

A History of Conscientious Objection and Different Meanings of the Concept of Tolerance

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The most ancient writings from Greek literature, philosophy and dramaturgy, the philosophical writings of the Roman Stoics, and the books of the Old Testament give us the witness of men and women who at a decisive moment in their lives, required to make a personal choice of religious or moral importance, found themselves in the position of having to disobey the law of their country. Even if the concept of conscientious objection did not exist yet (we know that conscientious objection, in a strict sense, was theorized recently, just a little over a century ago, in relation to bearing and using arms in a military context), the reality of the act—*to refuse to obey a civil law believed in conscience to be gravely unjust*—appears to have always existed. One of the objectives of this report is to show the permanence over the ages of an inner human need that sometimes leads to risking one's life and judging that respect for divine laws and moral honor are values that prevail over one's own survival.

Today recourse to conscientious objection has gone beyond the framework of the pacifist struggle to which it had been limited, not always without ideological influence, and been asserted in the areas of medicine and political activity. This undoubtedly calls for a differentiated, in-depth study, but also an analysis of the cultural and social conditions in which it is exercised. The witness of past centuries, at least until the end of the Middle Ages, seems linear and its contents easy to list. A general agreement existed regarding the *values* which were considered essential that gave foundation to political authority and social equilibriums: acceptance of duties to one's country and God, personal rules of behavior, the dignity of work, care for the family unit, filial piety, paternal authority, and many other aspects of life in society.

It would be exaggerated to say that all these values have disappeared today, but realism compels us to note that they are no longer the object of unquestioned agreement; on the contrary, they are subject to continuous theoretical and practical questioning. Obviously, the attenuation and, in some cases, the disappearance of certain values necessarily elicits new social norms of

behavior. We are in the presence of social and political reference points that come from alternative philosophies and currents of ideas that have become more and more transversal to the cultures in a globalized world. These ideas generate unusual judgments and behaviors insofar as they are based on truly revolutionary concepts of human nature marked by a kind of cultural relativism. We will take a look at some aspects of this.

Ideological tolerance and conscientious objection

One of these innovations is surely the current concept of *tolerance* which thrives because of a real ambiguity that will be seen later. To give a first idea of it, let us say that whereas the idea of patiently tolerating a temporary evil that is unavoidable for the moment without causing even greater damage, or calmly confronting contrary opinions has always signified a classic expression of the *virtue of prudence* and its reasonable expression, today *tolerance* has ceased to be a *practical virtue* because it claims to be on the level of a *theoretical virtue*. This claim is of a *political essence*, even if it has countless consequences in the order of *ethos*. The concept of *tolerance*, like that of *conscientious objection*, also has a relatively recent history. It can be dated to the time of the Protestant Reformation. From Erasmus¹ to Locke² and Spinoza,³ from Bayle⁴ to Voltaire⁵

¹ Despite his break with Luther, who had been his friend and whose seditious action he deplored, Erasmus became involved publicly so that violent methods would be avoided in the fight against the Reformation. He recommended a kind of political compromise that aimed at letting the regions practice their faith while waiting for an agreement to be made between the different parties. This is what earned the one who became the best friend of Thomas More a reputation for tolerance. In Erasmus, rather than a religious attitude, tolerance was the fruit of a kind of relativism, as has often been wrongly interpreted.

² The *Essay on Toleration* (1667) is the first philosophical work on the subject of tolerance. In the period marked by the crises of the Reformation, Locke's position consists essentially in putting the parties back to back that had been confronting one another for more than a century, for reasons of civic peace inspired for him by Gospel teachings. In a second Letter on tolerance, published in 1686, the English philosopher wrote the following: "Since you are pleased to inquire what are my thoughts about the mutual toleration of Christians in their different professions of religion, I must needs answer you freely that I esteem that toleration to be the chief characteristic mark of the true Church. For whatsoever some people boast of the antiquity of places and names, or of the pomp of their outward worship; others, of the reformation of their discipline; all, of the orthodoxy of their faith—for everyone is orthodox to himself—these things, and all others of this nature, are much rather marks of men striving for power and empire over one another than of the Church of Christ. Let anyone have never so true a claim to all these things, yet if he be destitute of charity, meekness, and good-will in general towards all mankind, even to those that are not Christians, he is certainly yet short of being a true Christian himself". (English text: <http://oregonstate.edu/instruct/phl302/texts/locke/locke2/locke-toleration.html>) An important step is taken in relation to Erasmus: orthodoxy is not granted to any religion. Locke, like every theoretically tolerant person, puts himself above the interested parties and gives some criteria that are authentic for him of true orthodoxy: someone who is tolerant is truly Christian.

³ Baruch Spinoza's tolerance, in his *Tractatus theologico-politicus* (1670), enounces an approach that is totally centered on individual freedom. In this sense, Spinoza is a great inspirer of current

in the age of the Enlightenment,⁶ it has been the subject of many subsequent, in-depth studies and given different nuances. It would not be fair not to try and list these precisely, but the semantic evolution of the term since Locke's *Essay on Toleration* in 1667 until our times shows that it has become a real political instrument that paradoxically contains some frightening forces of totalitarianism and exclusion.

While the nature of the subject matter obliges us to consider simultaneously the two very distinct questions of *conscientious objection* and tolerance, we have to understand that **the act of refusing in conscience to obey an unjust law is made today in a context of ideological tolerance which, by its nature, is not willing to support it. Our thesis is that an ideologically tolerant society cannot tolerate conscientious objection because in some way it escapes its control.**

This preliminary statement may be surprising: that is, stating that tolerance is intolerant is a paradox whose formulation may seem provocative and simplistic. However, an ideologically tolerant person is a little like Epimenides, the thinker whose fame has been handed down over the ages in the form of a paradox known as the Paradox of Epimenides:

Epimenides the Cretan said: All Cretans are liars.

subjectivist philosophies, many of which make reference to him. His idea is as follows: States must only be constituted on the basis of the freedom of individuals; this in turn gives grounds to the State's fundamental duty to safeguard it. No religious consideration should intervene in this because on this subject complete freedom of conscience prevails. Everyone has the right to judge and interpret religion; it is a personal matter. In this position, a philosophical origin can be found of the strict laicism that exists today in some Western democracies (France, Spain in particular).

⁴ Pierre Bayle (1647-1706), a French Calvinist, is considered one of the theoreticians of tolerance. His work entitled, *Commentaire philosophique sur ces paroles de Jésus-Christ: Contrains-les d'entrer*, unleashed a controversy around the idea of tolerance. The Huguenot Pierre Jurieu responded in his *Traité des deux souverains...contre la tolerance universelle* (1687). If Bayle has continued to be famous, it is because of his *Dictionnaire historique et critique* that defended the totally relativist thesis (or, more exactly, skeptic thesis according to which men are incapable of arriving at an absolute certitude. Hence an appeal for tolerance based on the primacy of personal conscience. In the event that this might be the pretext to carry out a persecution, it would have to be subject to reason. So Bayle grants reason the ability to judge the whole sphere of Revelation. His system thus develops an extreme rationalism.

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⁶ Starting from the Enlightenment, tolerance has been at the heart of the message spread in political and economic elites by Masonic lodges. "Tolerance in the seventeenth century was conceived of as a conquest of human freedom vis-à-vis a religious position that would presume to legislate on good and evil. Roman Catholicism was the first to be targeted: faith approached in a negative way, in the eyes of a Mason as well as an Enlightenment philosopher, is that kind of blinding that allows suspicious minds to adhere naively to certain facts which reason cannot be kept from rejecting...Interpreted in this way, faith can only give rise to a kind of sectarianism and fanaticism that has very often generated terror, which the Masons have no difficulty proving. Therefore, this exemplary virtue, tolerance, appears to be superior to faith". (N. Heamont, *La Franc-Maçonnerie*, Plon/Mame, Paris 1995, pp. 231-232.).

