avoidance of the scientific fact, which everyone really knows, that human life begins at conception and is continuous, whether intra- or extra-uterine, until death. The very considerable semantic gymnastics which are required to rationalise abortion as anything but taking a human life would be ludicrous if they were not often put forth under socially impeccable auspices. It is suggested that this schizophrenic sort of subterfuge is necessary because while a new ethic is being accepted the old one has not yet been rejected. (California Medicine).

At the same time, the objectivity of our judicial system has become suspect, and resembles the field of genetic engineering. Let me use an analogy which should not be drawn too far. The tactics of the anti-life forces are analogous to Genetic Engineering. The purpose of genetic manipulation is to alter the quality or the character of a living organism by inserting genetic material into the vital structure of the organism. Through cycles of reproduction, the genetic code is modified and the new strain of organism, whilst outwardly the same, is different and is set on a new pathway. Once locked in, the new genetic code will reproduce itself through succeeding generations and is virtually uncontrollable.

So it is with Precedent Law established by the highest Courts of the nation. It becomes the basis of Social Engineering. Insert into a key judgment a persuasive ideological interpretation that is not subjected at the time to close objective analysis, and the decision becomes the ingredient for a succession of judgments that consolidate the direction of the social engineering. This seems to be the argument used by half of the present justices of the Supreme Court of the United States.

This insertion of the new ethic did not happen by accident; it was not a case of natural evolution. It was carefully devised and orchestrated by a diligent small group of people who learned how to influence the legislative and judicial processes of the Western World from the early 1930s. (Duffy) They found ready accomplices in other organizations, particularly in those concerned with population control and the emerging eugenic elites. In the 1980s and 1990s, these groups would loosely merge with the gay lobby, the radical feminists and some elements of the environmental movement. In the 1990s particularly, these groups moved into the international arena and have attempted to override national sovereignty by control of the International Instruments.

It has not simply been a snowballing effect of the so-called Enlightenment but its roots found its nourishment in the ideology of that period of human history. It has been rightly identified with the
concept of secular humanism which today probes to further its agenda under the laws of anti-discrimination and human rights. Personal autonomy has become the guiding principle of the new concept of the Common Good and true science has been confounded by semantic gymnastics and true humanism replaced by freedom of choice.

Anderson has shown in his paper that, in the United States, the argument has moved from a claim to privacy to a claim for liberty, a freedom to choose and it is asserted that this constitutes a fundamental human right within the framework of the national constitution. In Canada, recourse to these freedoms is said to be enshrined in the Charter of Human Rights and Freedoms. But in both jurisdictions, the unborn child is excluded from any such considerations and is not protected within the framework of the legal processes.

The Supreme Court of the United States

The 1973 decision of the Supreme Court of the United States found an all encompassing principle of Privacy in the Constitution of that nation. Moreover, to disarm their opponents, they gave no legal status to the fetus-in-utero, an unconscionable misinterpretation of the scientific data about the development of a human being.

At the time, Jane Roe was used as a pawn in the Roe v Wade challenge to abortion laws as was Jane Doe in the related Doe v Bolton decision. Both later claimed that the challenges were based on lies and deception. The same claim was made by Bernard Nathanson in his book- Aborting America. The same scenario is articulated in the 1970 editorial quoted above.

The cultural climate was conducive to these developments. As others have pointed out, in the 60s and 70s, there was a dramatic challenge to authority, both inside and outside the churches (see J. Keown ). The Sanctity of Life ethic was being diluted by the concept of the Quality of Life and the charge of Specieism was promoted by such philosophers as Peter Singer. Singer is a very plausible communicator because his arguments are based on utilitarianism which suits the cultural shift on such matters as sexual freedom and personal autonomy. Moral relativism has filled the vacuum left by the loss of religious faith and practice. The media, the entertainment industry, the explosive growth and popularity of the glossy magazines and of modern pop music are formidable moulders of culture to the point of despair.

Today, the lawmakers are faced with widely proclaimed slogans - that they must seek a humanitarian or compassionate response and eliminate discrimination - or they are presented with suspect claims for the promotion of scientific knowledge - the "semantic gymnastics" of the straining research scientists or those who have built their careers and material prosperity on abortion practices, assisted suicide and euthanasia, and modern reproductive technology.

The Role of the Churches

But it is within the churches that much of the damage has been done. The decision of the Lambeth Conference in 1930 (see Comments) on the use of contraception led to the separation of the unitive and procreative attributes of marriage. It fed into modern society an anti-child mentality. The majority of the Papal Birth Control Commission clearly did not believe that contraception was intrinsically evil.(On Human Life). Several of the Episcopal Conferences smudged their responses to the Encyclical Humanae Vitae. Numerous Catholic moral theologians clearly do not believe in the Magisterium of the Catholic Church, or at least regard their judgments as of equal, if not superior, validity. Many of the most vocal who have gained a high media profile have been pro-abortion, as have significant lay Catholics in the political and judicial arenas. The strange silence of the British bishops during the abortion debates in 1967 and early 1968 hardly measured up to the command given by Christ to His Apostles.
Signs of Hope

But all is not lost even if the situation is disheartening and grim. In June, 1997, the Supreme Court of the United States gave a unanimous decision to the effect that the US Constitution did not give an American citizen the right to physician assisted suicide. Some eminent lawyers believe that this was the outcome of the persistent attacks on the objectivity of the Supreme Court, made by the pro-life groups over the years since 1973. (see Wardle). Several state legislatures and courts have rejected assisted suicide as a legitimate response to terminal illness (California, Florida, Michigan and Alaska) even after the alarming result of the referendum in Oregon in 1997. The Alaskan decision was given in September, 1999, and the judge referred to the state's obligation to "the preservation of human life and the protection of vulnerable individuals." The Supreme Court is divided almost half and half over the question of a review of the 1973 Roe v Wade ruling.

In Australia, to legitimise assisted suicide has become a dangerous pathway for state governments to tread after the outcome of the Andrew's Bill in the Federal Parliament. The growth of the Association of Palliative Care Physicians and its support by the Australian Medical Association have strengthened the opposition to euthanasia and the Voluntary Euthanasia Society.

But most significant of all has been the growth of the pro-family coalition. This movement is very much pro-child and pro-marriage. In Australia, such a coalition began during the International Year of the Family in 1994. It brought together in the State of Victoria representatives of various churches and pro-life forces who were concerned about the attack on the natural family that marked the responses of the national committee on the family. It was apparent that the members of this new family association (Family Council of Victoria) shared many beliefs in common - they were anti-abortion, anti-euthanasia, anti-pornography, anti promiscuous sexuality, anti-drug use and anti recognition of same sex marriage. Moreover, each affiliate organisation has large numbers of members, such as the Muslims, Catholics, Mormons, pro-life groups and the Returned Service Men's League.

Within 2 years, an international association had been established by Dr. Alan Carlson of the Howard Centre in Illinois, USA. This international body became known as the Congress of Families which recently conducted a highly successful meeting in Geneva which attracted 1500 people who shared the same objectives as the Family Council of Victoria.

This development has revealed that a powerful force can be established at both the state level and on the international scene, based on a strong belief in the natural family, of the sanctity of human life and the sacred nature of marriage, of human sexuality and parenthood. It is a lay organisation, with strong religious beliefs and speakers who are highly educated, articulate and disciplined. There is a mood of optimism in this newly discovered solidarity between the three major monotheistic religions and others who share a belief in the true common good of mankind.