*Epimenides is a Cretan.
 So Epimenides is a liar.
 So Cretans tell the truth
 So Epimenides tells the truth because he is a Cretan
 Since he tells the truth, all Cretans are not liars...*

We can see that there is no end to this seesawing from one affirmation to its opposite. The reason is that when Epimenides makes the affirmation, he destroys the validity of the act of affirmation through its content. By saying that *all Cretans are liars*, he calls himself a liar and therefore destroys the validity of his own affirmations.

An *ideologically tolerant person* is a little bit like Epimenides. Why? By saying that *all opinions are valid*; he affirms as a general rule what is never more than one opinion among others, according to his own affirmation. How can he get out of this deadlock? Only through the force of the reply: *If you contradict me when I say that all opinions are valid, you are a dangerous, intolerant person, to be fought by every means*. In fact, the alternative--which would consist in saying: *My tolerance is only one opinion among others*--is not bearable for him. *Ideological tolerance* is meant to be imposed on everyone. For this reason we said it is of a *political and not a moral essence*, even if it makes an improper moral claim. Since such intolerance is really unconscious, it is exercised with even greater force.

What tolerance cannot tolerate

The paradox of the *ideologically tolerant person* is not a rhetorical exercise. It makes us understand that a society that declares itself, loud and clear, to be a tolerant society cannot bear or tolerate anything that endangers its unstable and contradictory equilibrium. In particular:

- it does not tolerate the idea that there is a truth to be sought;
- it does not tolerate that such a truth can have a universal character;
- it calls for eliminating any in-depth discussions; in fact, in an in-depth discussion, the interlocutors may not be in agreement, but they have the common desire for a truth that is valid for all the parties in the discussion. In the *ideologically tolerant* society, the question of the search for truth is eliminated, and in doing this, an in-depth discussion is transformed into an exchange of relative ideas. Each interlocutor *informs* the other about his ideas and is forbidden to consider them possibly valid for the others. They cease to be in-depth ideas. There are no stakes in the discussion;
- it does not support the ethical implications of in-depth ideas;

- it always puts itself above in-depth discussions and **demands the right, its own right, to judge the parties involved in their presence**; in so doing, moreover, it does not exercise any real arbitration—which would be expected from an authentic political power—because **its tolerant positions will always put it practically on the side of the positions of the more theoretically tolerant interlocutors, positions that are surely less disturbing for the consensual equilibrium which it intends to maintain.**

In a word, the *tolerant society* imposes a ‘single thought’. It is in this sense that it is totalitarian and, without knowing it, paves the way for forms of totalitarianism, sometimes in very brief periods of time. For example, the proclamation of the revolutionary ideals of tolerance among the theoreticians of 1789 prepared the way in just three years for setting up a real regime of terror.⁷ Shortly afterwards, some priests tried in vain to make a form of conscientious objection understood that would have prevented them from taking an oath to the *Constitution civile du clergé*. The refusal of those who are called in a rather eloquent way the *réfractaires* earned them their death and, at best, exile with the loss of all their civil rights and possessions.

The ideology of tolerance is not free from philosophical prejudices. It has been rightly stressed that the great theoreticians of tolerance at the time of the Protestant Reformation were for the most part skeptics. This was particularly obvious for Bayle. The philosopher was not content with demanding the same rights for those who were in error as for those who were not. He went as far as to want to recognize the same status for erroneous doctrine as for expressions of truth: *A conscience that errs ought to be able to assure its erroneous convictions the same privileges as those which an orthodox mind obtains for truth*, he wrote in his Dictionary. To the objection that in this case one might be exposed to the torments of those whose consciences would oblige them to persecute others, Bayle could only respond by referring to the rational character of the moral conscience.⁸ He does this in a somewhat incantatory way without realizing the *contradictio terminorum* present in his theses: if conscience must obey reason, it is right for the latter to offer it some criteria of truth. It is for this reason that Bayle encountered the greatest opposition among the very ranks of his first partisans, for example, Jurieu.

We have to be fair: Pierre Bayle was perfectly sincere in his desire to fight against the real intolerance of his time. He proved it by dedicating several chapters of his work to the abuses committed by his own Huguenot brothers

⁷ We will refer to the small critical synthesis, *La Révolution ou la mort*, which makes up Chapter 9 of the work by J. Sevilla, *Le terrorisme intellectuel*, Perrin, Paris 2004 (2), pp. 156-167.

⁸ Cfr. H. Kamen in *L'éveil de la tolérance* (transl. J. Carlander), Hachette, Paris 1967, pp. 236-241.

against the Anabaptist minorities, the Catholics and also the Jews (the murder of Nicolas Antoine, who was strangled and burnt in Geneva in 1632).

The position of Locke, the father of modern tolerance, is much more problematic than Bayle's. His concept was rather vast: he intended to *open civil society up not only to the Jews, but also to the Muslims and even the pagans. However, he attached two reservations to this: Catholics and atheists were excluded from tolerance.*⁹ Let us leave aside the exclusion of Catholics, which was undoubtedly conditioned very much by the prejudices that structured English society under James II. Let us note with interest, however, that the exclusion of atheists was based on Locke's idea that *an atheist, even a virtuous one, cannot be committed either in relation to himself or in relation to others to remain virtuous; it is an inconsequential virtue because it denies the need for punishments or rewards in another world.*¹⁰ So Locke's tolerance, which is sensitive to the role of civic bond exercised by religious beliefs, is not based on a nihilist, or even just a neutral concept of human society. In this it is distinguished from the ideological tolerance of contemporary secularized societies.

If we want to find an answer now to the legitimate concern of Bayle, Locke and many others regarding the danger of forms of totalitarianism, we see that it cannot be found in a theoretical need for tolerance. *Ideological tolerance* is a false response.¹¹ **To say, in order to escape the totalitarian stranglehold, that all opinions are valid, would legitimize precisely what one would hope to avoid.** The only truly realistic response from the philosophical standpoint is the positive affirmation of human dignity as a truth valid for all. This makes a real discussion possible because the interlocutor in any case is considered worthy: that is, he is the respected holder of this fundamental freedom that one intends to recognize in him. This attitude is really tolerant, we might say in the classic sense, respectful and patient, but it is not found in *ideological tolerance* because it supposes and affirms a universal truth.

⁹ Cfr. P. Thierry in *La Tolérance, Société démocratique, opinions, vice set vertus*, Puf, Paris 1997, pp. 35-57.

¹⁰ *Ibid.*, p. 38.

¹¹ "We live under the grip of a kind of moral terrorism...a morality of convenience. The single thought, the single morality, moreover, are most often reactions of convenience. Once this was called conformism...In a despotic regime, conformism can go in the direction of violence. In a democracy, it always goes in the direction of moderation. The problem is that moderation can become despotic. Tocqueville explained it very well...There is something totalitarian in the soft thought that governs us today". (P. Tesson in *Un terrorisme intellectuel assez bienveillant*. A subject taken up by D. Linsel in J.M. Chardon and D. Linsel, editors, *La pensée unique. Le vrai process*, Economica, Paris 1998, pp. 34-35.