The Challenge for the Catholic Church

However, the Catholic Church must learn to identify its friends and its enemies. It must recall its mission, for its bishops and priests need to speak out in support of the authentic magisterium and to state clearly that there is a limit to theological dissent. It should carefully determine its responses to those in public life whose public acts belie their so-called allegiance to Church teaching, whether they be in politics, the bureaucracy, in education or in counselling services.

But the Church's mission is also to proclaim the message of Redemption, the call to repentance and the forgiveness of sins. We know that we are prone to sinfulness; but we also know that God will forgive us when we genuinely admit our failings and seek His saving grace. This is the great message of our Redemption. Herein lies our dignity and the foundation of the sacredness of our human lives.

As lay people, we must be prepared to engage in the public square where the intellectual and tactical battles have to be fought, but our bishops and priests need to play an openly supportive role and one appropriate to their tasks as commissioned by Christ Himself. They should also be aware that many
non-Catholic supporters of the right to life of the unborn child draw great moral strength from the Church's public stand on induced abortion.

In the introduction to Evangelium Vitae, Pope John Paul II opens with the challenging words:

The Gospel of Life is at the heart of Jesus' message. Lovingly received day after day by the Church, it is to be preached with dauntless fidelity as "good news" to people of every age and culture.

In paragraph 2, he goes on to say:

Even in the midst of difficulties and uncertainties, every person sincerely open to truth and goodness can, by the light of reason and the hidden action of grace, come to recognize in the natural law written in the heart, the sacred value of human life from its very beginning until its end, and can affirm the right of every human being to have this primary good respected to the highest degree. Upon the recognition of this right, every human community and the political community itself is founded.

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Each web site led to numerous links which are not separately listed in these references but they
contributed significantly to this paper.
* International Anti-Euthanasia Task Force
* www.roevwade.org
* supct.law.cornell.edu Legal Information Institute.
* www.nrtl.org
* Justice.oct.net/
* www.consciencelaws.org/
* www.unitedforlife.org/

Keown J Chapter 15. Issues for a Catholic Bioethic
Published by The Linacre Centre London 1999.

Last Rights Editor: Michael M. Uhlmann
Published by the Ethics and Public Policy Center USA. 1998
This book is a valuable source of information and features authors from both sides of the debate about
Euthanasia and Assisted Suicide. It covers such disciplines as history, theology, morality, the medical
aspects and legal perspectives.
The publication gives considerable attention to definitions, concepts such as a right to die, the moral
dimensions of the withdrawal of treatment and the right to refuse treatment. It brings into sharp focus
the language used in the debate and the mindset of the authors as they grope to suggest decisions in
particular cases, such as Cruzan, Quinlan and Bland. It studies the legal judgments given at different
levels of the judicial system.

Noonan J.T. The Morality of Abortion. Legal and Historical Perspective.

Neville W. Personal Communication January 2000

Overduin D. Chapter 25 The Ethics of Abortion
in New Perspectives on Human Abortion
Eds. Hilgers, Horan and Mall
Published by Aletheia Books, Maryland 1981.
Rowland R. Living Laboratories - Women and Reproductive Technology.
Published by Panmacmillan Australia .1992.


Published by the Thomas More Centre, Melbourne.
This issue of the Bulletin deals in depth with the situation in Australia on the question of cloning. It reveals considerable differences between the States. It draws attention to some declarations on cloning which have been issued by the Vatican.

Wardle L. Personal communication Brigham Young University - Law Department. December 1999.

Comments

Emotive : Emotive language is not unexpected or unethical in many circumstances. "Hard Cases" appeal to one's emotional reaction to the difficulties that confront many people and inspire us to try to find a just solution to a particular dilemma. But emotive language moves into a more dangerous ethical field when the intention for its use is to deceive or to misguide others in the making of a considered political or social judgment.

Lambeth Conference : The Anglican Church holds an international meeting of its governing bodies every 10 years. The 1930 meeting resulted in a resolution to sanction artificial contraception for certain married couples who, for very serious reasons, believed that pregnancy should be avoided. It was the first Christian communion to depart from a consistent condemnation of artificial contraception. Pope Pius XI responded to this announcement with his Encyclical on Christian Marriage (Casti Connubii).

Stem Cells - Inner Cell Mass : The stem cells, so ardently desired by the scientists for research regarding their therapeutic potential, are derived from the inner cell mass of the blastocyst stage of human embryology. A moral distinction is made between the nature of the inner cell mass and the trophoblastic layer, as if that outer layer is not part of the human embryo. But that outer trophoblastic layer is really an "external organ" of the embryo which allows for intrauterine development. This external organ enables the rest of the embryo to tap into the maternal system for nourishment, excretion and the provision of protective factors within the maternal circulation during intrauterine life. That organ will be discarded at birth as the umbilical cord and part of the placenta. But it is an essential part of the fetus during intrauterine development.

Attachment 1

Some Information from the Internet

Supreme Court Collection
Legal Information Institute USA

Planned Parenthood of Southeastern Pennsylvania et al.
v
Casey, Governor of Pennsylvania et al.
Decided June 29,1992.
Held by O'Connor, Kennedy and Souter.
1.Consideration of the fundamental constitutional question resolved by *Roe v Wade* principles of institutional integrity, and the rule of *stare decisis* require that Roe's essential holding be retained and reaffirmed as to each of its three parts....pp 1 -27

1(e). The *Roe* rule's limitation on state power could not be repudiated without serious inequity to people who, for two decades of economic and social development, have organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion in the event that contraception should fail. The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives........pp13 -14.

1(f). No evolution of legal principle has left *Roe's* central rule a doctrinal anachronism discounted by society......pp14 -17.

1(i). Overruling *Roe's* central holding would not only reach an unjustifiable result under *stare decisis* principles, but would seriously weaken the Court's capacity to exercise the judicial power and to function as the Supreme Court of a Nation dedicated to the rule of law........A decision to overrule *Roe's* essential holding under the existing circumstances would address error, if error there was, at the cost of both profound and unnecessary damage to the Court's legitimacy and to the Nation's commitment to the rule of law. ...pp22 -27.

**Held by Renquist, White, Scalia and Thomas.**

On the other hand, Rehnquist, White, Scalia and Thomas concluded differently. They drew attention to the confusing and uncertain state of "this Court's post *Roe* decisional law." "The Court has become increasingly more divided, none of the last three decisions having commanded a majority opinion. (Para.1.) They claimed that the Roe Court had overreached itself in establishing a right to abort a fetus from a study of other decisions..."None of these decisions endorsed an all encompassing 'right to privacy', as *Roe* claimed. (para.2)

2. "Because abortion involves the purposeful termination of potential life, the abortion decision must be recognized *assui generis*, different in kind from the rights protected in the earlier cases under the rubric of personal or family privacy and autonomy. And the historical traditions of the American people - as evidenced by the English Common Law and by the American abortion statutes in existence both at the time of the Fourteenth Amendment adoption and Roe's issuance - do not support the view that the right to terminate one's pregnancy is 'fundamental'."
INTRODUCTION
Bolivia's situation with respect to abortion is not too different from that of other Latin American countries even though it has its own peculiarities. Bolivia's legislation is clearly oriented towards the defense of human life and therefore considers abortion a crime. However, clandestine abortions do exist and, besides, the abortionist organizations periodically organize campaigns to decriminalize and to legalize abortion. In this presentation we will briefly examine the Bolivian legislature and its diverse interpretations. We will then explain our position which defends the life of the unborn child from the moment of conception.

1. THE REALITY OF ABORTION IN BOLIVIA
There are no accurate statistics on the number of abortions performed in Bolivia. The Bishop's Conference of Bolivia in their Pastoral Letter on the Family, published in 1983, cited 50,000 abortions annually, but do not mention the source of the statistics. They vaguely refer to private investigations carried out in former years (N. 27). This same number, at times exaggerated, is repeated in similar studies on this subject, but with the ideological intention of legalizing abortion. It is possible that the number of abortions has increased in the past years due to some economic, social and cultural factors: a) the precarious economic situation of the family; b) increasing permissive moral standards in mass media, especially of violence and pornography; c) the passivity of the police force as well as that of the judicial system with respect to the practice of clandestine abortions; d) the pro-abortion campaigns carried out periodically and financed by international organizations.

2. THE JUDICIAL LEGISLATION ON ABORTION
The legislation of most of the Latin American countries accepts the humane tradition of Christian inspiration as presented in the American Convention on Human Rights, the Pact of San José de Costa Rica, approved by the Organización de Estados Americanos (OEA) on the 22nd of November 1969 and ratified by many countries, among them Bolivia in 1993. Article 4.1 states: "Every person has the right that his/her life be respected. This right shall be protected by the law, and, in general, from the moment of conception. Nobody can be arbitrarily deprived of life". Consequently, paragraph 5 of this article indicates that capital punishment shall not be applied to a pregnant woman. This Pact is one of the few International Conventions, which adopts a clear position in favor of life from the moment of conception. The expression "in general" was added through the suggestion of the United States of America, where some states consider abortion legal in determined situations. The Pact of San José was supported by various Latin American countries that had the intention of presenting their reservations on the consensus of the International Conference on Population and Development (Cairo, Egypt, September 1994). In accordance with this principle, the Bolivian juridical system as a whole protects the human person from conception.

2.1. THE POLITICAL CONSTITUTION OF BOLIVIA
The Political Constitution of Bolivia, promulgated in 1967, article 6 states: "Every human being has juridical personality and capacity according to the laws. He / She enjoys all the rights recognized by this Constitution without distinction of race, sex, language, religion, political opinion, or of any kind, origin, social or economic condition etc.". Article 7 recognizes in the first place, the right to life. The elimination of every kind of discrimination among human beings signified for Bolivia a great historical advancement in the recognition of equality, thus getting rid of the unjust judicial inequality that existed in the past which negated fundamental rights to such groups as the illiterate and the poor.
people and to the women. For this reason decriminalizing and legalizing abortion would not only deprive the human being in gestation of his / her right to life but would be totally unjust and anticonstitutional. Besides, this would be a historical drawing back by introducing a new kind of discrimination, this time based on age and defenselessness on the part of the conceived.

2.2. THE CIVIL CODE AND CODE ON THE (BOY/GIRL) CHILD AND THE ADOLESCENT

The Civil Code, promulgated in 1975, establishes clearly the principle that protects the "conceived" one (nasciturus): "The one who is about to be born is considered born for all that could benefit him/her. In order to be considered a person, it is sufficient to be born alive" (art. 1°, II).

In accordance with this principle, the Civil Code recognizes the "conceived" as having the right to inherit and also to receive donations: "In order to be a successor, it is necessary to be existing, born or conceived, at the moment when the inheritance is initiated" (Art. 1008, I). "The donation can be made in favor of one who is merely conceived, or in favor of the not yet conceived children of a person who is alive at the moment of the donation" (Art. 663, I).

The Code on the (Boy / Girl) Child and the Adolescent (27th of October 1999) defines very clearly the boy / girl child and protects his / her rights. "Every human being is considered (Boy / Girl) Child, from the moment of conception until the age of twelve, and Adolescent, from the age of twelve until eighteen years of age" (art. 2). "The dispositions of the current Code are of public order and are to be applied preferentially. They are applicable to all children and adolescents (boys, girls) resident in the Bolivian territory without any kind of discrimination" (art. 3).

2.3. THE PENAL CODE

The Penal Code, promulgated in 1972 and modified on the 10th of March 1997, considers abortion as one of the crimes against the life and integrity of the person, articles 263 to 269.

Article 263: "He who causes the death of a fetus in its mother's womb or induces its premature expulsion will be penalized:
1) by imprisonment for two to six years, if the abortion was carried out without the consent of the woman or if she is less than sixteen years of age.
2) by imprisonment for one to three years, if the abortion was carried out with the consent of the woman.
3) the woman who consented to the abortion will be penalized by imprisonment for one to three years. If the woman herself attempts an abortion, the action is not penalized."

The remainder of the articles gather various modifying circumstances: aggravating (art. 264, abortion followed by lesions or death), extenuating (art. 265, abortion "honoris causa"; art. 267, abortion not pre-meditated; art. 268, criminal abortion) and exemptions (art. 266, abortion with impunity). The habitual practice of abortion is penalized by imprisonment for one to six years (art. 269).

Special controversy has provoked the application of Article 266 that regulates the two suppositions of abortion with impunity. The first refers to rape and other related crimes and the second refers to the threat to the life and health of the mother:
"When abortion has resulted from the crime of violation, abduction not followed by matrimony, rape or incest, there is no punishment at all, always under the condition that legal action has been initiated".
"Neither will abortion be punishable if it has been practiced with the intention of avoiding danger to the life and health of the mother and if this danger could not be avoided by any other means".
"In both cases, abortion must be practiced by a medical doctor with prior consent of the woman and judicial authorization in her case".
2.3.1. APPLICATION OF THE PENAL CODE
As we have already mentioned, clandestine abortions do exist, but during the last decade there has been no news on penal processes against the woman who aborted. On the other hand, in La Paz and in Cochabamba there have been only a few cases filed against medical doctors and other people who are dedicated to the practice of abortion. These cases have been filed by the police or by the Medical Association.

We consider the lack of application of the law as excessive tolerance. An explanation for this fact can be found in the chronic deficiency within the Bolivian judicial system with the serious problem of retardation of justice and too much bureaucracy. In addition, there is a specific factor that can be considered as social complicity. Many women with unwanted pregnancy abort because of the economical, social and familiar pressure put upon them. They believe that their problems will be solved by abortion. This conflictive situation creates false compassion on the part of society that then leads to the complicity of not denouncing or not penalizing the crime of abortion. This excessive tolerance is used by abortionist groups as a pretext to organize campaigns that are in favor of decriminalization and legalization of abortion within the Penal Code, so that, "the law be in concordance with reality". However, from our point of view, present legislation ought to be maintained since it establishes the definition of abortion as a crime against the conceived and unborn child. It also serves a dissuasive function especially for medical doctors and other persons who perform abortions so they are aware that they are committing a crime for which they are liable to be sanctioned legally.