If we avoid the search for a truth about man which, by its nature, is universal and can thus give foundation to the unconditional respect that should be given to his life regardless of its state, then concrete behaviors regarding man would no longer be regulated by the acceptance of a truth concerning his dignity, a truth that protects him. In reality, they would be regulated by a balance of ideological, political and financial forces.

In actual fact, we can see that *ideological tolerance* abolishes the only viewpoint that respects human dignity. How, then, can we be surprised when, in the name of tolerance, the lives of children in their mothers' wombs are threatened and human embryos are manipulated? Anything becomes possible without unconditional respect for man. Invective, being a short circuit of reason, will overstep well-argued and fair discussion.¹²

Human dignity is found on a philosophical level; it is a fundamental fact that can contribute socially to bringing many different philosophical concepts closer, but at one condition: namely, the indifference that reduces fundamental choices to simple expressions of different opinions must be avoided. Human dignity, especially with regard to respect for human life, would call for a kind of prudence on the part of a politician who cannot morally legalize what many citizens consider an action unworthy of man.

On the religious level, the concept of dignity also includes a vision of man as a created being. So from the Christian perspective, man finds his ultimate consistency in his nature as an image of God. He thus takes into consideration a certain design of the Creator that is readable in the facts of nature (with regard to life, these facts include, for example, the growth of the human being, the purposes of biological phenomena in the formation of the body). Believers cannot impose an understanding of vital phenomenon that explicitly includes a faith perspective. However, the contribution of faith is not inconsequential for human society. To stay with the example of human life, Christian faith and culture have certainly contributed to thinking about the coming into existence of a new human being as an event (or better, an advent). The rejection a priori by an ideologically tolerant society of the expression of this kind of sensitivity,¹³ can only lead to impoverishing the

¹² This is what we observed at the time of the recent controversy over Telethon in France. Until the present, a real, serene and fair discussion has not taken place on the question of the ethics of the means used in biomedical research to make progress in the treatment of some diseases (in the case of Telethon, muscular dystrophy).

¹³ The public expression of a culture's sensitivity to the traditions of a country is no longer completely guaranteed in Western societies, as two recent incidents sadly show. In London, in December 2006, it was decided to abolish any mention of Christmas in the public celebrations for the end of the year to not offend the immigrant communities. In the North of Italy, a schoolteacher decided to not allow the children to sing the traditional Christmas carols for the same reason: to not offend the children attending that school. Beyond the act of violence of depriving the citizens of a country of legitimate

social awareness that human life, even in its very first instants, is a good to be respected unconditionally, protected and served. It is understandable that in this context life is trivialized and reduced more and more to a simple biological fact.

In reality, ideological tolerance deprives the society of the specific contribution of philosophical and religious approaches which it refuses to include by preventing them from making their contributions to the common good.

The loss of meaning of the objectivity of a judgment in conscience

Ideological tolerance is always linked to an individualistic conception of the moral conscience whereby an individual who decides to act and adopt a particular behavior is seen as a kind of totally autonomous monad in his choices. The moral norm becomes a threat to freedom. At best, the norms from the moral authority, social tradition and magisterial instructions from a religious authority will be received as indicators that are no doubt interesting or stimulating opinions for reflection, but will not in any case be binding for the subject. From a perspective of this kind, the idea goes unheeded that a law, whether written or not,¹⁴ can be imposed on the subject because of the sheer force of the certain truth which that law can bring. The unwritten laws, to which Christian thought will refer with Saint Paul following Socrates and Sophocles, make it possible to integrate the rational requirement and divine law in a harmonious way. On the other hand, since the very idea of unwritten laws present in the human heart is rejected a priori, any connection is irremediably excluded between God and conscience. In other words, God is chased away from the moral sphere and no longer granted the possibility to intervene in human action. Far beyond the ethical problem, we can see that for Christians, a whole concept of divine grace, its efficacy and power of justification of the spiritual being is put up for question. The individualistic conceptions, which are also by definition necessarily relativist, cannot leave the foundations of the faith intact.

This relation between freedom and moral truth is not the only one to raise a problem in the tolerant view of conscience. All the problems of an erroneous conscience are also evaded; or the error of conscience is an

access to their traditions, which are part of the common good, a totally deficient anthropology can be found behind this: namely, the importance is overlooked for the civic bond of safeguarding the festive aspects that have brought all the generations together for centuries. Moreover, this unconsciously hides a deep misunderstanding of the immigrant peoples by prejudging that they, as a whole, could take offence from the joyful celebration in their host country of a traditional festivity.

¹⁴ Second Vatican Council, Pastoral Constitution *Gaudium et Spes*, 16.

opportunity that makes it possible to act ordinarily without committing a moral fault;¹⁵ or the reality of moral error itself is denied by the very fact that the moral conscience is granted an infallible status thereby creating confusion between the two levels of conscience classically designated by the terms *synderesis* and *conscientia*.¹⁶ Since many of these aspects are treated extensively in Anthony Fisher's report, I will not develop them here. I will only stress one important dimension of the delicate and widely discussed question of the autonomy of the moral conscience: namely, there is a kind of sovereignty of the moral subject who, through his actions, decides about himself and his becoming as a man, whether virtuous or not, that has always been at the heart of classic thought. Only the reasonable character of a judgment in conscience¹⁷ gives freedom the means to achieve its true autonomy by following the truth written into the moral good (in this sense, one commonly speaks about the freedom of the saints). A reasonable man, subject to Divine Providence, shares in this in some way. He has the ability to govern himself and to govern other beings. However, autonomy is often seen as an ability of the conscience to decide about the good. It affirms in this sense a kind of primacy of the subject's moral opinions, who can never err morally if he is sincere. At most, the possibility is admitted that he may make errors, but they are only considered errors of knowledge, in short, very comprehensible errors; and the moral conduct that follows is no longer blameworthy; it is described as inadequate or inappropriate.

So the shift in meaning of the concept of autonomy of conscience is expressed in the semantic sliding of the language of ethics, which often impedes the formulation of value judgments about human behaviors. By way of example, and to stay in the area of autonomy, Carlo Caffarra has demonstrated well how speaking about a *decision in conscience* instead of the traditional term, *judgment in conscience*, contributes to eliminating any possibility of referring to criteria of truth in the sphere of action.¹⁸

¹⁵ "The erroneous conscience, which makes it possible to live an easier life and indicates a more human way, would thus be the real grace, the normal way to salvation. Non truth, remaining far from truth, would be better for man than truth". (J. Ratzinger, *Coscienza e Verità* in *La Chiesa. Una comunità sempre in cammino*, Paoline, Cinisella Balsamo 1991, pp. 113-137.).

¹⁶ Note that in the article mentioned earlier, J. Ratzinger proposed to substitute the first of these terms, which is rather obscure and somewhat accessible in his opinion, with anamnesis, which has the merit of being clearer and deeper, and also particularly suited to the language of biblical anthropology (*Ibid.*, pp. 122ss).

¹⁷ "Rationalis creatura (...) sic divinae providentiae subditur quod etiam similitudinem quondam divinae providentiae participat, in quantum se in suis actibus et alia gubernare potest. Id autem quo aliquorum actus gubernantur, dicitur lex. Conveniens igitur fuit hominibus a Deo legem dari" (St. Thomas Aquinas, *Contra Gentes*, III, 114).

¹⁸ Carlo Caffarra, *L'autonomia della coscienza e la sottomissione alla verità* in AA.VV., *La coscienza*, International Conference sponsored by the Wethersfield Institute of New York, Orvieto, May 27-28, 1994, Libreria Editrice Vaticana, Vatican City 1996, pp. 142-162.