Anyway, it is necessary to overcome passivity before the issue of abortion. Civil society, especially the Catholic Church, medical associations, nursing associations, and the association of Lawyers should be more active in denouncing institutions and persons dedicated to the practice of abortion.

2.3.2. INTERPRETATIONS OF THE PENAL CODE
Actually, controversy has intensified around the interpretation of article 266 of the Penal Code where there is a regulation of the two cases of "therapeutic and ethical" abortion with impunity. The abortionist organizations try to present it as a right, demanding that in these cases the judge not only authorize but also to give the judicial order to proceed with the abortion. Also, they have had campaigns to eliminate some of the requirements and thus make it easy to carry out abortion with impunity.

On the contrary, the Catholic Church, the Institute of Bioethics of the Catholic University of Bolivia and other respectable persons and institutions sustain the position that the abortionist interpretation is absolutely wrong. Article 266 by no means gives the right to abort, as it would be contradicting the rest of the judicial order. It only gives the judge the power to authorize the carrying out of abortion in very exceptional cases where the life of the mother is really in danger or where the situation of the abused woman could endanger her own life.

Article 266 does not nullify the right to life of the child in gestation. Faced with the conflict of rights between that right and the right of the woman to freedom, life or health, the judge is obliged to prove the existence of certain requirements before giving the authorization. In the cases of rape and other related crimes, legal action ought to be initiated against the criminal. In the case of danger to the life or health of the mother, it is required that there be proof that no other means exists that can help avoid this grave danger. Furthermore, in both cases abortion ought to be carried out by a medical doctor with the consent of the woman and with judicial authorization.

Given the priority conferred by the Bolivian juridical system to the right to life of the child in gestation, all the modifications on abortion with impunity must be interpreted very strictly. In the case of therapeutic indication, the judge ought to request an exhaustive medical report in order to confirm that the life and health of the mother is really facing serious danger that cannot be avoided by any other means. For example, in the case of a uterine tumor, the doctor ought to carry out medical examinations to determine if by the nature and extension of the tumor the woman has to receive immediate treatment.
or could actually wait until she gives birth naturally or by medical induction in order to save the child's life.

In the case of violation and other related crimes, the judge ought to explain to the abused woman that abortion will destroy the life of a completely innocent and defenseless human being. Therefore he ought to recommend the woman to carry the pregnancy to term or until the child in gestation is viable outside the uterus. If the abused woman does not want to receive the child, the judge ought to look for persons or institutions that are willing to take care of the child. The Catholic Church has expressed repeatedly its disposal to collaborate in this task.

A judge who desires to act justly will hardly give in to judicial authorization of an abortion, save in truly conflictive situations where the life of a woman is seriously endangered by the pregnancy. Medical doctors have the right to refuse to perform an abortion against their conscience. This right not to be obliged to realize an action against one's will is recognized in the Political Constitution, articles 5 and 32.

3. THE OFFICIAL POSITION OF THE BOLIVIAN GOVERNMENT

It is important to state here the Declaration of Principles on Population and Sustainable Development, prepared by Bolivia for the International Conference on Population and Development (Cairo, Egypt, September 1994):

"In concordance with the consensus of Latin America and the Caribbean Islands on Population and Development, Mexico 1993:

"Abortion constitutes an important public health problem in the countries of the region and, even though diverse opinions exist with respect to this issue, in general, none of them accepts it as a method of birth control".

i) The incidence of abortion can principally be explained by the interrelation of economic and social-cultural factors that create a situation that leads to the termination of an unwanted pregnancy. This decision is often assumed in conditions in which a woman endangers her own life due to lack of access to information and adequate services, or as a result of the inefficient use of an anticonceptive method.

ii) Political, social and health programs must assist couples especially the woman to avoid abortion by providing access to information, guidance and family planning services, thus allowing them to exercise their right to decide freely and responsibly on the number and spacing of their children.

iii) Nevertheless, those women who might have aborted should be treated humanely and given proper orientation.

The current legislation of Bolivia only permits abortion when continuance with pregnancy would threaten the life of the mother or in cases of rape or incest. Therefore, abortion is neither promoted nor permitted as an alternative to family planning."

This official position was in accordance with the defense of life. Nevertheless, Bolivia's representation at the Conference of Cairo followed the trend of other more liberal countries and approved the Platform of Action without any restrictions. However, the Holy See and other Latin American countries presented their reservations on those points which were considered against the defense of life from the moment of conception or harmful to the family structure which has conjugal union in marriage as its base.

4. PERSPECTIVES FOR THE FUTURE

During the last years the abortionist organizations grouped together by the "Campaign of the 28th of September" have promoted the ideology in favor of decriminalizing and legalizing abortion. Their arguments are based upon the ultraliberal feminist ideology that defends the option for "gender", reproductive health, sexual rights, "safe" abortion etc., founded upon the conclusions of the international Conferences of Cairo and Beijing. The argument they use most refers to clandestine abortions that would result in incidences of many women who die or remain sterile due to the unsafe
conditions in which abortion is performed. We have already seen before that there are no reliable statistics on these points.

In 1997 there was an unsuccessful attempt to include the topic of abortion in the Reform of the Penal Code. In 1998 the abortionist groups tried to add the "eugenic" indication of abortion in the case of malformations of the fetus. However, the reaction of the Catholic Church and of the Association of the sick and disabled persons made this attempt unsuccessful too. In 1999 they tried to regulate article 266 so that it would facilitate abortion and thus avoid the trouble of getting judicial authorization. For the moment this has been unsuccessful.

The campaign to decriminalize and to legalize abortion manipulates dramatic situations of pregnancies that result from violations. In the last two years two cases of abortion were carried out with judicial authorization. In the other case the judge refused to give judicial authorization.

It is unlikely that the present Bolivian Government in power till year 2002 will change the legislation on abortion. President Hugo Banzer, himself a Catholic, respects the Catholic Church and often requests her to assume the role of mediator when social conflicts arise. Even though the number of Catholics in Bolivia has decreased due to the growing presence of other churches and religious communities, the Catholic Church is accepted by the public opinion because of her credibility and her defense of the poor people.

Afterwards it is difficult to foresee the future. Probably the campaigns to decriminalize and legalize abortion in Bolivia as well as in Latin America will increase due to the financial support of some powerful international organizations. The politics of the Government of the United States of America will have an overwhelming influence, above all, if the Democratic Party wins the next elections.

5. ESSAYS (PRO-ABORTION) IN BOLIVIA

Some of the booklets diffused in the abortionist campaigns are listed below:

Aliaga Bruch, Sandra / Machicao Barbery, Ximena, El aborto, una cuestión no sólo de mujeres. La Paz, CIDEM (Centro de Información y Desarrollo de la Mujer), 1995.

Dibbits, Ineke / Terrazas, Magaly, hablar sobre el aborto no es fácil. La Paz, TAHIPAMU, 1995.


Rance, Susanna, Planificación Familiar se abre el debate. La Paz, Secretaría Técnica del Consejo Nacional de Población, 1990.
The article 21 of the Constitution of the Republic of Croatia (December 22, 1990) reads: "Every human being has the right to life. There is no death sentence in the Republic of Croatia". Euthanasia and assisted suicide are prohibited by articles 94 (Killing on request) and 96 (Participation in suicide) of the Penal code (October 21, 1997). It means that all possibilities to take part in the termination of human life after birth are outlawed in Croatia.

On the other hand, the first item of the art. 21 of the Constitution ("Every human being has the right to life") turned out to be the main stumbling block in the later dispute about the abortion law. It is worth mentioning that the formulation "every human being" was indeed enforced by the Catholic priest - member of the legislative body as the last effort to reach a compromise between the initial demand by representatives of the Church for the "human right to life from conception to natural death" and the opposed proposal of a dubious "everybody's right to life".

The Croatian abortion law (full title: "Law on healthcare measures for realization of the right to free decision-making about childbearing") was passed in 1978 while Croatia was a federal state of Yugoslavia. It is still valid! It regulates contraception, sterilization, termination of pregnancy and artificial insemination (homologous and heterologous). In the subject of elective abortion the main points are: 1. The termination of pregnancy is allowed during the first 10 weeks from conception (12 weeks of pregnancy) on request of the pregnant woman only (lower age limit: 16 years); 2. After that term (the upper limit is not mentioned!) the termination may be allowed by a professional commission in cases of: a) the impossibility to save the pregnant woman's life or health by other methods, b) the scientifically justifiable expectation of serious physical and mental congenital disorders of the newborn and c) the pregnancy resulting from the violation of the women's dignity and of the moral.

In 1995 a legislative body, appointed by the Ministry of Health of the Republic of Croatia, prepared the drafts for 4 separate laws: on termination of pregnancy, on assisted procreation, on voluntary sterilization and on family planning. No one of them was ever officially published. Only the abortion law "leaked out" through the Catholic Information Agency. This very preliminary document ("Draft of the Proposal for the Pregnancy termination law") shows some progress in comparison with the existing law, but the substantial objection remained the same: the decision is based entirely on the conscience and on the free choice of the pregnant woman, as well as on her "right to abortion", while the fundamental intrinsic value of the unborn human being is neglected and its right to life unrecognized. The declarative aims of the document have been to reduce the legal abortions, to prevent the illegal ones and to ensure to pregnant women the previous professional help (counselling). The counselling is compulsory but only formal with respect to the final decision. The upper limit for the free-choice abortion is reduced for 2 weeks (10 weeks of pregnancy = 8 weeks after conception). The upper limit for the exceptional approval by a commission (by the same criteria as in the existing law) is 24 weeks of pregnancy (22 weeks after conception) or even more in extraordinary circumstances when fetal anomalies are incompatible with the life of the newborn, or when the woman's life is directly imperilled by the pregnancy. A positive novelty in the document is the approval of doctor's conscious objection. However, the licenced hospital is obliged to ensure the termination of pregnancy by doctors willing to do it.

This unofficial and formally unpublished document elicited an avalanche of public protests: a separate opinion of the representative of the Church in the legislative body (professor of moral theology) published in the Catholic weekly newspaper; proclamations of the Croatian Bishops' Conference and its
Council for the Family; declarations and appeals of all Catholic laic organizations distributed to civil and religious media, to the authorities, ministries and members of the parliament; numerous readers' reactions and disputes in newspapers etc. The main argument used to support almost all objections has been: *The approval of the elective abortion is against the constitutional statement about every human being’s right to life!*

The official reaction has been: silence and the apparent cessation of activity on the document. Because of officially unexplained (political?) reasons the new abortion law still undergoes a period of dormancy, its continuation probably being postponed for a time to come. In the meantime the 22 years old liberal law continues to be valid. And the new Croatian government is formed by a coalition of the social-democratic and the social-liberal parties.
TERESA IGLESIAS
Reflection on the ethos of modern Ireland and "the gospel of life"
with special reference to the ethos of the medical profession and the law

GENERAL PERSPECTIVE

In many minds and hearts Christianity has been reduced today in Ireland to Church regulated human behaviour and to Church doctrine. And as regards this regulation the human individual is free to interpret, accept or reject it. There is a social ethos of deep antipathy and disregard for doctrinal and hierarchical Christianity. This is manifested in public life from advertisements deeply religiously irreverent to the media portrayal of daily life. Like other form of human antipathy, which founded on other than rational sources, it can eventually change and vanish altogether.

In contrast there are many people for whom the core of Christianity is still the personal and persons, faith and love for God, our Lord Jesus Christ, his mother Mary and all the saints, as well as love for our neighbours. Sacramental life as well as dedicated charitable life in various social movements manifests this Christian vitality. For example the St Vincent the Paul Society in 1999 had 11,000 members of all ages and they raised and distributed 16,517 million pounds among the needy. There is always a quiet and hidden dimension to all true Christian life which does not permit measurement.

Ireland at the moment is living through a period of unprecedented economic prosperity which has come to be popularly called "the celtic tiger". In this climate the call for "prosperity with a purpose", as the bishops have noted, is central to its total human cultural development. There are lay and secular attempts to find this purpose in its human ethical dimension in some intellectual circles, but this move is not a prevalent one.

The present social atmosphere in ethical terms, is in my view that of a "celtic ostrich", where true concern for the ethical is buried in the ground. There is a social fear and kind of powerlessness manifested in ethical silence; this is a fear of bringing into the open, explicitly, the ethical dimension of major life issues confronting Irish society. Those who are openly for the Gospel of life are given little opportunity for a fair contribution in discussion. Usually that discussion which opens or starts by some organ of the media manifests, in most cases, the definite purpose of presenting, and persuading in favour of the liberal point of view. That is to say, "the unconditional respect for the right to life of every innocent person - from conception to natural death"- is not upheld. Yet the Gospel of life attitude and action is certainly not dead in Ireland. So as in every other developed society, the moral struggle whose core is to uphold the dignity of every human being from conception to death, is truly present in Ireland.

This report is primarily related to the area of the medical profession and the law in Ireland at present, and in the context of the Gospel of Life. I consider that part of its central concern is expressed in these words: "The Gospel of life is not for believers alone it is for everyone. The issue of life and its defense and promotion is not a concern of Christians alone. Although faith provides a special light and strength, this question arises in every human conscience which seeks the truth and which cares about the future of humanity. Life certainly has a sacred and religious value, but in no way is that value a concern only of believers. The value at stake is one which every human being can grasp by the light of reason; thus it necessarily concerns everyone" (101).

CENTRAL POINTS

The medical profession in Ireland is governed by law, by the Medical Practitioners Act, 1978 (with the Amendment of 1993). This law gives medicine professional independent governance - with rights
and duties—on the basis of its understood professional commitments to assist the sick and injured, and to the demands of educational means and other procedures this requires.

If a new law attempted to take over medical self-governance by demanding that the medical profession should do something that is contrary to the goals of the profession of healing and caring, and hence medically unethical, the profession can have recourse to the very law itself by which it is protected. A new law could not contradict or negate the medical commitments and mode of professional self-governance without involving itself in fundamental legal and moral incoherence.

The medical profession in Ireland has recently stood up to socio-legal pressures, which attempted to move the profession towards denying central medico-ethical goals and commitments of safeguarding the health and life of those under their care, particularly the dying and the unborn. In other countries, for example in Poland, a similar situation has also arisen and the medical profession has been legally vindicated in its medico-ethical goals and independent self-governance. The medical profession has the right, the duty, and the legal democratic possibility of safeguarding its own ethico-medical integrity and identity in Ireland.