The dual stakes of conscientious objection

The inner discussion that proceeds any subsequent moral decision is, upon its visible and public manifestation, a *deliberation*, a practical judgment that refers to what one proposes to do (or with regard to conscientious objection, not to do). **To choose not to do something is also a moral act with regard to the well defined object: to object is to perform an act of refusal by reason of convictions that are sufficiently important to be referred to the personal conscience.**¹⁹ We do not object to obeying a positive law only because we do not like that law or because we are of a different opinion than the lawmaker. Positive laws are binding when they come from the legitimate authority to which we are subject. They make up the legislative order that must assure justice among the citizens, regulate their relations and the proper organization of their roles and functions in all areas of social life: economy, education, health, culture, information. Laws are binding because they are supposed to protect goods and rights in a perspective, in principle, of protection and promotion of the common good.

The reasons for disobeying a positive law must be capable of being referred to the solicitation of the conscience where laws other than the positive law enter into play. They are distinguished from positive law insofar as they are not subject to change like human laws; they are immutable laws and commit the totality of the person. Here are some examples that posterity has left us:

a) Socrates' condemnation to death.

We can ask the question: How could putting the philosopher to death have been the work of the first democratic government in history? It is not without interest to look at the political and cultural context of this trial because it does not lack similarities with the Western context at the beginning of the twenty-first century. Athens was left battered and bloodless after a war that cost the lives of nearly a quarter of its population (the Peloponnesian War). Although two attempts to overturn the democratic power failed, the intellectual discussions were still animated by the Sophists' paradoxes. Their art, inherited from Ionian rationalism, consisted in putting up for question all the foundations of the city, in particular, the gods and the laws. By introducing doubt about everything that had contributed to the glory of Athens in the age of Pericles, they were considered a threat. By playing on Socrates' original character and the impact of his teaching, his accusers managed to formulate two charges against him--

¹⁹ J. Ratzinger, art. cit.

corruption of youth and belief in gods who were not those of the city--and have him condemned to death after a trial from which the condemned's admirable plea has passed on to posterity.

His death was voted by a majority of 280 votes to 221: a first democratic consensus for a work of death! In his defense, the philosopher put forward the rectitude of his own conscience and said that in death he had a more enviable destiny than those who condemned him unjustly: *"I would have you know, that if you kill such a one as I am, you will injure yourselves more than you will injure me. Nothing will injure me, not Meletus nor yet Anytus, they cannot, for a bad man is not permitted to injure a better than himself"*. Earthly goods and life itself did not seem to him to have the dignity of a pure conscience: *"I do not deny that Anytus may, perhaps, injure me; and he may imagine, and others may imagine, that he is inflicting a great injury: but there I do not agree. For the evil of doing as he is doing, the evil of unjustly taking away the life of another is greater far"*.²⁰

We can ask what made death in Socrates' eyes a more enviable fate than the injustice of condemning someone who is innocent. Here **religious sentiment joins moral conviction and gives it all its perspective**. This involved the judgment of the gods and all those who preceded us in Hades: *"If indeed when the pilgrim arrives in the world below, he is delivered from the professors of justice in this world, and finds the true judges who are said to give judgment there...that pilgrimage will be worth taking. What would not a man give if he might converse with Orpheus and Musaeus and Hesiod and Homer? May, if this be true, let me die again and again!"*²¹

b) *The confrontation between Creon and Antigone*

This unity between moral requirements and religious duties is found in Sophocles' character, Antigone. The drama opposes two wills: that of Antigone, who intended to bury her brother Polynices, and that of Creon, the King of Thebes, who thus incarnated the positive law. The context is a fratricidal war that set his two sons against one another: Eteocles, who was destined to reign, and Polynices, exiled by Creon, who attacked the city. The two brothers are killed. The king decides to honor the younger as a hero and refuse burial to the elder. The order becomes law: his body is abandoned to the dogs; anyone who tries to bury him will be condemned to death. Antigone is surprised by the guards as she covers her brother's body, and so she is brought before Creon, who actually has her imprisoned while waiting to put her to death. It is only

²⁰ Plato, *The Apology of Socrates*, 30c and 30d (English translation: <http://www.wsu.edu/-dee/GREECE/APOLOGY:HTM>).

²¹ *Ibid.*, 41a.

through the intercession of his forecaster with his dark predictions because the gods are angry about the situation that Creon withdraws, gives a burial to Polynices and decides to let Antigone free. But his remorse comes too late: Antigone hangs herself in prison. Haemon, the son of Creon and fiancé of Antigone, puts an end to his days. Eurydice, Creon's wife and Haemon's mother, commits suicide too when she learns of her child's death. In this way Creon loses everything. All he can hope for is a liberating death. The dialogue between Creon and his daughter merits attention. Before the blind, unjust force of the law, she makes herself the advocate of the rights of the *Physis*, the demands of nature, which express the will of the gods.

The dialogue presents with great clarity the opposition between the two concepts of duty and in this sense it is strikingly up-to-date. Creon expresses a viewpoint that pertains to all positivists: "*No. We must obey whatever man the city puts in charge, no matter what the issue—great or small, just or unjust. For there's no greater evil than a lack of leadership. That destroys whole cities, turns households into ruins, and in war makes soldiers break and run away. When men succeed, what keeps their lives secure in almost every case is their obedience. Until one dies the best things well may be to follow our established laws*". Before the king, Antigone presents her views in this way: "*I did not think anything which you proclaimed strong enough to let a mortal override the gods and their unwritten and unchanging laws. They're not just for today or yesterday, but exist forever, and no one knows where they first appeared*".

The antagonism is complete: divine laws against human laws, temporal decrees and unwritten, eternal laws. Note that Antigone, in referring to the gods, also evokes the precept of a law of nature: *Under no pretext can a man's body be left unburied*. Here nature reflects the will of those to whom it is subject, the gods. *Conscientious objection* joins religious duty in a natural way because the latter rightly imposes itself on the conscience: it is good, it is right, it is just to obey the gods. Antigone puts in parallel the physical and moral sufferings of the conscience that disobeys the gods: "*And so for me meeting this fate won't bring any pain. But if I'd allowed my own mother's dead son to just lie there, an unburied corpse, then I'd feel distress*".²²

c) Seneca or the sacred character of the duty in conscience

Despite the justification of suicide that we find in Rome among the Stoics--an action that was condemned by minds as different as Pythagoras, Plato, Cicero and Plotinus--the conviction is present that men are destined to respond for their

²² Sophocles, *Antigone*, II, Sc. 3, 462-470.

actions one day before the gods. For Seneca, there is no possibility for man to be elevated above his destiny without a god, and, without him, to become really good. The conscience's need to act well enters into the perspective of having to make an account to the divinity one day.²³ Once again we find the unity between the two dimensions, religious and moral, of the need to lead a virtuous life, regardless of the cost.

d) *The witness given to the one God as a reason for religious conscientious objection: the seven brothers of the Book of Maccabees*

From a directly religious perspective since it takes place in the ritual act par excellence, the seven brothers of the Book of Maccabees offer the perfect example of conscientious objection. While of religious essence, their approach is also profoundly moral. Their refusal to eat sacrilegious meat offers them the occasion to give the witness of martyrdom. Before dying, each one of the seven brothers expresses his submission to the laws of his country and his certainty that he will receive compensation from God. God will bring about all justice in chastising the unholy persecutors. Observe that in their case, as in that of Eleazar who preceded them in death, there is also witness to the one God as the youngest of the brothers expresses in accepting the torment: "*I too, like my brothers, surrender my body and life for the laws of my ancestors, calling on God to show his kindness to our nation*".²⁴ To give witness to God is a requirement of their conscience. It is also interesting to note the elderly Eleazar's concern to not give bad example to the young who could be confused if it appeared acceptable to eat the sacrilegious meat, as he was being persuaded to do. In this example, conscientious clearly includes a *responsibility for others*. This is added to the perfection of wanting to keep oneself personally pure from all compromise of principle.

e) *The structure of believers' freedom*

From the beginning, Christians have found themselves in an awkward position in relation to the Jewish and then the Roman law. Obviously, their witness is first and foremost of a religious essence, which explains the outbreak of the persecutions. It was through Gamaliel's intervention that the Apostles around Peter escaped the anger of the Sanhedrin that wanted to put them to death. The crime was disobeying the order to not *teach in the name of Jesus* any more. Peter answers by giving one absolute rule of discernment: *It is better to obey God rather than men*, a principle that would accompany all baptized

²³ Seneca, *Ad Lucilius*, IV, XII, 41.