DISCUSSION

Matters affecting the ethics of the medical profession have arisen and come about, in Ireland as in many other countries in the world, through the law and the verdicts in specific court cases. The Constitution of Ireland, enacted in 1937, advocates "the dignity of the individual" (Preamble) as the most fundamental reality which law is committed to protect. The individual human being from conception to natural death is protected - in life and bodily integrity among other things- by constitutional law in Ireland. This general ethical framework, provided and guaranteed by the Constitution, has governed the medical profession in the past and continues to do so in the present. Through The Medical Practitioners Act, 1978 (with Amendment of 1993) the State makes provisione for the recognition of the independence of the medical profession's rights and duties within society. This Legal Statute governing the medical profession makes the Medical Council, legally, the highest body of medical governance, granting it statutory powers and functions. In Section 69 (1), (2), (3) of this Act it is said:

1. It shall be the function of the [Medical] Council to advise the Minister either at the request of the Minister or on its own initiative, on all matters relating to the functions assigned to the Council under this Act.
2. It shall be the function of the [Medical] Council to give guidance to the medical profession generally on all matters relating to ethical conduct and behaviour.
3. It shall be the function of the Council to inform the public on all matters of general interest relating to the functions of the Council.

The Medical Council exercises ethical guidance, and makes it public and explicit in a Guide to Ethical Conduct and Fitness to Practice. The first published version of this Guide appeared in 1981, the fifth, most recent one in 1998. The general directives of the Guide are the ones that operate -with legal recognition- in medical practice in the country. The Council interprets its own directives as follows: "In giving guidance to the medical profession on questions of ethical conduct, it is not the intention of the Council to issue a Code, but to provide a Guide by which the individual members of the profession may judge particular situations" [1.2].

The Medical Council, as the representative and authoritative body of the entire medical profession in Ireland, acknowledges and accepts the grounds in virtue of which its legally recognised medical self-governance is ultimately based. These grounds are constituted by the goals and commitments of the profession, that is to say, the objective for which medicine exists as a profession called to serve each of the members of the Irish community. The Guide itself expresses this goal and commitment in clear straightforward terme: "the responsibility of all doctors is to help the sick and injured" [1.3]. It is also explicitly acknowledged in the Guide that: "Medical care must not be used as a tool of the State, to be
granted or withheld or altered in character under political pressure" [1.3]. The character of the profession rests precisely in being committed to assist and benefit the sick and injured as regards their health.

This understanding of the medical profession, guaranteed by law, has permitted the profession in recent times, through its medical Council, to resist socio-legal pressures intended to alter the character of medical care in its most fundamental aspect of protecting the lives, health and bodily integrity of patients. This pressure has come mainly through court cases which generated national interest and concern. Let me mention briefly two of them.

In February 1992, the Supreme Court (constitutional court) by a majority of 4-1 granted a minor, a fourteen year old girl found to be pregnant by an adult male well-known to her, the right to have a medically procured abortion. It was alleged that if the abortion were not carried out the girl was at risk of committing suicide. On the basis of the Constitutional interpretation of article 40.3.3 the girl was legally permitted to have the abortion on the following grounds: ...if it is established as a matter of probability that there is a real and substantial risk to the life as distinct from the health of the mother which can only be avoided by the termination of her pregnancy.... such a termination is [constitutionally] permissible.

Four of the justices concluded that such a probability had been established. Hence the young girl was allowed to have the abortion. [See The Attorney General v. X and Others, Judgements of the High Court and Supreme Court. Legal Submissions Made to the Supreme Court, edited by Sunniva McDonagh, Barrister in Law, Incorporating Council of Law Reporting for Ireland, Law Library, Four Courts, Dublin 1992, p.183].

The Supreme Court Judgement in this case interpreted the Constitution as permitting abortion. This appeared to be contrary to the original interpretation of article 40.3.3 introduced in the Constitution by a general referendum in 1983. For this reason the government of the time judged that the matter had to be constitutionally clarified and finalised by a new referendum. Therefore it was decided to hold a second referendum on abortion. The people were asked for their will as regards a) the inclusion of abortion in the Constitution along the lines established by the Supreme Court judgement, b) the freedom for any citizen to travel to another jurisdiction for the purpose of having an abortion, and c) the permissibility of obtaining information within the jurisdiction concerning abortion, described as "services lawfully available in another state". The referendum was defeated regarding the permissibility of abortion, and was passed as regards the permissibility to travel to obtain an abortion and to obtain information within the jurisdiction.

The medical profession as a whole had little impact on the above-mentioned particular court case—either on its origin or its resolution—giving rise to the new legislation. Nevertheless, the medical profession based on medical grounds and on the upholding of its goals and commitments, explicitly recognises in its Guide that "The deliberate and intentional destruction of the unborn child is professional misconduct" [26.5]. It is therefore understood that such destruction violates the character of the profession in its basic medical commitment, which is devoted to protect the life, health and bodily integrity every individual human being under medical care.

The constitutional protection of life in other (medical) cases which may include the terminally or chronically ill (a protection against a medically/privately assisted suicide) is also guaranteed and further ratified by the recent Criminal Law (Suicide) Act, 1993. The Act states: Suicide shall cease to be a crime [2.1]. A person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding fourteen years [2.3].

In July 1995 another case was brought to the Supreme Court affecting medical practice. It concerned a woman who was fed by a gastrostomy tube and whose family requested the tube to be withdrawn so that she would die. The woman was described as being in a "semi-vegetative state" and had been chronically ill in this state for over twenty years. The Supreme Court granted the family the petition for
such withdrawal of tube-nourishment with a majority of 4 to 1. The judges claimed that the decision was not one of euthanasia, but of allowing to die of "an underlying pathology" and that is was not a death caused by lack of nourishment and hydration.

Members of the public were divided as regard the significance of the judgement. Some welcomed it, others objected to the decision as one which involved euthanasia. The family of the person at the centre of the case have publicly stated that it was a case of an ethically permissible procedure of allowing to die and not of euthanasia. Conceptually the public debate on this matter seems to remain at the same stage as it was left at the time of the court. It is worth noting, though, that in Ireland the complete judgement of the Supreme Court is made publicly available, and publicly assessed. In these two cases there have been serious legal criticisms regarding both the logic and the adequate legal handling and interpretation of the constitutional content of the cases by the judges.

On the basis of the legal decision issuing from this case, the medical profession was put under pressure to accept it and to carry it out. Yet the practice was interpreted by the profession- in agreement with one of the constitutional judges- as one of deliberately terminating the life of a patient. This they judged to be contrary to their professional aims and commitments as legally guaranteed by the State itself in The Constitution, and in other statutes particularly the Medical Practitioners Act, (1978,1993) and the Criminal Law (Suicide) Act, 1993. Thus, the medical profession, as well as the nursing profession, openly stated their non-involvement in such practice as it would be contrary to, and so violate, their professional goals and commitments.

There are movements, groups of persons as well as individuals, in Ireland at present who advocate a change in the law designed to permit abortion. By this change, it is deemed, the medical profession will be forced to admit in its goals and practices the new ones proposed-namely, that of intentionally taking a human life (that of an unborn human being, and, consequently, the harm to the woman's bodily integrity involved in such practice).

Let me bring here an illustration of this point the document Facing Up to Reality, published by the Irish Family Planning Association in March 1998 states: "... the Constitution should be amended to provide that any right to life in the constitution refers only to persons who are bore". [The meaning of persons is not indicated or taken to be of equivalent reference to human beings]. "Abortion is a practical health issue" [1.1.4].

"....abortion is treated as a health issue, since it requires a medical intervention" [1.1.5].

In the event of the people of Ireland do not agree to delete article 4.3.3 of the Constitution [article protecting the life the unborn child], the government should address the issue of abortion through legislation. In such circumstances we recommend that:

• the legislature defines "unborn" as a foetus which has reached that stage of pregnancy at which, if born, it would be capable of independent life.

• The legislature amends articles 58 and 59 of the 1861 Offences against the Person Act so as to provide that it would be unlawful to induce the termination of pregnancy of more than 22 weeks gestation, other than for purposes of premature delivery, or where necessitated in order to save the life of the pregnant woman, or where there is a congenital abnormality of the foetus rendering it incompatible with life.

It would be necessary, in the interests of women's health, to provide that it would be unlawful for any person other than a person appropriately qualified and trained, and registered under the Medical Practitioners Act 1978 to induce a termination of pregnancy [8.2.2].

Legislation should be introduced to permit minors to have access to the courts so as to ensure that they are equal to other women in regard to their ability to avail of medical treatment, including termination of pregnancy [8.2.3].

On the basis of these statements three major ethico-legal issues arise. One affects the nature of the State itself as civil authority. The other two are concerned directly with the relation between civil authority and the medical profession.
Civil authority and the authorisation to kill unwanted human beings

As regards the first, this needs to be noted. Clearly, a first primary duty of civil authority is to protect all members of its society. Thus, when civil authority makes it a policy to decide or to license the killing of some of its unwanted members, it loses its character of civil authority. This kind of understanding of the nature of civil authority seems to be underlying the recommendation stated in Facing Up to Reality, by proposing to disregard the unborn human being as a member of that community to be protected by civil authority. In other words, the issue of abortion will not be an issue at all if the unborn child is excluded from the protective range of law. This means that it would be possible to destroy or dispose of a child as a personal property in an equivalent manner as we do with pet animals. Why the parents or mother of the child cease at birth to be their owner, and, then, the child becomes a subject of civil protection, is not given any justification in this perspective. By implication Facing Up to Reality accepts infanticide as well. Tragically, this radically inhuman proposal undermines the whole of natural justice, and the notion of a just law. It divides human beings into two classes, the protected and the unprotected, the wanted and the unwanted.

Legalized forms of homicide and the medical profession

The State cannot legally demand of a professional body, dedicated to protect life and health that it goes against its own aims and commitments. By doing so it would destroy the very nature of the profession and deprive the population of its service and dedication. This has been openly recognized by the World Health Organization as regards the medical professional commitment not to participate in capital punishment-through lethal injection- as a medical task or treatment.

As things stand in Ireland today the medical profession is guaranteed by law to maintain the fundamental object of its professional dedication -"to care for the sick and injured"- as the ground of its identity and social and legal status. The legislators cannot, without legal contradiction, ask of the doctors on the one hand to continue to exercise their professional commitment, and on the other to negate that commitment with the force of an unjust law that requires of them to take the life of some under their care.

To claim that "...abortion is treated as a health issue, since it requires a medical intervention"[1.1.5] is to reduce the notion of medical intervention to the idea of bodily intervention in accordance with the wishes of the patient in order to obtain some personal benefit from it. Medicine is then reduced to mere body technology. It loses its character of a dedication to benefit the sick, because they are sick, and to protect them from deliberate harm and injustice.

The present government of Ireland is considering legislation as regards abortion. The Prime Minister has openly manifested his view that he regards abortion justifiable in some cases. Other politicians think otherwise. The medical profession is divided in the matter, so are the members of the public. The issue of abortion -the recognition of the unborn human being as having full human status and protection by law- thus, continues to be at the centre of the moral struggle in Ireland, as it is in many other countries of the world.
FRANCES X. HOGAN,
MARIANNE REA-LUTHIN

A Challenge and a Response to a Discussion of The Law and Abortion:
The Feminine Genius and the Culture of Life

The purpose of this intervention is to prescind from a detailed discussion of the law and abortion in the countries of the world and to propose for consideration by the members of the Academy the particular situation in the United States where efforts to enact legislation eliminating or limiting abortion have been occurring for more than thirty years at both the state and federal levels. In the United States this effort has been essentially an incremental approach with emphasis on finding issues where there is some consensus such as limiting funding of abortion, banning late term abortions and requiring parental and informed consent prior to abortion.

It has become increasingly clear to those of us involved in efforts in the United States to impact laws on abortion that we have achieved almost everything allowable under the Constitution of the United States as it is currently interpreted by the US Supreme Court. Without question, legislative and political efforts to protect the right to life and human dignity are vitally needed in the United States and around the world. Individuals of goodwill from a broad spectrum of religious beliefs have worked diligently and effectively to bring about these legal changes. Despite these often-heroic efforts, however, it has become very obvious that fundamental reform will not occur until we first see decisive shifts in cultural attitudes and personal beliefs. For this reason, it is very apparent that the only way to restore full legal protection for the unborn and those at the edges of life is to wage an effective campaign to reclaim the culture and infuse it with values which lie at the heart of each of us, the values written in each of our hearts by God, the values which must, necessarily, undergird our laws. Thus, important as the legal efforts are with respect to abortion, the cultural battle is where attention ought to be focused at this time, at least in the United States.

This intervention is the result of the personal experiences of two women who have been frontline pro-life activists for thirty years. Each has served as President of a state-wide pro-life non-sectarian organization as well as in numerous other capacities within the pro-life movement in the United States. Both have been intimately involved in drafting, advocating for, and supporting pro-life legislation. One of us is a single woman, an attorney, with a law practice in Boston, Massachusetts who serves as President of Women Affirming Life; the other is a wife and mother who also serves as Executive Director of Woman Affirming Life.

Like many Catholic women in the United States involved in pro-life activities, a defining moment in our understanding of the relationship between abortion laws and cultural attitudes took place with the Holy Father's challenge in Evangelium Vitae (n.99) that "[in] transforming culture so that it supports life, women occupy a place, in thought and action, which is unique and decisive."

And so it is that the theme of this year's Assembly, "Evangelium Vitae: Five Years of Confrontation with Society" has a special resonance for many Catholic women in the United States. Through a series of conferences, writings, informal networks and conversations there is developing a growing awareness and appreciation about the wisdom of the Holy Father's special call to women to be in the forefront of efforts to build a culture of life--indeed to be the bearers of that culture. This growing awareness is surely a work in progress but it promises to bear good fruit.