²⁴ *2 Mac* 7:37.

persons after him. Then, the Apostle adds, this formulates the kerygma whereby he and his companions are witnesses with the Holy Spirit whom God gives to those who submit to Him. These words recounted by the Acts of the Apostles provide the structure of what would become for Christians the specific conscientious objection that can lead to martyrdom. It expresses the believer's freedom.²⁵

The following elements make up its structure:

1. The divine laws take precedence;
2. Only when a human law formally contracts divine law a believer can be in a situation to disobey;
3. The witness transmits a precise truth about God:²⁶ to teach *in the name of Jesus*;
4. The witness is made possible through the power and help of the Holy Spirit;
5. A believer cannot shrink back: objection is a duty in conscience precisely because the Gift of the Holy Spirit is given to him.

f) *To not sacrifice to idols, to not recognize false gods: Saint Philias and Saint Cyprian*

By now, the witness given by the Christians ready for martyrdom will include all the same elements. There are plenty of examples: under the persecution of Diocletian, in the year 304, Saint Philias was interrogated by the President of the Court, Culcien, who ordered him to sacrifice to the gods.

- *I will not make the sacrifice*, Philias answers.
- *Are you acting in this way because of a scruple in conscience?*
- *Precisely for that reason.*
- *Why then don't you observe with the same scruple in conscience the duties to your children and your wife?* Philias responds:
- *Because the duties to God are more important than the others. To give witness to the true God by refraining from worshipping idols is indeed a duty in conscience for Philias.*²⁷

²⁵ M. Schooyans, *Le terrorisme à visage humain*, F.X. de Guibert, Paris 2006, p. 112.

²⁶ See in this regard the opposing positions of J. Assmann and J. Ratzinger, regarding the former's affirmation that religious intolerance dates back to the Exodus when Moses affirmed the existence of the One True God. Assmann sees in this the origin of ethical intolerance because this God gives instructions to men (Decalogue). The latter shows that the question of truth was not invented by Moses. It inevitably arises when the conscience arrives at certain maturation (J. Ratzinger, *Fede, Verità, Tolleranza*, Cantagalli 2003, pp. 223-275).

²⁷ Martyrdom of Saints Philias and Philorome (in *Actes des Martyrs*, Italian ed.: *Atti dei Martiri*, Paoline, Milan 1985, p. 753).

The martyrdom of Saint Cyprian is well known. What is known less is that the bishop of Carthage had to suffer exile following a previous appearance before the court. During that first interrogation, the future martyr relates doing God's will to the rectitude of the one to whom God has revealed himself. To the Proconsul Paternus who asks him, *Do you persist in this will* (= to not make sacrifice to the gods)? Cyprian responds, *The upright will that knows God cannot change.*

Sometimes it has been stated, as Voltaire did in his times, that these persecutions really came from the Empire's need to keep the spread of Christian doctrine from weakening the unity of the Empire. The philosopher even adds that this was not a sign of intolerance. Here we find an illustration of what we said in the beginning about eliminating the real questions. If the Christians had not claimed a universal doctrine of salvation, their religion would have taken its place with the other religions that were tolerated in the Empire. For this reason, it would have been sufficient for them to recognize the Roman rituals while practicing their religion.

This is precisely what is unacceptable for real Christians and hence what Cyprian and the others rejected. In the interrogation before his exile, Cyprian formulated what was expected of him in this way:

- *The three holy emperors Valerian and Gallienus have deemed to send me a letter in which they ordered that all those who do not practice the Roman religion should recognize its rituals. What do you answer to me?*
- *I am a Christian and a bishop, said Cyprian, I do not know any other god than the one true God who created heaven and earth, the sea and everything contained in it.*²⁸

We note that the martyrs' witness on which the Church of the first centuries was founded, makes it possible to understand the opposite act of counter-witness represented by apostasy and the idolatrous worship of the Roman gods. Note that among the *lapsi* in the Christians' eyes there were not only those who abandoned the one God, but also those who seemed to do so by making sacrifices to the gods of the Empire.

Cyprian's attitude raises a question that is very up-to-date and worthy of an ideologically tolerant society. It is precisely the subject of the famous controversy that put Saint Ambrose in opposition to Symmachus: Why wouldn't the Christians recognize the Roman gods since Rome allowed them

²⁸ *Ibid.*, p. 467.

to practice their own religion?²⁹ Voltaire did not hesitate to say, in his *A Treatise on Tolerance*, that in his eyes, the Roman Empire proved to be tolerant towards all, and added that it was the Christians who proved to be intolerant,³⁰ by not abiding with the gods of the city. After these pages, which have never been the subject of a critical, coherent examination by historians and philosophers, the accusation against Christianity of being intolerant has been taken up continuously down to our own times. According to the Enlightenment philosopher's thinking, the Christians could and should have tolerated the Roman gods. We can extrapolate, without going too far, that in this way they would not have disturbed the tolerant order of imperial society.

In spite of the specious character of the reasoning, this kind of accusation shows in the least that from the rise and spread of its ideas, *ideological tolerance* saw an adversary in Christianity to be fought from the outset. As we shall see later, this observation does not prejudice other positive aspects in the reflection on the theme of tolerance. The fact remains, however, that in its exaggerated expression, it is indeed with regard to Christian thought that the *tolerant ideology* will reserve its most violent attacks.

g) *The Letter to Diognetus or the moral coherence of the Christian faith*

In any case, the faithful defense of doctrine and the limpid witness of the martyrs will allow Christians to give coherent and credible example of a rule of life that excludes some practices. Moral uprightness and rectitude of will are inseparably linked to the witness given to the true God. Some of them will raise objections to carrying out certain activities (for example, bearing

²⁹ The controversy had to do with the question of knowing if it was fitting, beyond the restoration of the Altar of Victory, to re-establish the pagan religions. Symmachus preached tolerance on this point, while Ambrose proved to be intractable on the grounds that a Christian cannot recognize false gods (St. Ambrose, *Letters* XVII and XVIII; Symmachus, *Relation* III, in Ital. ed., *La maschera della tolleranza*, Bur, Milan 2006).