This evolving effort among a widening circle of Catholic women at the parish, diocesan and national levels, is not just part a larger discussion about the role of women in society and the Church. Rather, it is part of a deeper examination of how women are called to live out the values of the Gospel of Life in home, professional and community experiences. It seeks to better understand the underlying reasons for what the Holy Father termed the "eclipse" of the value of life in society: "...the profound crisis of culture which generates skepticism in relation to the very foundations of knowledge and ethics, and
which makes it increasingly difficult to grasp clearly the meaning of what man is, the meaning of his rights and duties." (EV, n.11)

Court decisions and legislative directives did not create the unprecedented assaults on the dignity of human life we are witnessing in society today. As the Holy Father so forcefully reminds us, our present situation "...with its lights and shadows, ought to make us fully aware that we are facing an enormous and dramatic clash between good and evil, death and life, the "culture of death" and the "culture of life..." and, he adds, "[we] find ourselves not only "faced with" but necessarily "in the midst of" this conflict..." (EV, n. 28)

So, why did the Holy Father enunciate a special role for women in this monumental and universal struggle between the forces of life and the forces of death? Why is it that special emphasis needs to be put on the role of women so that women are able to impact the culture, which will result in impacting the law? What is this "feminine genius" which the Pope exhorts Catholic women to bring to the great cultural debate? How are Catholic women in the United States understanding this call and putting it into practice in their lives?

In seeking to answer these questions, much reflection and prayer has taken place. Without doubt, the Holy Father's challenge is clearly not only to women. There is a very real sense that the Holy Father is offering some entirely new insights and is asking for help in understanding the enormity of the changes which have pummeled social and family life over the past two generations. The Holy Father was quite direct in his exhortation in Evangelium Vitae for a "...general mobilization of consciences and a united ethical effort to activate a great campaign in support of life" (n.95). He challenged us "all together"--men and women, Catholics and non-Catholics--to confront society with "...the full truth about the human person and about human life..." and begin to "...build a new culture of life..." (n.95). This is clearly not an exclusively female responsibility.

Shortly after this universal call to active engagement of all of us in achieving the realization of the Gospel of Life in society, the Holy Father explicates a special role for women in the work of transforming the culture. This call to women is very striking. He wrote, "It depends on them [women] to promote a "new feminism" which rejects the temptation of imitating models of "male domination", in order to acknowledge and affirm the true genius of women in every aspect of the life of society, and overcome all discrimination, violence and exploitation" EV, (n.99). The Holy Father goes on to call this role of women"the indispensable prerequisite for an authentic cultural change".

It should come as no surprise that only three months after the issuance of Evangelium Vitae, John Paul II authored another important document on the role of women in working to achieve true and lasting social justice. Coming immediately before the United Nations Conference on the Status of Women in Beijing, the Holy Father's "Letter to Women" dated June 29, 1995, called on women to "...reflect carefully on what it means to speak of the "genius of women", not only in order to be able to see in this phrase a specific part of God's plan which needs to be accepted and appreciated, but also in order to let this genius be more fully expressed in the life of society as a whole, as well as in the life of the Church".

At Beijing, for the first time in the history of the Holy See, a Vatican delegation to an international conference was headed by a woman, Professor Mary Ann Glendon of Harvard University Law School. Professor Glendon and the other members of the delegation in Beijing worked arduously and courageously, against formidable opposition, to uphold the rightful dignity of women and the family. In the year following Evangelium Vitae and the Beijing conference, a unique conference took place in Washington, DC co-sponsored by the Pro-Life Secretariat of the National Conference of Catholic Bishops and Women Affirming Life. The conference brought together Catholic women from three continents to explore the Holy Father's call in Evangelium Vitae to create a "new feminism". Professor Glendon along with two other members of the Holy See's delegation in Beijing, Hon. Janne Matlary of Norway and Kathryn Hoomkwap of Nigeria, led two days of discussion and reflection. This "Women and the Culture of Life" conference was the impetus for an ongoing discussion and real soul-searching
among American Catholic women about what it means to bring their commitment to the sanctity of life, marriage and family into the boardrooms, the classrooms, the legislatures, the kitchens, the catechetical classes, and all the other venues where they live, work and participate in community life—about how Catholic women in the United States can impact the culture.

While there obviously can be no causality proven, it is still significant that both the number and rate of abortions in the United States have declined successively over the past three years. There is a growing consensus among American women, even after more than 25 years of legalized abortion on demand in the United States, that abortion should be neither desired nor necessary. Five out of six American women still become mothers. They experience what the Holy Father has so movingly described in a long series of writings on the role of women and the meaning of true freedom and dignity which is perhaps best summarized in Evangelium Vitae where he calls us to recognize the unique feminine openness to the other human person. "A mother welcomes and carries in herself another human being, enabling it to grow inside her, giving it room, respecting its otherness..." The Holy Father writes: "Women first learn and then teach others that human relations are authentic if they are open to accepting the other person: a person who is recognized and loved because of the dignity which comes from being a person and not from other considerations, such as usefulness, strength, intelligence, beauty or health." (n.99) A woman's openness to accepting with unconditional love the child growing within her is not only true feminism, it is a model for all interpersonal relationships and thus "the indispensable prerequisite for an authentic cultural change" upon which the Gospel of Life depends. (EV, n.99)

The unique ability of women to bear and nurture children has for too long been portrayed as a burden by doctrinaire feminists. Thus, it is a special call to Catholic women to affirm with love and wonder the gift of life and the dignity of the human person. Those who have the ability to accept and nurture life at its earliest and most vulnerable stages can bear personal witness to the power of absolute love and the enslavement to false notions of radical autonomy and absolute personal "freedom".

Women Affirming Life and the Pro-Life Secretariat of the National Conference of Catholic Bishops of the United States will hold a follow-up conference to "Women and the Culture of Life" entitled "The Feminine Genius and the Culture of Life" on March 23-25. This leadership conference is a special invitation to a new generation of Catholic women at the threshold of the 21st century to examine the ultimate millennial challenge to the "genius of women": How can Catholic women of the Third Millennium use their unique talents and insights to build a culture of life and a civilization of love? Only in this way, can we effectively impact laws on abortion and on other life issues.

Fittingly, the conference will end with a Mass at the Basilica of the National Shrine of the Immaculate Conception in celebration of the Feast of the Annunciation. Mary's fiat was the ultimate confrontation with society. In faith, in wonderment, unclear of the future but confident in God's loving providence, Mary offers all Catholic men and women the ultimate role model for building a culture of life. This work-in-progress of bringing the "feminine genius" to the forefront of efforts to build a culture of life begins with the premise that the core of the Gospel of Life lies within the hearts of each and every member of society. Cultural change in the United States must precede both genuine political change and the enactment and upholding of laws which really protect the full dignity of the human person from conception until natural death. The culture in the United States has been impacted significantly for the worse, not by violent direct assaults such as happened in war-torn Europe in World War II, especially in the Pope's own homeland, but rather by a subtle, internal, erosion of our common heritage about the dignity and value of every human life and our common belief that freedom must be tethered to truth. This change in American culture has, in the last twenty five or thirty years, undone in a non-violent manner, more than two hundred years of a proud tradition of understanding that none of us is safe unless the law protects each and every one of us.

A growing number of American Catholic women are prepared to engage the culture and to challenge it in response to the Holy Father's call in Evangelium Vitae and to use their "feminine genius" to infuse
the power of unconditional love into the homes, schools, parishes, and professions of the United States. With profound gratitude for the leadership of His Holiness Pope John Paul II in confronting the unprecedented clash of good and evil in our world today, we ask God's blessing as we take up the enormous challenge to build a culture of life and a civilization of love.