³⁰ "What! The Romans would have suffered because the infamous Antinoüs was put on the level of the second gods, and would have torn and handed over to the beasts all those who were only reproached for having peacefully adored a just man! What! They would have recognized a supreme God, a sovereign God, the master of all the secondary gods, affirmed by this formula: *Deus optimus maximum*; and they would have sought those who adored only one God! It is unbelievable that there was an inquisition against the Christians under the emperors: that is, that someone went to their homes to question them about their religion. Neither Jew, nor Syrian, nor Egyptian, neither Bards, Druids nor philosophers were ever troubled about that article. So the martyrs were the ones who rose up against the false gods. It is a very just, very pious thing to not believe in them; but in the end if they were not content to adore a God in spirit and truth and manifested violently against the religion received, as absurd as it could have been, we are obliged to admit that they themselves were intolerant" (Voltaire in *Traité sur la tolérance*, Ed. Garnier-Flammarion, Paris 1989, Chapt. IX, pp. 70-71).

arms, as will be the case for the Christian apologist Lactantius and for Tertullian). But all show respect for the laws of the city as long as they do not contradict the moral requirement. This is the description of the disciples of Christ made by the *Letter to Diognetus*: "As citizens, they share in all things with others, and yet endure all things as if foreigners...They marry, as do all; they beget children, but they do not destroy their offspring. They have a common table...They obey the prescribed laws, and at the same time surpass the laws by their lives".³¹

h) Fidelity to the Church as the content of a Christian's conscientious objection: the case of Thomas More

Christians know by now that they can be compelled by the pressure of events to choose the narrow way that leads them to not deny their faith. Saint Thomas More undoubtedly constitutes the most striking example in early modern times of conscientious objection for religious reasons, and more particularly, religious belonging.

After abandoning his wife, as we know, to marry Anne Boleyn, King Henry VIII needed to have his marriage annulled under pain not only of excommunication, but also of having to face insoluble problems of succession. When Rome, solicited by Catherine of Aragon, rejected the annulment of his marriage (March 23, 1534), the legitimacy of the royal succession of any children that would be born from the king's marriage to Anne Boleyn was immediately put up for question. The king reacted by having his Parliament adopt a new law regarding the succession of the English Crown. Anyone who rejected its content would be declared a *felon* (traitor). Every high functionary had to take an oath: the members of the Communes as well as those of the House of Lords. Only bishop Fisher refused to do this among the Lords.

As a matter of fact, there were two different oaths: one had to do with the royal succession and was addressed to the laymen; the other was destined to the clergy on whom abolition of all papal authority in England was imposed. When More is judged, he raises the invalidity of the law of succession with regard to natural law. But the question of succession was not the only one raised to Thomas More. In fact, when he was presented the text of the oath, he discovered that he was compelled not only to approve the royal succession, but also the king's authority over the Church of England. We know from his son-in-law Roper how difficult his inner struggle was. Thomas, in fact, had to resist the affection of his loved ones until the moment

³¹ *Letter to Diognetus*, V, 6-10.

he was summoned to take the oath in Lambeth. He had the courage to contest the illegal character of the dual oath that was expected of him. He was explicitly asked to favor his duty of obedience to the sovereign over his doubts and his conscience. He answered that he was compelled to obey his conscience rather than the king, but that he did not wish to condemn anyone. The episcopate, in fact, had already renounced its tie to Rome, with the exception of Fisher.

Thomas was later imprisoned for *contumacy*. The firmness he demonstrated until the end was accompanied by a very keen sense of his own weakness. In this way, the example he gives of conscientious objection, which is profoundly Christian in its motivations, is first of all the expression of a divine gift: *I can only hope that recourse will not be made to violent means of coercion and, moreover, if that was the case, that God with the help of his grace as well as that of the many prayers of faithful people will give me the strength to stay firm...For of this I am entirely certain: if ever I would make an oath, I would act entirely against my personal conscience.*³²

More demonstrates that the right to object to an unjust law is not the fruit of a haughty decision on the part of someone who puts himself above the law. Moreover, the difficulty, as in the previous case, in exercising it in stages, so to speak, proves that martyrdom is never chosen a priori. It represents the arrival point of a course of action that is careful at every stage to find a solution that safeguards the rights of conscience and, if possible, at the same time, respect for authority.

Thomas More was not a revolutionary. His actions were not first of all political in nature. Thomas More did not escape from any of the obligations that were made on him: he went to Lambeth when he was convoked, he gave witness to respect and deference to his sovereign, and he did not avoid any of the formal obligations required of him, except for the precise subject of his objection: the rejection of the pope's authority. At no time did he contest the legitimacy of the legislator as such: **the objection only has bearing on the subject of the law that is considered unjust.** As for every authentic conscientious objector, *his passivity and docility with regard to the sanctions incurred impede considering him a traitor or a rebel. Only his assumed impotence attests to his attachment to the State whose sovereign authority and power to legislate he recognizes.*³³

The refusal to act against one's conscience has naturally developed over the ages in a Christian compost. As we have seen, it has concerned subjects

³² Quoted by E.M. Ganne, *Thomas More. L'homme complet de la Renaissance*, Nouvelle cité, Coll. Historiques, Montrouge 2002, p. 216.

³³ Cfr. M. Broc – R. Pietra in *L'objection de conscience*, Esprit 10 (October 1963), 375.

as different as bearing arms, denial of faith, and laws against the Church on the part of the temporal authority. Behind the rejection of a law or disobedience to an immoral order, a force is always present which, beyond the firmness of personal witness, is undergone and interpreted by the civil authority as a potential threat. The refusal of the adolescent martyrs of Uganda, for example, not to bend to the king's immoral whims was interpreted and judged as a crime of lese-majesty (a crime against royalty or a sovereign power).

The secularization of conscientious objection: modern times

By its nature, conscientious objection is exposed to retaliation and sanctions unless it is codified by the law. Conscientious objection in modern times has become secularized and taken definitive shape around two specific themes.

The first is *military service*, the civil obligation required by most legislations which calls for all young adults to serve a certain period of time in the armed forces. Such service involves learning to use arms in the event that the country will be exposed to an armed conflict. The refusal of this possibility by those who are called conscientious objectors has given rise to a codification that was the result of a long evolution over more than a century. The status of conscientious objection, the cultural and political context in the West where this action has been legitimated by law, and the object of what has often become a demand of a political nature, requires us to compare it with traditional conscientious objection.

The second area of application is recent and for less than half a century has concerned the issue of the practice of decriminalized and then legalized abortion. The fact that procured abortion is not only tolerated but also recognized as a right and an individual freedom creates a totally unprecedented situation in the history of public expressions of the demands of personal conscience: it is the subject of a positive right that becomes the object of conscientious objection.

Let us examine two more recent forms of conscientious objection:

a) Military service:

Christian objectors have found the foundations of their position in Scripture: the Fifth Commandment, the teaching about loving one's enemies, Jesus' order to Peter to put the sword back in the sheath (Cfr. *Jn* 18:11). The prospect of performing an action, shedding blood, against their own conscience

has convinced them that they will incur the severity of divine justice on Judgment Day, according to the saying of Pope Gelasius in his letter to Emperor Anastasius: *Quicquid fit contra conscientiam aedificat ad gehennam*.³⁴

However, refusing to bear arms has never been an attitude shared by all Christian consciences. With the reign of Constantine, the legitimate character seems to be affirmed of the State's need to use all means—and hence the force of soldiers—to safeguard the common good. The sovereign's authority comes from God and there is no opposition in principle between the evangelical precepts and the citizen's duties. The protection of the common good is the responsibility of every citizen and a Christian is also a citizen. In no place in the Gospel can we see, for example, Christ reproaching the Roman centurions (and yet, they were the occupants) for the nature of their service. We know that only a contemporary, ideological re-reading of the Constantine era interprets, as a compromise of principle with the Empire, Christian thought on the temporal authority, which began to be systematized then, following Saint Ambrose and Saint Augustine.

Medieval reflection will strive to show that circumstances exist in which war conducted by a sovereign State can prove to be just.³⁵

The protection of its subjects, and the integrity of its territorial limits in the event of unjust aggression are two examples of this.

In actual fact, the refusal to bear arms among Christians has had more to do with currents in the Anglo-Saxon countries that came from churches which sprang from the Reformation: Anabaptists, Mennonites, and Quakers.

Dispensation from military service for religious reasons existed in the sixteenth century in some European regimes. For example, the Dutch Mennonites and later those in Russia enjoyed freedom of worship accompanied by a dispensation from the duty to serve in the armed forces. However, this concession was not, strictly speaking, inspired by philosophical reasons. It was part of the usual exemptions granted as privileges in different juridical, civil and religious areas. These communities ran their own religion, courts and schools. So it was in favor of the Mennonites that the first civil service to substitute military service was granted and created in Russia in 1875. The objectors had to take part in forestry work. Their number never exceeded a thousand. It was

³⁴ PP. Gelasius, Epistola VIII, *Ad Anastasium imperatorem*, PL LIX, col 42.

³⁵ Extrapolating the Roman idea of just war (*justum bellum*)--a purely formal idea inasmuch as war was considered just that was declared according to the well-known rituals carried out by magistrates empowered to do so--Christian thought with Saint Augustine and later with Saint Thomas would specify the conditions of just war: it can only be declared by the competent authority, there must be a just cause (requirement of punitive justice), and, lastly, it must have an upright intention: war cannot have any other purpose than the reestablishment of peace and justice.

only in the beginning of the twentieth century that provisions in favor of objectors were made in different countries, but on the condition that their requests would be presented individually. We mention Sweden (1902), Australia (1903), South Africa (1912), Great Britain (1916), Canada, the United States and Denmark (1917), Norway in 1922, and the Netherlands in 1923. The interested parties had the choice between unarmed military service and civil service. Very soon a considerable part³⁶ of the objectors refused any assignment at all and made an absolutist choice.

The same phenomenon could be seen all over. In some countries, the lawmakers were very late in providing a statute. This is the case of France which waited until December 21, 1963 to vote on an original status for objectors. Previously, the refusal to do military service was harshly sanctioned by law and punishments of imprisonment were usually inflicted. The country had to confront the question because of the rapid development of the objection movement, which was favored, among other things, by the Jehovah's Witnesses in the difficult context of the Algerian War. The 1963 law was equivocal: on the one hand, it recognized the right to objection demanded by a part of the population (it was in fact a small minority at the time) and resolved the questions of the objectors who were still in prison; on the other, it surrounded this right with such constraining administrative conditions that it made it a *shameful right*, we might say, through very dissuasive measures (doubling the time period of civil service in relation to military service, prohibition of making publicity about it; moreover, the request was not accepted if it was not presented many months before the date of induction). The abolition of compulsory military service as a result of creating professional armed forces has made the question less acute in many countries. It has shifted to other areas of social life and become more and more politicized.

In reality, these difficulties in making laws express the fact that the secularization of conscientious objection at the end of the nineteenth century often brought a deviation in the meaning of this course of action. To obvious cases of refusal authentically inspired by scruples in conscience of religious origin, motivations of a philosophical and especially a political order were soon added. It is commonplace to say that conscientious objection has found in the antimilitarism linked to the anarchist current³⁷ a matrix that contributes to making it an issue of political action. Hard-line pacifism, the theory of non-violence and civil disobedience have given rise for some decades to the creation

³⁶ According to J.P. Cattelain, the absolutist choice concerned, by way of example, 6,261 objectors out of a total of 15,925 in Great Britain for the period 1916-1918. The statistics that we give are taken from his historic work on the subject (J.P. Cattelain, *L'objection de conscience*, PUF, Coll. Que sais-je?, Paris 1973, pp. 50ss).

³⁷ All the organized movements of conscientious objectors refer to historical figures of anarchism for which any demand on the part of a State is inadmissible.

of a host of movements, associations and publications in the West that share the demand for a more and more extended recognition of the right to objection. The demands of conscience sometimes pave the way for political and ideological convictions and turn quite simply into opinions. Today, most objectors invoke non-violence and are involved in causes that have become public issues in political life: the struggles against the arms industry, against nuclear energy, against internationalization. Conscientious objection has become pure *political objection*: it is no longer a question of refusing, for reasons of conscience, personal participation in military activities that would require bearing arms, but rather of militating—and sometimes not without violence—against a whole political and economic system in force in the Western countries. In the most extreme cases, the mere fact that constituted bodies—the army, Civil Service, the Church—are hierarchized, is sufficient to consider them enemies to be defeated. Then the political choice becomes, in Cattelain’s words, a *libertarian choice*.³⁸

The ambiguity of the concepts used explains the difficulties encountered by the legislator in setting down the objective criteria of the *status of objectors*. Can the refusal to do military service be based on adherence to somewhat imprecise values (non-violence, for example), or even philosophical opinions? Where is the limit? We know that in many countries legislators have made a limitation that only recognizes objection inspired by religious requirements. This fact constitutes a paradox in the sense that, in the final recourse, it is indeed personal conscience that ought to inspire the attitude of objection. To obey religious prescriptions is also a moral duty, but to limit the right to religious motivations would come back to exclude those who may be very sincerely motivated by moral reasons. Having said this, the development of ideologies illustrated earlier and the tribunal they find in many media show how necessary the distinction was between moral requirements and simple political opinions, which was expressed in the beginning by the severity of the law.

This makes it possible to understand the animated discussions that have surrounded the consideration of the second modern form of conscientious objection regarding questions in biomedical ethics directly related to the problems of respect for human life and different health care actions.

b) *The recent development of conscientious objection in health care*

The current discussions on conscientious objection in medicine have taken shape first around the *decriminalization* and *legalization* of abortion, and then extended to many question raised today in very different contexts. The

³⁸ Cf. J.P. Cattelain, *op. cit.*, p. 76.

problems taken up are many. Among these problems giving rise to objection besides abortion, we find the question of some patients' refusal to undergo certain treatments (the case of blood transfusions for Jehovah's Witnesses, for example), the refusal to take part in acts of euthanasia, sterilization and capital punishment, research that involves the destruction of embryos, assisted procreation techniques, and many other questions. They all concern medical-surgical practice on the one hand, and biomedical research on the other. Since these two precise areas are the subject of two specific studies in our Congress, I will only deal with them in this report from the particular viewpoint of what has characterized this kind of conscientious objection:

- From the viewpoint of the State's authority, it is a concession granted to a citizen exactly like the license granted to the objector who refuses to bear arms. Note that this right to refrain from taking part in "medical" acts (or pseudo-medical acts since it involves abortion and anything that threatens human life), or from acts of research involving manipulations which the persons judges as morally unacceptable, is based both on ethical requirements (the Hippocratic tradition) and on religious reasons. Many times the two coincide, moreover, for the reasons already shown with regard to the witness of the Christian martyrs.
- From the viewpoint of the objector, these new areas of application, compared to the area of military involvement, give the conscientious objection, at least whenever a human life is at stake, an objectively higher moral consistency. To refuse to serve in the framework of the armed forces of one's country is a recognized object of conscientious objection; however, from a moral standpoint, no one can question a country's right to take proportioned means to defend its territory and protect its citizens. On the other hand, the certain endangerment of the life of an innocent human being through a deliberate act justifies not only conscientious objection, but absolutely requires it.

Observe that international law does not ignore the existence of a right of this kind because in some cases it has reproached subordinates for carrying out orders, in a context of war, which they should have disobeyed (participation in war crimes), even when these acts were falsely covered by scientific research. This was the case during the second trial at Nuremberg against the Nazi doctors in 1946-1947. In a recent work, Michel Schooyans, in considering the accusation against the latter, notes that at the time, the Nuremberg judges went much further than many classic Catholic moralists go today.³⁹ In fact, canon law only considers the materiality of the act, while

³⁹ M. Schooyans, *Le terrorisme à visage humain, op. cit.*, pp. 121ss. The author adds that the judges "accepted the idea of the inalienable responsibility of those who *institutionalize* crime. They condemned the *organization* of eugenics, immoral and cruel medical experiments, and death en masse" (*Ibid.*).

military law, as expressed at Nuremberg, also took the intention into consideration in order to condemn it.

From these observations, let us keep in mind the chain of responsibilities in the evil committed. We find this in a particularly developed way in the question of abortion: preparation of the law, lobbying with the mass media, the lawmaker's work with different contributions from jurists, the participation of MPs who vote on the laws, setting up the material conditions (hospital establishments, social services, "medical" prescriptions) that encourage and orient persons, and finally the performance of the act, with all the aspects of immediate and mediate cooperation in the act of abortion. The decriminalization laws have been a politically subtle way of presenting to public opinion what was already dictated by an intention to legalize purely and simply. In this sense, the Weil Law of 1975 in France was the first of a long series in Western Europe. To negotiate it, it had to be presented using a technically neuter term that was, we daresay, morally sterilized (*voluntary interruption of pregnancy*), and better yet, only its initials (VIP). For some years the term MIP (*medical interruption of pregnancy*) has also been used to designate procured abortion performed in the framework of medical treatments for the mother. The recent history of the past thirty years has just expanded a movement that is presented not only as an individual right (a woman's right to have control over herself), but has laid down the conditions for real eugenics by including so-called *therapeutic* abortion in the usual procedures of selecting healthy embryos and eliminating sick embryos (for example, in the context of a prenatal diagnosis).

Conscientious objection in this context is raised on different levels: that of the health care professions and that of politicians. We will take the example of the French law to illustrate this.

The law in France provides for a right to conscientious objection for the health care professions, but the possibility to exercise it is so restricted that it establishes a real *right to abortion* system. Everything is articulated around the distinction between public and private establishments. Since objection is not recognized for establishments, only persons—a problem, moreover, which has been raised recently in other countries, Argentina, for example—all the public establishments must provide services where abortions can be practiced. The obstetricians who work in these establishments cannot refuse the fact that abortions are practiced in their department. If they do, they will be asked to leave the public structure. In the private sector, the doctors are not held to practice them or to accept them if they are in charge of an establishment. However, they have to indicate an alternative structure to patients who so desire where they can undergo the interruption of pregnancy. Refusal to do so would mean to incur grave sanctions if the patient decides to

press charges (for example, by invoking medical reasons such as infections or others).

Nurses that have been assigned to a department where VIPs are practiced certainly have the freedom to ask for a change of duty, which is granted, but not without difficulties at times.

This system calls for many observations. The first is that with conscientious objection, we really have a *theoretical right*, not a practical right. It does not have the same status at all as the right to abortion: it is accompanied by such limitations and conditions for its applications that its public exercise marginalizes those who use it and sometimes exposes them to sanctions. What is true for obstetricians in the public sector is true a fortiori for the profession of pharmacists. They cannot refuse to sell products that are considered and classified as contraceptives when they are not in fact abortifacient. So in the area of conscientious objection to abortion, we find the same limitations as the restrictive arrangements we indicated in the area of objection to military activity.

The second observation is an implication of the preceding one: the higher values--which are the only ones in principle that justify someone's objection in conscience to taking part in an action that is considered morally unacceptable--are not really considered by the State authority as higher, or in fact even equal to the values judged to be politically consensual (such as freedom of the individual, tolerance).

A third observation: obstetricians and gynecologists are no longer in a position to exercise their profession in serene conditions. They are exposed to possible sanctions if, in the framework of prenatal diagnosis, they commit an error of evaluation that would under evaluate the infirmity of a fetus, thus influencing the mother's decision to let it live. But here we note the imbalance: when, on the contrary, a doctor's error leads to the death of the fetus when the mother wants the birth of the child, the doctor cannot be prosecuted.⁴⁰

The developments in the recent history of abortion in France make it possible to understand a deviation which, following in the example of what is happening in more and more countries, marginalizes the conscientious objector increasingly. The fact that since 1982 (Roudy Law) abortions have been reimbursed by Social Security shows that the act of aborting is no longer considered the negative action which the initial law of 1975, despite its remote intentions, wanted to dissuade mothers from committing. The act

⁴⁰ Cf. *Généthique* 72 (December 2005).

of aborting has practically become the alternative of an iniquitous choice because it no longer incurs more disapproval than deciding to give birth to a child. The State itself facilitates the conditions for its execution and the fact that it reimburses it is its spectacular and sad material expression.

Conscientious objection is also limited in the choice of its action. Analogous to what happened before 1963 for actions against military service, the law sanctions some militant actions which are interpreted as disrespectful of the law and intolerant. Since 1993, a new crime has even been created: *obstruction of VIP*. The parallel with the crime of *disobedience (insubordination)* in the military area of the past is instructive: *obstruction of VIP* incurs comparable prison punishments (from two to three years of prison); but the wording of the crime seems to indicate that VIP designates an objective social good, not an evil that the State would refrain from sanctioning by decriminalizing it. *Insubordination*, on the other hand, only indicated a subjective attitude (the action of not submitting to the obligation of military service). So we have understood this: in contemporary culture, the VIP has become a good, not only for the person who is free to practice it, but also for the society itself that permits, encourages, promotes and finances it. Historically, this kind of approach can only increase the practice of abortion more and more by trivializing it. In July 2001, the conditions for access to this procedure were the subject of new measures, some of which, without being unfair, could be described as incitation: the legal cutoff time is brought to twelve weeks, parental authorization is abolished for minors, and even the conversation, which was compulsory up until that time for women of legal age, has disappeared. The crime of obstruction is extended to moral and psychological pressures. Regarding the conscience clause for doctors, this has been greatly undermined and even abolished for heads of hospital service. In November 2004, a decree authorizing medical abortion at home was signed by the Minister of Health (!).

The case of abortion is paradigmatic: the ideology that has established and encouraged it by presenting it as a personal right of pregnant women, has deprived society of any possibility of reflecting serenely on the fundamental question of the status of the embryo precisely out of fear that this legislative choice will be put up for question again. By doing this, society is no longer able to face the challenges ethically that are represented by some medical-surgical practices and manipulations related to biomedical research. How, and by virtue of what, could society express a reservation in principle to procedures involving the destruction of many embryos if, until now, it has not accepted to confront the problem objectively related to the act of aborting?. It has taken away from any future reflection on these themes the essential criteria that would have enabled it to look at them serenely.

Such political action has an immediate effect on the possibilities that citizens will have in the future to exercise a right to conscientious objection with regard to scientific procedures that threaten human life. This political action lays down the conditions for an immediate limitation and, in the end, the abolition of the right to conscientious objection in the area of respect for human life. A legal intentions is already expressed to evolve towards the abolition of this human right, even though it is linked to the most fundamental requirements of the human moral conscience. The reason invoked is classic: the objection would express a means of escaping from the law and violate the principle of everyone's equality before the law.

It will be then that our starting thesis will come about: a tolerant society cannot tolerate that a right of conscientious objection is exercised in it because it is no longer in a position to accept it by honoring the higher values expressed therein. So it chooses consensual values, some of which will unfailingly lead it to death.